



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

**Thursday, January 29, 2026
2:00 PM**

Redwood Room – 2180 Milvia Street, 6th Floor, Berkeley, CA 94704
Teleconference Location – 1619 Edith Street, Berkeley CA 94703

Committee Members:

Councilmembers Rashi Kesarwani, Shoshana O’Keefe, and Brent Blackaby
Alternate: Mayor Adena Ishii

This meeting will be conducted in a hybrid model with both in-person and virtual attendance. Attend this meeting remotely using [Zoom](#). To request to speak, use the “raise hand” function in Zoom. To join by phone: Dial **1-669-254-5252 or 1-833-568-8864 (Toll Free)** and enter **Meeting ID: 161 091 9781**. To provide public comment, Press *9 and wait to be recognized by the Chair. To submit a written communication for the Committee’s consideration and inclusion in the public record, email policycommittee@berkeleyca.gov. All Committee meetings are recorded.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting, however, if you are feeling sick, please do not attend the meeting in person.

Pursuant to the City Council Rules of Procedure and State Law, the presiding officer may remove, or cause the removal of, an individual for disrupting the meeting. Prior to removing an individual, the presiding officer shall warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The presiding officer may then remove the individual if they do not promptly cease their disruptive behavior. “Disrupting” means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, a failure to comply with reasonable and lawful regulations adopted by a legislative body, or engaging in behavior that constitutes use of force or a true threat of force.

California Government Code Section 84308 (Levine Act) Parties to a proceeding involving a license, permit, or other entitlement for use are required to disclose if they made contributions over \$500 within the prior 12 months to any City employee or officer. Parties and participants with a financial interest are prohibited from making more than \$500 in contributions to a decisionmaker for the 12 months after the final decision is rendered on the proceeding. The above contribution disclosures and restrictions do not apply when the proceeding is competitively bid, or involves a personnel or labor contract. For more information, see Government Code Section 84308.

AGENDA

Roll Call

Election of Chairperson

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes - October 16, 2025

Committee Action Items

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

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

2. Resolution Rescinding Berkeley Police Department's Pepper Spray Reporting Requirement

From: Councilmember Kesarwani (Author)

Referred: November 17, 2025

Due: May 26, 2026

Recommendation: Adopt a resolution rescinding Berkeley Police Department's current required notification process for reporting pepper spray use after each incident. Further, recommend recording the use of pepper spray within the existing use of force reporting system to minimize the administrative burden on staff. The department's current transparency measures already provide the public with detailed data on all use of force incidents.

Financial Implications: None

Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110

Committee Action Items

3. **Resolution Rescinding Resolution No. 51,408-N.S. Restricting the Use of Air Support and Canine Units And Updating Mutual Aid Policies**
From: Councilmember Kesarwani (Author)
Referred: November 17, 2025
Due: May 26, 2026
Recommendation: Adopt a resolution to rescind Resolution No. 51,408-N.S. which currently restricts the use of helicopters and police canine units by the Berkeley Police Department (BPD) and to update policies authorizing BPD to deploy these resources through mutual aid agreements directly with external agencies. The revised policy framework will replace the prior requirement for City Manager approval with post-deployment notification, ensuring rapid and effective responses during critical incidents. The policy will continue to explicitly prohibit the use of canines for crowd control.
Financial Implications: See report
Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110

4. **Resolution to Amend Berkeley City Council’s 2020 Direction to Reinstate Berkeley Police Department’s Use of Tear Gas in Limited Situations and Lift the COVID-19 Moratorium on the Use of Smoke and Oleoresin Capsicum (OC) Spray**
From: Councilmember Kesarwani (Author), Councilmember Humbert (Co-Sponsor)
Referred: January 5, 2026
Due: June 9, 2026
Recommendation: Adopt a resolution amending the Berkeley City Council's June 9, 2020 direction regarding smoke, OC spray, and tear gas to allow the Berkeley Police Department’s Special Response Team (SRT) to use tear gas under circumstances in which there is a significant risk of injury or death, maintain the prohibition on the use of tear gas for crowd control, and lift the temporary moratorium on the use of smoke and OC spray.
Financial Implications: See report
Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110

Unscheduled Items

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

Items for Future Agendas

- **Requests by Committee Members to add items to the next agenda**

Adjournment

~~~~~  
*Written communications addressed to the Public Safety Committee and submitted to the City Clerk Department will be distributed to the Committee in advance of the meeting and retained as part of the official record.*

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

**COMMUNICATION ACCESS INFORMATION:**

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at [ada@berkeleyca.gov](mailto:ada@berkeleyca.gov), (510) 981-6418 (V), or (510) 981-6347 (TDD) at least three business days before the meeting date. Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.

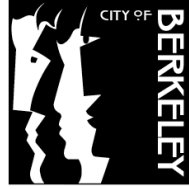
~~~~~  
I hereby certify that the agenda for this meeting of the Standing Committee of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on January 22, 2026.



Mark Numainville, City Clerk

Communications

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



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

**Thursday, October 16, 2025
2:00 PM**

Redwood Room – 2180 Milvia Street, 6th Floor, Berkeley, CA 94704

Committee Members:

Councilmembers Rashi Kesarwani, Shoshana O’Keefe, and Brent Blackaby
Alternate: Mayor Adena Ishii

This meeting will be conducted in a hybrid model with both in-person and virtual attendance. Attend this meeting remotely using [Zoom](#). To request to speak, use the “raise hand” function in Zoom. To join by phone: Dial **1-669-254-5252 or 1-833-568-8864 (Toll Free)** and enter **Meeting ID: 160 649 5058**. To provide public comment, Press *9 and wait to be recognized by the Chair. To submit a written communication for the Committee’s consideration and inclusion in the public record, email policycommittee@berkeleyca.gov. All Committee meetings are recorded.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting, however, if you are feeling sick, please do not attend the meeting in person.

Pursuant to the City Council Rules of Procedure and State Law, the presiding officer may remove, or cause the removal of, an individual for disrupting the meeting. Prior to removing an individual, the presiding officer shall warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The presiding officer may then remove the individual if they do not promptly cease their disruptive behavior. “Disrupting” means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, a failure to comply with reasonable and lawful regulations adopted by a legislative body, or engaging in behavior that constitutes use of force or a true threat of force.

California Government Code Section 84308 (Levine Act) Parties to a proceeding involving a license, permit, or other entitlement for use are required to disclose if they made contributions over \$500 within the prior 12 months to any City employee or officer. Parties and participants with a financial interest are prohibited from making more than \$500 in contributions to a decisionmaker for the 12 months after the final decision is rendered on the proceeding. The above contribution disclosures and restrictions do not apply when the proceeding is competitively bid, or involves a personnel or labor contract. For more information, see Government Code Section 84308.

MINUTES

Roll Call: 2:01 p.m.

Present: Kesarwani, O'Keefe, Blackaby

Public Comment on Non-Agenda Matters: 2 Speakers

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes - September 18, 2025

Action: M/S/C (Kesarwani/O'Keefe) to approve the September 18, 2025 minutes.

Vote: All Ayes.

Committee Action Items

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

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

Committee Action Items

2. Unmanned Aerial Systems and Drones as First Responders

From: Councilmember Taplin (Author), Councilmember Kesarwani (Co-Sponsor), Councilmember Humbert (Co-Sponsor)

Referred: September 15, 2025

Due: March 9, 2026

Recommendation: Refer to the City Manager the initiation of the process outlined by BMC 2.99: Surveillance Technology Ordinance (STO) for the Berkeley Police Department (BPD) to acquire and use Unmanned Aerial Systems (UAS), including Drones as First Responders (DFR), consistent with all auditing, transparency, data and privacy protections required for all use policies and acquisition reports under the STO. Submitting a UAS acquisition report and use policy will support informed, collaborative, and accountable exploration of this technology across departments, and ensure that any deployment aligns with Berkeley's commitment to public trust, environmental stewardship, and racial and social equity. As outlined in the STO, the use policy, and acquisition report shall include:

An interdepartmental assessment of potential operational uses by public safety and regulatory frameworks, civil liberties and privacy protections, and equity implications; Community engagement and best practices for transparency and accountability; A requirement for annual public reports detailing: Instances of drone deployment; Departmental uses and impacts on operations; Community outcomes; Compliance audits; And updates on training, and data handling procedures.

Financial Implications: See report

Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Action: 3 speakers. M/S/C (Kesarwani/O'Keefe) to send the item with a positive recommendation to Council.

Vote: All Ayes.

Unscheduled Items

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

- None

Items for Future Agendas

- None

Adjournment

Action: M/S/C (O'Keefe/Kesarwani) to adjourn the meeting.

Vote: All Ayes.

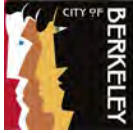
Adjourned at 2:48 p.m.

I hereby certify that the foregoing is a true and correct record of the Public Safety Committee meeting held on October 16, 2025.

Wendy Sorensen, Assistant City Clerk

Communications

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



Rashi Kesarwani
Councilmember, District 1

CONSENT CALENDAR

December 2, 2025

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author)

SUBJECT: Resolution Rescinding Berkeley Police Department's Pepper Spray Reporting Requirement

RECOMMENDATION

Adopt a resolution rescinding Berkeley Police Department's current required notification process for reporting pepper spray use after each incident. Further, recommend recording the use of pepper spray within the existing use of force reporting system to minimize the administrative burden on staff. The department's current transparency measures already provide the public with detailed data on all use of force incidents.

CURRENT SITUATION AND ITS EFFECTS

Currently, the Berkeley Police Department (BPD) must notify the City Council and the Police Accountability Board within seven days every time pepper spray is used by the Police Department. The required Use of Pepper Spray Report is comparable to the Use of Force Report, which is also required to be filed for these types of incidents. This duplicates both staff's efforts and the information captured and creates an unnecessary administrative burden.

Under current policy, every deployment of pepper spray goes through the full review structure required by Policy 300 which includes documentation and supervisory evaluation. At the same time, officers must prepare a second report for Council and the Police Accountability Board that contains the same facts already captured in the use-of-force review. The two processes run side by side and track identical information, which creates extra work without adding anything meaningful to the record.

The Department already publishes detailed information on all use of force incidents through its Transparency Hub which is continuously updated. That system shows

2180 Milvia Street, Berkeley, CA 94704 • Tel: (510) 981-7110 • TDD: (510) 981-6903 • Fax: (510) 981-7111
E-Mail: rkesarwani@cityofberkeley.info

when pepper spray is used and places it within the broader context of overall use of force reporting. Because the public already receives this comprehensive, routine data an additional stand-alone pepper spray report no longer serves a unique purpose. The proposed change would simply eliminate the additional reporting mechanism and maintain the reporting of pepper spray use as it currently exists within the Transparency Hub.

BACKGROUND

In 1997, the Berkeley City Council instituted a separate notification process for reporting pepper spray use.¹ That requirement helped build accountability during an era of evolving police practices. That was also a time that pre-dated the Department's Transparency Hub² that contains vast quantities of data including all use of force incidents that are updated daily. This overhaul of reporting procedures has made the separate pepper spray notification obsolete.

PROPOSED CHANGES AND RATIONALE FOR RECOMMENDATION

The proposed resolution would eliminate the mandate requiring Council notification for every use of pepper spray. All incidents will be documented through the existing use of force reporting system and be readily available to the public. This adjustment simplifies administrative procedures and avoids duplicative reporting while preserving transparency and accountability. The current reporting framework captures all instances of pepper spray use alongside other use of force incidents. Maintaining a separate notification requirement burdens staff with redundant documentation. The change will streamline operations and allow personnel to devote more attention to critical matters without sacrificing public oversight.

FISCAL IMPACTS

No significant additional expenditures are anticipated. The proposed change is expected to yield administrative efficiencies that may result in minor cost savings.

CONTACT PERSON

Councilmember Rashi Kesarwani, District 1

(510) 981-7110

ATTACHMENTS

- 1) Resolution
- 2) Minutes for the Regular City Council Meeting, September 16, 1997

¹ See Attachment 2

² Berkeley Police Transparency Hub: <https://bpd-transparency-initiative-berkeleypd.hub.arcgis.com/>
 2180 Milvia Street, Berkeley, CA 94704 • Tel: (510) 981-7110 • TDD: (510) 981-6903 • Fax: (510) 981-7111
 E-Mail: rkesarwani@cityofberkeley.info

Resolution NO. ##,###-N.S.
Resolution Rescinding the Pepper Spray Incident Notification Requirement

WHEREAS, in 1997 the City Council established a requirement for the Berkeley Police Department to notify Council each time pepper spray is used as a measure to bolster accountability; and

WHEREAS, the separate notification process was introduced at a time when reporting mechanisms were limited and provided necessary oversight; and

WHEREAS, the Berkeley Police Department has since implemented a comprehensive use-of-force reporting system that documents all related incidents, including those involving pepper spray; and

WHEREAS, the continued requirement for separate notification creates redundant administrative tasks that strain City resources; and

WHEREAS, rescinding the notification requirement will simplify reporting procedures and allow staff to concentrate on more critical operational matters while preserving public transparency;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that:

1. The requirement for the Berkeley Police Department to notify the City Council every time pepper spray is used is hereby rescinded.
2. All pepper spray incidents shall be recorded as part of the established use-of-force reporting system in accordance with current departmental protocols.

MINUTES
BERKELEY CITY COUNCIL
REGULAR MEETING

Tuesday, September 16, 1997

Section A. Preliminary Matters

1. **Roll Call:** 8:00 p.m.

Present: Councilmembers Armstrong, Breland, Maio, Olds, Shirek, Spring, Woolley, Worthington, Mayor Dean and Deputy City Manager Rucker.

Absent: None.

2. **Ceremonial Matters:**

- a. Proclaimed September 20 as Berkeley Coastal Clean-up Day
- b. Proclaimed the 25th Anniversary for Telegraph Avenue Arts and Crafts Vendors
- c. Proclaimed September 14 - September 20 as Constitution Week

3. **Comments From The Public:** Lenore Anderson; Nancy Delaney; Ashley Krey; Sally Hindman; Howard Jeter; Ed Joseph; Charles Robinson; David Todtfeld; Margaret Bartelt; Russell Bates; Tom McAninley.

Section B. Action On Minutes

Meetings of May 13 (regular), June 3 (regular), June 10 (regular), June 17 (regular, special), June 24 (regular, special), July 8 (regular), July 15 (regular), July 22 (regular, special), July 25 (special), and July 31 (special), 1997.

Action: Minutes held over at the request of Mayor Dean.

Section D. Consent Calendar

The Consent Calendar was moved by Councilmember Breland, seconded by Councilmember Spring, and adopted by unanimous vote of the Council, unless otherwise stated:

(a) From City Manager:

1. **Loan Agreements with the Redevelopment Agency**
Recommendation: Adopt a Resolution authorizing the City Manager to prepare loan agreements with the Redevelopment Agency for the purpose of financing Agency administration, overhead and capital projects in the West Berkeley Redevelopment Project Area and presenting for final approval on October 28, 1997. The debt obligations to conform substantially to the following: 1) a multi-year loan agreement for an aggregate amount to pay for administrative and overhead expenses through the year 2012 and 2) a loan from the City to fund Capital Projects. Expense: Not to exceed \$3.31 million.
Action: Adopted Resolution No. 59,150-N.S. (Abstain: Olds, Dean)

2. **Contract: Totland Park Renovations**
Recommendation: Adopt a Resolution approving plans and specifications for Totland Park renovations; accepting the bid of CLD Construction; authorizing the City Manager to execute a contract and any amendments for a period of 120 days. Expense: \$49,950
Action: Adopted Resolution No. 59,151-N.S.

3. **Donation for San Pablo Park Play Equipment Project**
Recommendation: Adopt a Resolution accepting a donation from Eminent Software Inc. through Berkeley Partners for Parks for planned improvements within the tot area at San Pablo Park. Donation: \$3,000
Action: Adopted Resolution No. 59,152-N.S.

4. **Contract: University Avenue Interconnect Replacement Project**
Recommendation: Adopt a Resolution approving plans and specifications for the University Avenue Interconnect Replacement Project; accepting the bid of St. Francis Electric, Inc.; and authorizing the City Manager to execute a contract and any amendments to install traffic signal interconnect cable along University Avenue between Milvia and Sixth Street for the period September 15, 1997 to June 30, 1998. Expense: \$340,000
Action: Adopted Resolution No. 59,153-N.S.

5. **Contract: Municipal Parking Lot at Dwight Way and Eighth Street**
Recommendation: Adopt a Resolution appropriating funds from the Off-Street Parking Fund; and authorizing the City Manager to execute a contract and any amendments with the Berkeley Chamber of Commerce to manage and operate the new City Parking Facility at Dwight Way and Eighth Street for a time period of two years. Expense: \$23,170
Action: Adopted Resolution No. 59,154-N.S.

6. **Contract: West Campus Swim Center Pool Renovation Project**
Recommendation: Adopt a Resolution approving plans and specifications for the West Campus Swim Center Pool Renovation Project; accepting the bid of Western Water Features, Inc.; and authorizing the City Manager to execute a contract and any amendments to upgrade the swimming pool at the West Campus Swim Center for the period September 15, 1997 to June 30, 1998. Expense: \$223,700
Action: Adopted Resolution No. 59,155-N.S.

7. **Contract: West Berkeley Senior Center Roof Replacement**
Recommendation: Adopt a Resolution approving plans and specifications for the West Berkeley Senior Center roof replacement; accepting the bid of Pioneer Roofing Organization; authorizing the City Manager to execute a contract and any amendments for a period of 35 calendar days. Expense: \$44,952
Action: Withdrawn by the City Manager.

8. **Contract: North Berkeley Senior Center Upper Exterior Siding Repair**
Recommendation: Adopt a Resolution approving the plans and specifications for North Berkeley Senior Center upper exterior siding repair; accepting the bid of the lowest responsible bidder; authorizing the City Manager to execute a contract and any amendments for the period September 26, 1997 to January 1, 1998. Expense: \$115,000
Action: Adopted Resolution No. 59,156-N.S.

- (b) From Mayor and Council:
 1. **Gray Panthers Proclamation**
From: Councilmember Maio
Recommendation: That Council approve the reading of a proclamation at the September 23rd Council meeting declaring Friday, September 26, 1997 as Gray Panthers Day and allowing representatives from the Gray Panthers to comment.
Action: Approved recommendation to add proclamations to September 23rd meeting.

 2. **Support Survival of the Traditional Hopi/Dineh (Navajo) Peoples**
From: Councilmember Worthington
Recommendation: That Council: 1) Adopt a Resolution which outlines the severity of the situation at Big Mountain regarding survival of the cultural existence of the Traditional Hopi/Dineh (Navajo) Peoples, 2) Send letters to President Clinton, Congressman Dellums and Senators Feinstein and Boxer urging them to establish new emergency hearings to investigate the issues occurring in northeast Arizona and a request for creation of a National Historic Cultural and Environmental Preserve and the return of those relocatees to the Joint Use Area and nearby lands, 3) Formally request the elders of both the Hopi and Dineh tribes be sought out and included in these hearings, 4) Call upon other U.S. cities to join us in lobbying Congress and the President to put an end to the injustices being performed with our government's approval, 5) Send a letter to Executives of Peabody Coal and the parent company, Hanson, Inc. asking them to put an end to the ecosystem destruction and devastation of cultural existence of the native peoples, 6) Send a letter to the Bureau of

Indian Affairs in Arizona and to Ada Deer, Assistant Secretary for Indian Affairs, calling upon them to act upon their responsibilities to protect and preserve the traditional cultures, and 7) Send letters to the Hopi Tribal Council and Tribal Police Chief, and Senator McCain voicing the City of Berkeley's disapproval of their actions and encouraging interest of the traditional peoples, culture and sustainment of the ecosystem ahead of corporate interests, such as those of Peabody Coal, or others.

Action: Adopted Resolution No. 59,157-N.S.

3. **Enforcement of Permit Parking Zone**

From: Councilmember Spring

Recommendation: That Council 1) request the City Manager inform all City staff and the Berkeley Unified School District of the rules regarding the preferential permit parking zones in the Civic Center area, 2) continue the project started by MAGNA representatives of daily identification of individual license plate numbers and car owners that park for more than two hours in Zone C and 3) report back to Council in seven months.

Action: Approved recommendation.

4. **Establish an Additional Zoning Adjustments Board**

From: Mayor Dean

Recommendation: That Council refer to the Zoning Adjustments Board (ZAB) and the City Manager the question of establishing an additional Zoning Adjustments Board and request a report back with recommendations by the end of November 1997.

Action: Removed from Consent Calendar by Councilmember Maio. Moved, seconded, carried (Shirek/Maio; Noes - Woolley, Dean) to table the item.

5. **Prevention of Storm Damage from Expected Early and Heavy Winter Rains**

From: Councilmembers Armstrong, Olds, Woolley and Mayor Dean

Recommendation: That Council direct the City Manager to take immediate steps to prevent storm damage expected to occur as a result of early and heavy rains due to El Nino. Steps should include but not be limited to the following: 1) Clean out all storm drains throughout the City, paying special attention to areas where past problems have occurred, 2) Plan ahead to prevent damage from occurring in landslide areas and 3) Take action to ensure that creeks are inspected prior to the onset of winter storms. In addition, request the City Manager prepare an oral report including a City-wide schedule of cleaning storm drains no later than the October 7th Council meeting.

Action: Removed from Consent Calendar by Councilmember Maio. Moved, seconded, carried (Spring/Maio; Abstain - Armstrong, Olds, Woolley, Dean) to ask the City Manager to schedule a Council discussion with a report back in October on Public Works' work plan and priorities and schedule for storm drain cleanouts. The report should also include information on what is being done by the County and by other cities to prepare for El Nino. Mayor Dean and Councilmembers Armstrong, Olds and Woolley asked that the record reflect that they abstained because they feel that the storm related issues are not being addressed.

6. **Investigation of California Gas Prices**

From: Mayor Dean

Recommendation: That Council support Senator Boxer in her investigation of the rise in California gas prices by sending letters of support to Senator Boxer, Attorney General Reno and Secretary of Energy Pena and endorse a letter writing campaign allowing Berkeley residents to express their support for the investigation.

Action: Approved recommendation.

7. **Dragonfly Preschool**

From: Councilmember Breland

Recommendation: That Council direct the City Manager to investigate the financial status and any assistance needed to keep the Dragonfly Preschool Program in the community and to include low-income residents, and report back by October 7th Council Meeting.

Action: Removed from Consent Calendar by Councilmember Olds. Moved, seconded, carried (Breland/Olds) to adopt the recommendation as amended to also request the City Manager to report back on October 7th or as soon as possible thereafter as to why the Preschool did not receive funding from the Housing Advisory Commission; how community welfare reform monies might be utilized; and a list of other preschools that might be eligible for welfare reform monies.

8. **Waiver of Fees for Youth Forum for West Berkeley Youth**

From: Councilmember Breland

Recommendation: Adopt a Resolution waiving fees for the rental of the James Kenny Recreation Center, providing for the taping of a film by BTV Channel 25, providing for staff support, and for all necessary permits; and directing the City Manager to find financial support for the West Berkeley Youth Forum sponsored by the West Berkeley Council Subcommittee.

Action: Adopted Resolution No. 59,158-N.S.

9. **25th Anniversary of Arts and Crafts Vendors on Telegraph**

From: Councilmember Worthington

Recommendation: That Council issue a proclamation at the September 16th City Council meeting in honor of the 25th Anniversary of the Arts and Crafts on Telegraph Avenue to be held on September 21, 1997.

Action: Removed from Consent Calendar by Councilmember Worthington. Moved, seconded, carried (Worthington/Spring) to approve recommendation. Proclamation presented by Councilmember Worthington.

Section G. Reports For Action

(a) From City Manager:

1. **Memorandum of Understanding for Fire Protection**

Recommendation: Adopt a Resolution authorizing the City Manager to negotiate and execute a Memorandum of Understanding (MOU) with the cities of El Cerrito, Richmond, Kensington Fire Protection District, Contra Costa County Fire Protection District and the East Bay Regional Park Fire Department for the exchange of fire protection. Expense: None

Action: Moved to Consent Calendar by Councilmember Armstrong. Adopted **Resolution No. 59,159-N.S.**

2. **Air/Surface Easement at 1904 Sixth Street**

Recommendation: Adopt first reading of an Ordinance authorizing the City Manager to execute an Easement Grant Deed with Rue-ell Enterprises for a ten-foot wide by 152-foot deep air/surface easement over the southerly portion of City-owned lot at 1904 Sixth Street. Revenue: \$16,000

Action: Withdrawn by the Deputy City Manager.

(b) From Mayor and Council:

1. **Interim Measures on the Use of Pepper Spray**

From: Councilmember Spring

Recommendation: That Council: 1) approve an interim policy that every time pepper spray is used by the Police Department, that the Officer involved will fill out a Use of Pepper Spray Report similar to the Use of Force Report presently in effect, and send to the Council and Police Review Commission within 7 days, 2) put seals on the triggers of the canisters, 3) no pepper spray will be used as crowd control by the Berkeley Police Department, 4) the City of Berkeley will investigate legal and other actions to be taken against UC Berkeley Police over abuse of pepper spray and other weapons, and 5) Council will view up to ten minutes of the video of UC Berkeley Police use of pepper spray on demonstrations for affirmative action at the September 16, 1997 Council meeting.

Actions: The video was shown.

Moved, seconded, carried (Maio/Spring) to approve an interim policy for City of Berkeley Police Department use of pepper spray to include: 1) Every time pepper spray is used by the Police Department a Use of Pepper Spray Report similar to the Use of Force Report presently in effect will be completed and sent through regular Police Department channels and to the Council and Police Review Commission; 2) the Report will be sent to the Council as an off-agenda report within seven days, 3) Seals will be put on the triggers of the canisters, 4) No pepper spray will be used as crowd control, and 5) The Police Chief will return to the Council with a report on all past and present uses of Pepper Spray.

Moved, seconded, carried (Maio/Spring) to 1) Ask the City Attorney to advise the Council on any legal actions Council might pursue as it relates to the University and University Police Department's actions to protect the students and their civil rights and any other effective actions the Council might take, and 2) The City continue working with the University of California at Berkeley to promote improved oversight and training to better equip the University Police to handle sensitive and volatile situations.

Moved, seconded, carried (Armstrong/Olds) to endorse the ASUC Bill in support of reforming the UC Police Review Board as presented by ASUC Senators at this meeting, and send a letter to the University officials informing them of Council's endorsement.

Section H. Reports For Information

(a) From City Manager:

1. **South Side Pedestrian Lighting Study (CR 97-53)**
Action: Received and filed.
2. **Unsafe Bedroom Window Security Bars (CR 97-64)**
Action: Received and filed.
3. **Survey Regarding Economic Impact of Smoking Ordinance (to be delivered)**
Action: Withdrawn by the City Manager.

(c) From Others:

1. **Notices of Decision for 2683 Le Conte Avenue and City Right-of-Way and Eastern Portion of Daley's Scenic Park District**
From: Landmarks Preservation Commission
Action: Councilmember Maio moved to Action. Received and filed.

Section I. Priority Items

1. **PRESENTATION ON ELECTRIC POWER SUPPLY OPTIONS**
 - a. City Manager Information Report

Action: Presentation made. Moved, seconded, carried (Maio/Worthington; Absent - Woolley) to adopt the following staff recommendations: 1) The City should not join the ABAG electric power purchase pool this year. This pool applies to electricity serving municipal facilities only. The team believes that greater savings may be available through other vehicles and that the relatively modest projected savings are offset by price uncertainty, administrative cost, metering costs, and advance payments. If Council decides

otherwise, it must act by September 16 or wait for another year; 2) The City should explore other options for electric power supply for municipal facilities. Those options should include participating in the State of California's power pool, pooling with another public agency(ies) or pooling with loads in the Berkeley community. The City should explore opportunities to include electricity generated from renewable resources into its supply contract(s). Staff will explore these options; 3) The City will need to change its procedures to collect revenues related to electricity sales pursuant to the utility users tax, franchise ordinance and business license tax. Staff are working on the new procedures; 4)The City should explore opportunities to increase competition for electric services within the community (not just for municipal facilities). Options range from encouraging private companies to market in Berkeley, to encouraging non-governmental buyers' groups to aggregating municipal and community loads for bulk power purchase. Staff intends to initiate a preliminary study of these options in 1998 after there is some experience with this new market.

2. **LIBRARY PROJECT UPDATE BY BOARD OF LIBRARY TRUSTEES**

Action: Presentation postponed at the request of the Library Board.

Section J. Communications

The following communications were read, noted and filed unless referred to the City Manager as noted:

1. Joan M. Torykian, P.O. Box 9267, regarding parking places at 2555 Virginia Street. **Referred by Breland.**
2. Patrick R. Craig, P.O. Box 545, regarding Parking Citation Center. **Referred by Breland, Maio, Spring, Woolley and Mayor Dean.**
3. Charles L. Smith, 61 San Mateo Road, regarding tall trees as a hazard in the City. **Referred by Shirek.**
4. Russell G. Clemens PhD EE, Caja 93 San Blas, Nayarit, Mexico, regarding the discontinuance of oil.
5. Damien Curry, 1815 Curtis Street, regarding commuters using Curtis, Delaware and Hearst Streets. **Referred by Maio.**
6. Emilie Keas, 2141 Virginia Street, regarding building units at under-market prices.
7. Bernard J. Finkle, 21 Kingston Road, regarding affordable homes to be built at 1320 and renovate at 1314 Haskell Street. **Referred by Breland.**
8. Charles V. Shank, Director, Lawrence Berkeley National Laboratory, regarding soil containing tritium. **Referred by Olds.**

9. Richard C. Atkinson, President, University of California, 300 Lakeside Drive, Oakland, regarding on-site burial of tritium waste at Lawrence Berkeley National Laboratory.
10. Deborah Walton, Richard Graham, Carol Jenkins and Ronaldo Beber, 2319, California Street, regarding Kragen Use Permit. **Referred by Breland and Mayor Dean.**
11. Anne Ireland, 10944 San Pablo Avenue, regarding Roisin McAliskey's release. **Referred by Breland.**
12. Communications regarding off-leash dog use from Doug Manson, 5228 Felicia Avenue, Livermore and Josie Lemon, 6429 Regent Street, Oakland. **Referred by Breland and Woolley.**
13. John Woodbury, Director and Matt Williams, Director, Alameda-Contra Costa Transit, 1600 Franklin, Oakland, regarding BART strike.
14. Ellen Marionthal, The Cutting Room, 2079 University Avenue, regarding Parole Office located on University Avenue. **Referred by Olds, Spring, Woolley and Mayor Dean.**
15. Sydney Twinshek, 1805 Bonita Avenue, regarding homeless people occupying Ohlone Park. **Referred by Breland, Maio and Spring.**
16. Jeff Issenberg, Program Coordinator, Friday Night Live, 39355 California Street, Fremont, regarding supporting Berkeley's Youth Commission's Youth Day Celebration.
17. Jeff Hobson, 2315A Russell Street, regarding 1320 Haskell Street. **Referred by Breland.**

Section K. Adjournment

Meeting adjourned at 10:50 p.m. in memory of Albert Perez, Jason Jenkins and Connie Barton.

This is to certify that the foregoing is a true and correct copy of the minutes of September 16, 1997, as approved by the Berkeley City Council.

Attest:


City Clerk



Rashi Kesarwani
Councilmember District 1

CONSENT CALENDAR
December 2, 2025

TO: Honorable Mayor and Members of the City Council
FROM: Councilmember Rashi Kesarwani (Author)
SUBJECT: Resolution Rescinding Resolution No. 51,408-N.S.
Restricting the Use of Air Support and Canine Units
And Updating Mutual Aid Policies

RECOMMENDATION

Adopt a resolution to rescind Resolution No. 51,408-N.S. which currently restricts the use of helicopters and police canine units by the Berkeley Police Department (BPD) and to update policies authorizing BPD to deploy these resources through mutual aid agreements directly with external agencies. The revised policy framework will replace the prior requirement for City Manager approval with post-deployment notification, ensuring rapid and effective responses during critical incidents. The policy will continue to explicitly prohibit the use of canines for crowd control.

CURRENT SITUATION AND ITS EFFECTS

Resolution No. 51,408-N.S., passed on July 15, 1982, imposes restrictions on deploying helicopters and canine units that function as essential support during high-risk emergencies. Per this resolution, mutual aid in the form of helicopter and canine unit deployment can only be used during high-risk situations. The resolution notes that police use of dogs from other law enforcement agencies is permitted only under the following circumstances:

- To apprehend suspects:
 - Where there is a threat to human life;
 - Where the suspect is reasonably believed to be armed with a deadly weapon; and
 - Where the suspect is in a controlled, contained area and there are no known occupants of the area other than the suspect.
- To locate missing persons;
- To locate crimes scenes;
- Provided that the use of dogs is explicitly prohibited for use in crowd control.

The resolution also notes that police use of helicopters from other law enforcement agencies is permitted in locating missing persons. This item proposes allowing the following uses for air support, in line with Lexipol policy recommendations:

- When the helicopter is activated under existing mutual aid agreements;
- Whenever the safety of law enforcement personnel is in jeopardy and the presence of the helicopters may reduce such hazard;
- When the use of the helicopters will aid in the capture of a suspected fleeing felon whose continued freedom represents an ongoing threat to the community;
- When a helicopter is needed to locate a person who has strayed or is lost and whose continued absence constitutes a serious health or safety hazard; and
- Vehicle pursuits.

The 1982 resolution also requires the pre-approval of the City Manager which imposes a time-intensive effort during emergency situations.¹ Limiting the department's ability to quickly deploy both helicopters and canine units hinders response times and reduces operational flexibility. This limitation can compromise both the public and officer safety by preventing rapid access to resources that could significantly enhance situational awareness of the high-risk incident and on-scene effectiveness.

BACKGROUND

Resolution No. 51,408-N.S. was originally enacted in 1982 to curb potential police overreach; it no longer reflects modern law enforcement practices. Today, mutual aid agreements with external agencies providing access to helicopters and police canine units are standard across many jurisdictions and do not require additional time-intensive approval processes. These resources offer real-time situational awareness, safer monitoring of dynamic incidents, non-lethal suspect apprehension, and enhanced capabilities in search and rescue operations.

PROPOSED CHANGES AND RATIONALE FOR RECOMMENDATION

Resolution No. 51,408-N.S. is recommended for rescission so BPD can more effectively and quickly address high-risk situations using appropriate mutual aid tools. By updating our policies to allow the department to directly deploy these tools we will be aligning ourselves with regional mutual aid best practices and industry standards as well as aligning with our own recently updated agreements with other law enforcement agencies passed on July 22 earlier this year.² Rescission of this resolution will replace the outdated requirement for prior City Manager approval with a post-deployment notification. Rescinding the existing ordinance will remove barriers that delay the deployment of vital resources in emergencies. Mutual aid

¹ See attachment 2, Resolution No. 51,408-N.S. as found in the annotated agenda from the July 15, 1982 City Council meeting.

² July 22, 2025 Public Hearing: Memorandum of Understanding (MOU) Compendium: Agreements with Other Law Enforcement Agencies and Private Organizations;
<https://berkeleyca.gov/sites/default/files/documents/2025-07-22%20Item%2016%20Memorandum%20of%20Understanding%20%28MOU%29%20Compendium.pdf>

arrangements are widely recognized as an effective means of enhancing public and officer safety by providing rapid access to aerial and canine support. Updating the policy will not only modernize Berkeley's law enforcement capabilities but also ensure that resource deployment is carried out with greater efficiency, transparency, and adherence to current industry standards.

FISCAL IMPACTS

No significant new expenditures are expected from this rescission. Any costs incurred for mutual aid support will be managed through established reimbursement agreements. The policy revision is anticipated to deliver operational benefits without imposing undue financial burden on the City.

CONTACT PERSON

Rashi Kesarwani, Councilmember, District 1

(510) 981-7110

ATTACHMENTS

- 1) Resolution
- 2) Resolution No. 51,408-N.S.

RESOLUTION NO. ##,###-N.S.
RESOLUTION MODERNIZING AIR AND CANINE SUPPORT MUTUAL AID
POLICIES

WHEREAS, the Berkeley City Council recognizes that Ordinance Resolution No. 51,408-N.S.- adopted in 1982 imposes outdated restrictions that delay the timely deployment of air support and police canine units during critical law enforcement operations; and

WHEREAS, these restrictions hinder the Berkeley Police Department's ability to secure essential resources in high-risk incidents, thereby reducing operational flexibility and potentially compromising public and officer safety; and

WHEREAS, mutual aid agreements with external agencies providing access to helicopter support as well as police canine units are now standard practice nationwide, enhancing situational awareness, effective suspect apprehension, and search-and-rescue capabilities; and

WHEREAS, replacing the existing requirement for prior City Manager approval with post-deployment notification will facilitate rapid response during emergencies while ensuring accountability through comprehensive documentation and annual reporting;

NOW, THEREFORE, BE IT RESOLVED BY THE BERKELEY CITY COUNCIL THAT:

1. Resolution No. 51,408-N.S. is rescinded in full. All prior limits on the use of outside air support and police canine units are nullified.
2. The Berkeley Police Department may request and deploy canine teams from external agencies for the following purposes:
 - a. To apprehend suspects:
 - i. Where there is a threat to human life
 - ii. Where the suspect is reasonably believed to be armed with a deadly weapon, and
 - iii. Where the suspect is in a controlled, contained area and there are no known occupants of the area other than the suspect.
 - b. To locate missing persons
 - c. To locate crimes scenes
 - d. Provided that the use of dogs is explicitly prohibited for use in crowd control.
3. The Berkeley Police Department may request and deploy helicopter assistance from external agencies for any of the following purposes:
 - a. Activation under existing mutual aid agreements.
 - b. Support during incidents that place officers at risk when an aerial presence can reduce the danger.
 - c. Assistance in pursuing a fleeing felony suspect whose continued flight threatens the community.
 - d. Searches for missing or lost individuals whose absence creates a serious hazard.
 - e. Vehicle pursuits where aircraft can safely assist tracking or coordination.

4. The Berkeley Police Department may enter into and use mutual aid partnerships with outside agencies for all air support and canine deployments described in this resolution.
5. The former requirement for advance approval by the City Manager is replaced. After each deployment of outside air or canine support, the Chief of Police or a designee shall notify the City Manager as soon as practical.

RESOLUTION NO. 51,408 -N.S.

ESTABLISHING POLICIES FOR USE OF DOGS AND HELICOPTERS BY THE POLICE DEPARTMENT OF THE CITY OF BERKELEY, AND RESCINDING THE PROVISIONS OF RESOLUTION NO. 48,630-N.S. AS THEY APPLY TO THE USE OF DOGS AND HELICOPTERS.

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

That the following policies for use of dogs and helicopters by the Police Department of the City of Berkeley are hereby established:

1. Police use of dogs from other law enforcement agencies is permitted upon approval of the City Manager (or upon approval of the Chief of Police in emergency situations when the City Manager is not immediately available) in the following circumstances:

a. To apprehend suspects

- (1) Where there is a threat to human life, and
- (2) Where the suspect is reasonably believed to be armed with a deadly weapon, and
- (3) Where the suspect is in a controlled, contained area and there are no known occupants of the area other than the suspect; or

b. To locate missing persons; or

c. To locate crime scenes.

Provided, however, that the use of dogs is explicitly prohibited for use in crowd control.

2. Police use of helicopters from other law enforcement agencies is permitted upon approval of the City Manager (or upon approval of the Chief of Police in emergency situations when the City Manager is not immediately available) in the following circumstances:

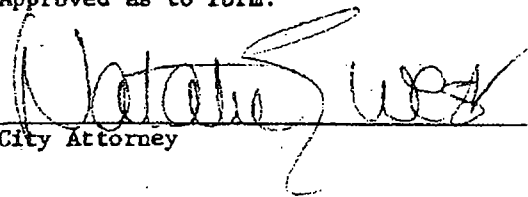
a. To assist in case of a disaster; or

b. To assist in rescue efforts (specifically excluding the rescue of hostages); or

c. To assist in locating missing persons.

FURTHER, RESOLVED, that the provisions of Resolution No. 48,630-N.S. as they apply to the use of dogs and helicopters are hereby rescinded.

Approved as to form:



City Attorney



Rashi Kesarwani
Councilmember, District 1

CONSENT CALENDAR
January 20, 2026

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author),
Councilmember Mark Humbert (Co-Sponsor)

SUBJECT: Resolution to Amend Berkeley City Council's 2020 Direction to Reinststate Berkeley Police Department's Use of Tear Gas in Limited Situations and Lift the COVID-19 Moratorium on the Use of Smoke and Oleoresin Capsicum (OC) Spray

RECOMMENDATION

Adopt a resolution amending the Berkeley City Council's June 9, 2020 direction regarding smoke, OC spray, and tear gas to allow the Berkeley Police Department's Special Response Team (SRT) to use tear gas under circumstances in which there is a significant risk of injury or death, maintain the prohibition on the use of tear gas for crowd control, and lift the temporary moratorium on the use of smoke and OC spray.

CURRENT SITUATION AND ITS EFFECTS

Tear gas has rarely been used by the Berkeley Police Department (BPD), having only been used three times over the last several decades. One of these incidents included responding to a barricaded subject. Making tear gas available to the Special Response Team will enable BPD's preparedness for these types of extreme situations.

On June 9, 2020, the Berkeley City Council banned the use of tear gas under any circumstances by the Berkeley Police Department and outside law enforcement agencies when providing mutual aid support in the City of Berkeley.¹ This action also placed a temporary moratorium on the use of smoke and OC spray. This was in part due to respiratory-related concerns heightened during the COVID-19 pandemic. BPD's Policies 300 (Use of Force), 303 (Control Devices and Techniques), and 428 (First Amendment Assemblies)² governed the use of tear gas before the Council's June

¹ June 9, 2020 4:00pm Special Meeting Annotate Agenda:
<https://berkeleyca.gov/sites/default/files/city-council-meetings/06-09%20Annotated%20Agenda%204pm.pdf> p. 5 of 13.

² See Berkeley Police Department Law Enforcement Manual for details of each policy:
https://berkeleyca.gov/sites/default/files/documents/RELEASE_20240301_T161429_Berkeley%20PD%20Policy%20Manual.pdf

2020 action, and they would resume that role if the Council approves this item under consideration.

While tear gas has seldom been deployed, it remains a vital option specifically for resolving high-risk incidents involving armed individuals. Without it, the Special Response Team cannot safely extract suspects from barricaded locations, creating a significant gap in its ability to manage several types of critical scenarios that include: armed standoffs, hostage situations, and encounters where shots have been fired. The use of tear gas can prompt a suspect's compliance and can also restrict their movement or capacity to inflict harm on officers or other members of the public.

BACKGROUND

Tear gas has been a law enforcement tool since the 1920s and has been available for use by the Berkeley police department for decades. Officers tasked with using this equipment are members of the department's Special Response Team (Special Weapons and Tactics/SWAT). Team members train annually using this equipment with certified department instructors and have received specific training on the safe and proper use of this equipment. Although this is an essential law enforcement tool, its use is limited to high-risk low-frequency events.

The Department reserves tear gas for limited, high-risk situations where it is necessary to safely resolve dangerous incidents and protect the public, officers, and property. Because use of this tool is reserved for these types of situations, the department has deployed this tool on only three occasions over the last 40-plus years: once in response to a barricaded subject and twice in response to crowd violence. In all instances, the objective was to compel movement out of a building or away from officers. Additionally, the department has deployed smoke once. A brief summary of each incident follows:

In the early 2000s, the Special Response Team used tear gas during a warrant service involving an armed individual who refused to surrender. The deployment created the conditions needed for officers to take the suspect into custody without injury.

In December 2014, the Department used tear gas during a large-scale riot in Berkeley. Officers were assaulted with rocks and bottles, and despite repeated warnings and lawful orders to disperse, the violence escalated. Tear gas, smoke, and OC spray were deployed to stop the assaults and ongoing property destruction. Multiple officers were injured during the incident.

In 2017, a series of politically motivated demonstrations brought opposing groups into Berkeley. Several of these events devolved into large, chaotic fights. At one spring event, an officer deployed a smoke canister into a crowd actively engaged in violent confrontations to interrupt the violence and compel the group to disperse.

In May 2020, Berkeley officers responded to an Oakland Police Department (OPD) mutual-aid request during the civil unrest following the murder of George Floyd. Officers were assigned to protect OPD's main station when several thousand individuals attempted to force their way to the station with the intention of destroying

it. Officers came under attack from rocks, bottles, Molotov cocktails, and commercial-grade fireworks. Tear gas and less-lethal munitions were deployed to protect officers from the life-threatening assaults they were facing while protecting critical infrastructure.

In the wake of the murder of George Floyd and the beginning months of the COVID-19 pandemic, the Berkeley City Council adopted a motion that prohibited BPD and mutual aid agencies from using tear gas as well as a temporary ban on smoke and pepper spray out of concern the substances would exacerbate respiratory infections. Since then, public health responses to the virus have changed dramatically and most of the local population is inoculated against this disease.³ As a result, serious infection and hospitalization rates have dropped, and the state of emergency has long since ended. Therefore, the specific health concerns that necessitated the temporary moratorium on smoke and OC spray are no longer present. The combination of the reduced risk and the rare use of these tools make it appropriate to now reevaluate this decision.

There have been several significant policy and law-related developments regarding the use of tear gas that warrant a re-evaluation of our policies. Since 2020, the California legislature has added new language that clearly articulates the circumstances under which tear gas can be used that includes a focus on limiting this tool to responding to violence, an emphasis on proportional responses, and protection of free speech. These legislative updates are already reflected in the department's broader use-of-force framework.⁴

ENVIRONMENTAL SUSTAINABILITY

There are no significant or lasting environmental concerns regarding the use of these agents. Specifically, tear gas disperses quickly once air circulation improves, and the compounds break down without leaving persistent residue in soil or water.

RATIONALE FOR RECOMMENDATION

Tear gas offers law enforcement a crucial option for stopping violent behavior or prompting an armed, barricaded individual to leave a building. Because of its value in safely resolving these situations, both the California Commission on Peace Officer Standards and Training and the National Tactical Officers Association expect SWAT teams to have it available.

Key reasons it would be advantageous for BPD to have renewed access to this tool:

³ According to the Vaccine Dashboard on the Alameda County website, 89.4% of the county has been fully vaccinated as of March, 2023: <https://www.alamedaca.gov/RESIDENTS/ALERTS-COVID-19/Vaccine/Vaccine-Dashboard>

⁴ On September 20, 2021, Governor Newsom signed Assembly Bill 48 into law which was later incorporated into California Penal Code Section 13652 Section 2 in January of 2022. See: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB48(https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN§ionNum=13652). This law embodies many principles currently in BPD's Policies 300 (Use of Force), 303 (Control Devices and Techniques), and 428 (First Amendment Assemblies) and aligns with the community's and the department's values related to the use of force.

- Tear gas is a time-and-distance de-escalation tool providing officers with a less-lethal option to gain compliance or disperse barricaded or violent suspects without having to resort to close-quarters force.
- By allowing officers to maintain distance and slow down an encounter, tear gas can reduce the likelihood of physical confrontations, serious injuries, or fatalities for both officers and community members.
- In situations where armed or dangerous suspects refuse to surrender, tear gas can compel compliance without direct physical engagement, thereby preserving life.
- Authorizing tear gas for tactical incidents is consistent with the City's and Department's commitment to de-escalation, as it provides a non-lethal alternative to firearms or physical force.
- Tear gas allows officers to influence behavior and end violence or the threat of violence without increasing the level of force.
- In prolonged, high-risk incidents, alternatives to tear gas (such as physical entry or prolonged standoffs) carry higher risks to officers, suspects, and bystanders.
- The use of tear gas offers a stand-off capability: gas can permeate rooms and reach behind barricades or enter through small openings.
- Controlled chemical deployment can resolve incidents faster and more safely, reducing neighborhood disruption and minimizing the community's prolonged exposure to danger.
- This agent can facilitate safe extractions and rescues, making it possible to remove hostages or wounded people while suspects are suppressed.
- If an incident escalates beyond BPD's control and they lack industry-standard tools, the city assumes unnecessary risk.

FISCAL IMPACTS

The fiscal impacts of adopting this resolution are minimal; equipment costs associated with this recommendation pertain to inventory replacement depleted during trainings or through use or due to expiration. Replacement costs are approximately \$2,000 annually. Training costs will be nominal as associated fees will be reincorporated into existing budgeted training sessions.

CONTACT PERSON

Rashi Kesarwani, Councilmember District 1

(510) 981-7110

Attachment:

1. Resolution

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

RESOLUTION REINSTATING THE BERKELEY POLICE DEPARTMENT'S ABILITY
TO USE TEAR GAS UNDER LIMITED CIRCUMSTANCES AND LIFTING THE
MORATORIUM ON SMOKE AND OLEORESIN CAPSICUM SPRAY

WHEREAS, on June 9, 2020, the Berkeley City Council placed a temporary ban on the use of smoke and pepper spray, and a permanent ban on the law enforcement use of tear gas; and

WHEREAS, the temporary ban on smoke and OC spray was enacted due to respiratory concerns associated with the COVID-19 pandemic, and the state of emergency for the pandemic has since ended; and

WHEREAS, the access to tear gas enables the police department to resolve dangerous and high-risk situations with less force, in a manner that supports safer outcomes for all; and

WHEREAS, the Berkeley Police Department seeks a limited, narrow use of tear gas by members of the Special Response team when responding to critical incidents that pose a significant threat to the safety of the public or officers, and that don't involve civil unrest; and

WHEREAS, the Berkeley Police Department Policies 303 (Control Devices), and Policy 300 (Use of Force) ensure proper use and oversight; and align with California Penal Code Section 13652 Section 2;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the June 9, 2020, ban on the use of tear gas is hereby modified to authorize the Berkeley Police Department's Special Response Team to use tear gas when responding to a critical incident that poses a significant threat to public or officer safety, and excluding its use for crowd control or in connection with civil unrest, in accordance with Policies 303 and 300, and that the temporary moratorium on the use of smoke and OC spray is hereby lifted.

