

Page numbers for this agenda packet are marked in **blue** to distinguish them from the numbering within individual documents.

PUBLIC MEETING MATERIAL



**POLICE ACCOUNTABILITY BOARD
REGULAR MEETING AGENDA PACKET
SUPPLEMENTAL MATERIAL
JANUARY 21, 2026
6:30 PM**

Board Members

Joshua Cayetano (Chair)

Leah Wilson (Vice-Chair)

Kitty Calavita

Juliet Leftwich

Randy Wells

Joshua Buswell-Charkow

MEETING LOCATION

Office of the Director of Police Accountability
1900 Addison Street, Floor 3
Berkeley, CA 94704

Item	Description	Page
9.g.	Supplemental Material for Item 9.g. includes: • Draft Letter to the Berkeley City Council With the Subject Line "Item 21 on the Berkeley City Council's January 27, 2026 Agenda – Proposal to Rescind and Replace the Police Equipment and Community Safety Ordinance" • Berkeley Municipal Code 2.100 "Police Equipment and Community Safety Ordinance" • Draft Letter to the Berkeley Police Department with the Subject Line "Formal Request for Single Annual Report from BPD in Compliance with California Gov. Code §§ 7070 & Berkeley Municipal Code 2.100 et. seq. by May 31st"	1 26 35

Item 9.g. Supplemental Material

Draft Letter to the Berkeley City Council With the Subject Line “Item 21 on the Berkeley City Council’s January 27, 2026 Agenda – Proposal to Rescind and Replace the Police Equipment and Community Safety Ordinance”



Joshua Cayetano | Chair
Police Accountability Board
JCayetano@berkeleyca.gov

January 20, 2026

VIA ELECTRONIC MAIL [Email]

Berkeley City Council
council@berkeleyca.gov
2180 Milvia Street,
Berkeley, CA 94704

Re: Item 21 on the Berkeley City Council's January 27, 2026 Agenda – Proposal to Rescind and Replace the Police Equipment and Community Safety Ordinance

Honorable Mayor and Members of the City Council:

The Police Accountability Board (PAB) writes to highlight critical flaws in the proposal to rescind and replace the Police Equipment and Community Safety Ordinance (the “Ordinance”), and urge the Council to reject any dilution of independent civilian oversight of the use and deployment of militarized equipment in Berkeley.

- **First**, California’s AB 481—a state law authored by some of the same community groups that authored Berkeley’s Ordinance—is a floor, not a ceiling. AB 481 expressly contemplates, and even encourages, local governments to implement additional requirements and standards.¹ The fact that the Ordinance requires Berkeley Police Department (BPD) to report on additional uses and deployments of military equipment, like the deployment of less-lethal munitions, is a testament to Berkeley’s robust commitment to transparency and oversight.
- **Second**, under the current Ordinance, BPD may submit a single report that complies with both state and local requirements. BPD’s duplicative (even triplicative) reports are entirely self-imposed by BPD itself. Oakland has a very similar local ordinance and Oakland Police Department issues a single annual report that complies with both state and local law.² At the PAB’s last meeting, the PAB sent the Public Safety Policy Committee the attached letter, which requests that BPD author a single report on the timeline contemplated by state

¹ Government Code Section 7075 (“Nothing in this chapter shall preclude a county or local municipality from implementing additional requirements and standards related to the purpose, use, and reporting of military equipment by local law enforcement agencies.”); Government Code Section 7070(c)(15) (defining military equipment as “[a]ny other equipment as determined by a governing body or a state agency to require additional oversight”).

² See Oakland Municipal Code 9.65.030.

law.³ Rescinding an ordinance because of duplicative reporting that is not required by the Ordinance is dubious policymaking, at best.

- **Third,** Item 21 weakens the PAB’s authority to review proposed Controlled Equipment Use Policies and the annual report without any justification. Doing so will seriously undermine the PAB’s ability to provide timely, evidence-based recommendations to the Council.
 - AB 481 requires local governments to ensure that each military equipment complies with its corresponding use policy and certain standards guaranteeing the protection of civil liberties.⁴ Under the Ordinance, Berkeley delegates that task to the PAB for a first look. BPD is required to submit proposed use policies and the annual report to the PAB. The PAB is then authorized to review the proposed use policies or the reported uses complies with certain standards that ensure the protection of civil liberties. BPD can submit use policies to the Council 90 days after submitting them to the PAB and the annual report 60 days after submitting it to the PAB.
 - Item 21 compresses the review timeline for both use policies and the annual report to 30 days. That timeline is not sufficient to allow fulsome review of military equipment uses, which requires a dialogue with BPD about why there was no reasonable alternative in a particular instance and whether the use of military equipment safeguarded civil liberties. The PAB appreciates that Item 21 allows for the Rules and Agenda Committee to provide the PAB with more time, but advises that, historically, it needs more than 30 days to conduct a fulsome review.
 - Item 21 also limits the scope of the PAB’s review to “provid[ing] comments.” The PAB has a clear mandate under Berkeley’s current Ordinance, which provides standards for review that are consistent with state law.⁵ Item 21’s revision unnecessarily eliminates that clear mandate in favor of an ambiguous one. The Council should retain and reiterate the mandate in the Ordinance and state law.

³ See Attachment 1, July 18, 2025 PAB Letter to the Public Safety Policy Committee Re: “Recommendation to Revise, Not Repeal, Berkeley Municipal Code Chapter 2.100 et seq.

⁴ Government Code Section 7071(e)(2) (“The governing body shall determine, based on the annual military equipment report submitted pursuant to Section 7072, whether each type of military equipment identified in that report has complied with the standards for approval set forth in subdivision (d). If the governing body determines that a type of military equipment identified in that annual military equipment report has not complied with the standards for approval set forth in subdivision (d), the governing body shall either disapprove a renewal of the authorization for that type of military equipment or require modifications to the military equipment use policy in a manner that will resolve the lack of compliance.”)

⁵ BMC 2.100.040(E)(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.”) and BMC 2.100.050(B) (“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](#).... 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](#).”)

As a matter of policy, the PAB also highlights the following concerns with the proposed “Police Equipment Ordinance”:

- Item 21 ties the reporting of less-lethals to an existing or successor Use of Force Policy without establishing an independent requirement to report on the use and deployment of less-lethals. In other words, if the Use of Force Policy changes, the proposed reporting requirements would change with it. The Council can simply designate automatic rifles and less-lethal munitions as reportable “military equipment,” consistent with AB 481.⁶
- Item 21 limits “reportable deployments” to the context of a First Amendment activity. The deployment of military equipment is not significant only in the context of “First Amendment activity.” One of the most significant contexts in which military equipment is being deployed in Berkeley is homeless encampment sweeps, as happened last year at 8th and Harrison. The deployment of military equipment can also occur at routine traffic stops, which historically have disproportionately impacted Black and Brown people. The California state legislature made clear that “the acquisition of military equipment *and its deployment* in our communities impacts the public safety and welfare, including increased risk of civilian deaths, significant risks to civil rights, civil liberties, and physical and psychological well-being.” That is no less true in the encampment sweep and traffic stop context. More fundamentally, the proposed ordinance in Item 21 is not clear what a “First Amendment activity” even is. Under existing case law, First Amendment activity can be anything from honking, to raising a middle finger, to sleeping in front of City Hall.
- Berkeley Police Department utilizes its own definition of “deployment” in its Use of Force Policy. The proposed ordinance should incorporate that definition, with some modifications for clarity.
- The Transparency Hub is not required by ordinance or written into BPD policy and cannot replace state law reporting requirements.

Recommendations:

- **Delete the following provisions from the proposed 2.100.050**
 - ⊖ “Police use of force (irrespective of whether it involved military equipment) shall continue to be reported ~~in a manner consistent with Policy 300 (or a successor policy).~~”
 - ⊖ ~~“Less lethal” weapons which fall outside of the definitions in AB 481 Chapter 12.8 but are subject to reporting requirements established by Policy 300 must continue to be reported in a manner consistent with Policy 300 (or any successor policy).~~
- **Delete the proposed 2.100.060(B) and add to the proposed 2.100.040 Additional City of Berkeley Standards:**

⁶ AB 481 explicitly defines “military equipment” as “[a]ny other equipment as determined by a governing body or a state agency to require additional oversight.”

- **2.100.040 (B)** In addition to the definitions set forth in Chapter 12.8, “Military equipment” means the following:
 - (1) automatic rifles
 - (2) less lethal weapons, which are any weapons which present less potential for causing death or serious injury than conventional lethal force, including but not limited to a specialized launcher, or other device that can discharge, fire, launch or otherwise propel single or multiple flexible or non-flexible projectiles designed to cause physiological effects consistent with blunt force impact.
- (C) In addition to the reporting requirements in Chapter 12.8, the Berkeley Police Department shall report on:
 - (1) all deployments of military equipment.
 - (a) “Deployment” shall mean any instance in which military equipment was pointed or aimed at an individual *and* where an individual present would have reasonably believed that the use of military equipment was probable. “Deployment” shall not include the transport or wearing of military equipment.
 - (2) the geographic location of each use and deployment of military equipment.
- **Delete the proposed 2.100.050 and retain all the original BMC 2.100.040 Acquisition and Use of Controlled Equipment and 2.100.050 Reports on the Use of Controlled Equipment**

Sincerely,

Joshua Cayetano, Chair

Police Accountability Board

Attachments:

1. July 18, 2025 PAB Letter to the Public Safety Policy Committee Re: “Recommendation to Revise, Not Repeal, Berkeley Municipal Code Chapter 2.100 et seq.
2. January 27, 2026 Material for the Proposal of the Rescission and Replacement of the Police Equipment and Community Safety Ordinance

Attachment 1



Joshua Cayetano, Chair
Police Accountability Board
JCayetano@berkeleyca.gov

July 18, 2025

VIA ELECTRONIC MAIL

Honorable Members of the Public Safety Policy Committee

PolicyCommittee@berkeleyca.gov

2180 Milvia Street, 1st Floor

Berkeley, CA 94704

Re: Recommendation to Revise, Not Repeal, Berkeley Municipal Code Chapter 2.100 et seq.

Dear Members of the Public Safety Policy Committee,

The Police Accountability Board (PAB) submits this recommendation to eliminate any duplicative reporting on the City's military equipment without discarding the substantive requirements in Berkeley Municipal Code Chapter 2.100 et seq., the Police Equipment and Community Safety Ordinance (BMC 2.100 or the Ordinance). BMC 2.100 provides important oversight on militarized equipment in Berkeley that is absent from California's AB 481.¹ We urge the Committee to reject the proposal to repeal BMC 2.100 and instead recommend that the Council revise BMC 2.100. Attached to this letter is a red-line of the PAB's recommended revision for the Committee's convenience.²

Background:

On April 27, 2021, Berkeley City Council unanimously passed Ordinance No. 7,760-N.S.,³ an ordinance that enables transparency and public oversight of the funding, acquisition, and use of military equipment. Its passage reflected years of advocacy by community groups working to end the militarization of our neighborhoods and was extensively vetted by all stakeholders, including

¹ We refer to "military equipment" throughout this letter to refer to both military equipment regulated by AB 481 and controlled equipment regulated by BMC 2.100. We recommend revising the references throughout BMC 2.100 from "controlled equipment" to "military equipment" to align with AB 481 and eliminate any confusion.

² See Attachment 1: PAB's Proposed Revision to BMC 2.100.

³ Ordinance No. 7,760-N.S.:

<https://records.cityofberkeley.info/PublicAccess/api/Document/ARx07EYZ3rKchpLXojF0CLCO2BAiAR70sLPB PqimXd%C3%89yrsN0Tmlaltscp0EdFiMQnzRBo6sfffUTqR%C3%893MbCjpo%3D/>

Berkeley City Council, the City Manager's office, the City Attorney's office, the Police Review Commission (PRC), and Berkeley Police Department.

When Berkeley's Ordinance passed, California's AB 481⁴—a state law authored by some of the same community groups who authored BMC 2.100⁵—was working through committee at the California State Assembly, then the California Senate. AB 481 was enacted on September 30, 2021. AB 481 explicitly declared that “adequate oversight of the acquisition and use of military equipment is a matter of statewide concern rather than a municipal affair,” such that AB 481 supersedes any conflicting or inconsistent municipal ordinance. However, AB 481 expressly contemplates—even encourages—local governments to implement additional requirements and standards that furthers its purposes.⁶

As described below, BMC 2.100 undoubtedly strengthens the reporting and oversight requirements that are set forth in AB 481. One way BMC 2.100 strengthens AB 481, and demonstrates Berkeley's commitment to police transparency and accountability, is by requiring BPD to report on deployments of military equipment, not just “uses,” a term that is not defined by AB 481. The definition of “deploy” was subject to extensive discussion by the Council, the PRC, BPD, and community groups.⁷ Those in favor of including a deployment reporting requirement made clear that the public has a right to know when law enforcement deliberately utilizes or employs police equipment like less-lethal or pepper spray in order to provoke some response, as opposed to simply when they are discharged. BPD raised concerns about administrative and operational burdens and, as a compromise, the Council made clear that merely wearing a piece of military equipment does not amount to a “deployment” and specifically exempted the deployment of batons, with a limited carveout for crowd control situations.

Another way BMC 2.100 strengthens AB 481 is by delegating oversight of BPD's use of military equipment to the PAB. AB 481 sets forth certain standards governing the use of military equipment and authorizes local governments to modify or rescind a military equipment use policy if the governing body identifies any non-compliance⁸; BMC 2.100 asks the PAB determine if any

⁴ Assembly Bill 481 (2021-2022):

https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB481

⁵ Berkeley Municipal Code 2.100 “Police Equipment and Community Safety Ordinance”:

<https://berkeley.municipal.codes/BMC/2.100>

⁶ Government Code Section 7075 (“Nothing in this chapter shall preclude a county or local municipality from implementing additional requirements and standards related to the purpose, use, and reporting of military equipment by local law enforcement agencies.”); Government Code Section 7070(c)(15) (defining military equipment as “[a]ny other equipment as determined by a governing body or a state agency to require additional oversight”).

⁷ BMC 2.100.020(D).: <https://berkeley.municipal.codes/BMC/2.100.020>

“Except as provided below, ‘Deployed’ means 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. (1) Batons 30 inches or longer in length shall only be deemed ‘deployed’ when used for management or control of crowds.”

⁸ Government Code Section 7071(e)(2) (“The governing body shall determine, based on the annual military equipment report submitted pursuant to Section 7072, whether each type of military equipment identified in that report has complied with the standards for approval set forth in subdivision (d). If the governing body determines

military equipment has not complied with those standards and then directs the PAB to recommend either modification of the use policy to ensure compliance or revocation of the authorization for that piece of military equipment.⁹ Repealing the Ordinance would strip the PAB of this role, deprive the Council of the PAB's subject-matter expertise, and leave a gap in City processes governing this important oversight function.

We understand that BPD currently submits two reports on military equipment that are nearly identical. The Council can easily modify BMC 2.100 to eliminate any duplicative reporting without discarding the Ordinance entirely, as the City of Oakland did. If BPD believes that a particular reporting requirement is overly burdensome, and Council is interested in reconsidering the additional substantive reporting requirements, then the PAB is ready and willing to review those proposals on the merits and make a recommendation. But rescinding the Ordinance entirely would reduce public trust in law enforcement, erode safeguards designed to protect the public's welfare and civil liberties, and undermine the City's commitment to civilian oversight of law enforcement.

Recommendation and Rationale:

1. Eliminate duplicative reporting.

We agree that BPD should not be subject to duplicative reporting. Currently, BPD submits two annual reports on military equipment, the first in March and the second in the summer. All administrative duplication can be eliminated by combining these two reports. Nothing in BMC 2.100 or AB 481 prevents BPD from doing so.¹⁰ BMC 2.100 only says that 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."¹¹ We strongly recommend that BPD consolidate these reports into a single report that satisfies both AB 481 and BMC 2.100.¹²

Even though BPD could submit a single annual report that satisfies both AB 481 and BMC 2.100 as codified, we suggest some revisions to BMC 2.100 that would make clear BPD can and should do so, and that BMC 2.100 is intended to harmonize with AB 481.

that a type of military equipment identified in that annual military equipment report has not complied with the standards for approval set forth in subdivision (d), the governing body shall either disapprove a renewal of the authorization for that type of military equipment or require modifications to the military equipment use policy in a manner that will resolve the lack of compliance.")

⁹ BMC 2.100.050(B)(1): [https://berkeley.municipal.codes/BMC/2.100.050\(B\)\(1\)](https://berkeley.municipal.codes/BMC/2.100.050(B)(1))

¹⁰ See Attachment 2: Sample Combined Military Equipment Report. This report combines BPD's current Controlled Equipment Report and Military Equipment Report into a single report and notes the differences in red text.

¹¹ BMC 2.100.050: <https://berkeley.municipal.codes/BMC/2.100.050>

¹² Oakland Police Department issues a single annual report that complies with both state law reporting requirements and Oakland's local requirements. In fact, the language in BMC 2.100.050—the section governing the submission of BPD's report—is nearly identical to the language in Oakland Municipal Code 9.65.030, Oakland's local military equipment reporting ordinance, which was also passed before AB 481. See Attachments 3 and 4.

2. Retain BMC 2.100's additional substantive reporting requirements and oversight mechanisms that promote transparency and accountability.

Over the course of three public meetings, we heard from many community members who expressed support for retaining the Ordinance. At the June 11, 2025 meeting, former Councilmember Kate Harrison, who co-authored the Ordinance, provided a presentation that detailed the substantive differences between AB 481 and BMC 2.100. We also heard from John Lindsay-Poland, a subject-matter expert on military equipment civilian oversight, and Brian Hofer, the Executive Director of Secure Justice—both of whom warned that repealing BMC 2.100 would eliminate substantive reporting requirements and oversight mechanisms that promote transparency and accountability and are not mandated under AB 481. Many other community members either spoke in person or wrote separately in support of BMC 2.100.

After conducting its own review of BMC 2.100, the PAB concluded that BMC 2.100 contains the following additional substantive reporting requirements and oversight mechanisms:

Category	Brief Description of Substantive Difference
Definition of Military Equipment	BMC requires BPD to report on CS gas, pepper spray, and batons while AB 481 does not. AB 481 specifically allows local governments to determine that other police equipment requires additional oversight. ¹³
Differences in Components of the Annual Report	Elements in the annual report that are required by BMC 2.100 but not in AB 481 ¹⁴ : (a) Reporting on deployments of military equipment. BMC 2.100 requires reporting on “deployments,” ¹⁵ while AB 481 requires reporting only on “use,” which is not defined in the legislation. (b) Geographic impact. A breakdown of where the military equipment was used in Berkeley. (c) Other requirements. The number of days equipment was used and the percentage of these uses that were authorized by warrant or a court.

¹³Government Code Chapter 12.8 Section 7070(c)(15) (defining military equipment as “[a]ny other equipment as determined by a governing body or a state agency to require additional oversight”):

https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB481

¹⁴ See Attachment 5, an example of an AB 481 report from the East Bay Regional Park District Police Department.

¹⁵ The definition of “deploy” was subject to extensive consideration by Council, BPD, and the then-existing Police Review Commission. See the April 27, 2021 Supplemental Material for Item 32 “Police Equipment and Community Safety Ordinance”: https://berkeleyca.gov/sites/default/files/documents/2021-04-27%20Item%2032%20Adopt%20an%20Ordinance%20Adding%20Chapter%202.100%20to%20the%20Berkeley%20Municipal%20Code%20Regulating%20Police%20Acquisition%20and%20Use%20of%20Controlled%20Equipment%20-%20Rev%20Harrison_0.pdf; See Attachment 6 for images of military equipment deployments in Berkeley.

Category	Brief Description of Substantive Difference
Use Policies	With respect to military equipment use policies, BMC 2.100 requires defining authorized <i>and</i> prohibited uses; AB 481 requires defining only authorized uses.
Impact Statements	BMC 2.100 (like Oakland’s militarized equipment ordinance) requires the Department to elaborate an impact statement when it proposes to acquire new types of controlled equipment. The provisions of an impact statement not included in AB 481 are: statement of potential impact; mitigations to safeguard against such impacts; rationale for not selecting alternative methods to achieve the same purpose as the equipment; and whether the equipment requires third party services.
Review by Oversight Entity	BMC 2.100 requires that proposed use policies receive the recommendation of PAB; AB 481 requires identification of an independent oversight entity, but does not define such entity’s authority. BMC 2.100 requires the PAB to determine that each piece of military equipment complies with the standards set forth in the Ordinance, which are substantially similar to the standards set forth in AB 481; if the PAB identifies any noncompliance 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.¹⁶ BMC 2.100 provides that if the PAB does not act within 90 days (30 days in time-sensitive circumstances), BPD may proceed to City Council for approval.
Exigent Circumstances	Unlike AB 481, BMC 2.100 includes provisions governing the use of controlled equipment that has not been approved in exigent circumstances.
Private Right of Action and Protections for Whistleblowers	BMC 2.100 provides for a private right of action and protection for whistleblowers, while AB 481 does not.

¹⁶ We recommend modifying the language in BMC 2.100.050(B)(1) and (2) establishing this compliance review function from mandatory to permissive language in order to reduce the administrative burden on the PAB while still retaining the PAB’s authority to conduct a compliance review of military equipment.

We discussed with BPD how to operationalize consolidating the reports without discarding these substantive differences. During those conversations, it became clear that BPD's central concern is not with duplicative reporting requirements, but with the substantive reporting requirements that Berkeley's local ordinance imposes. The primary pain point is the requirement to report on deployments of military equipment, which BPD suggested is too resource-intensive because BPD manually reviews body worn camera to determine if a deployment occurred—something that is not required by the Ordinance. BPD explained that it performs multiple levels of review in order to ensure that its sworn officers are not overreporting deployments of military equipment.

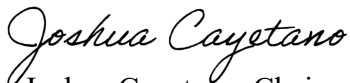
During our public meeting, PAB Board Members asked a number of questions about deployment reporting—for example, what percentage of officer-reported deployments are overturned by a supervisor following a manual review of body camera? If the percentage is negligible, why commit the staff time? If the percentage is high, what training can be initiated in order to reduce the need for administrative review of body camera footage? What about the current definition of “deployment” in the Ordinance is the source of confusion and can that source be fixed by changing the definition?

We remain open to discussing modifications to substantive requirements with BPD in the future. But, even if we agreed with BPD's perspective that the deployment reporting requirement is too onerous, addressing those concerns could be accomplished by less drastic means than a wholesale repeal.

3. Issue a negative recommendation to the proposal to repeal BMC 2.100 and a positive recommendation to the PAB's proposed revision to BMC 2.100.

For the foregoing reasons, we respectfully request that the Committee issue a negative recommendation to the proposal to repeal BMC 2.100 and a positive recommendation to the PAB's proposed revision instead. We remain committed to working in partnership with the Committee, the Council, BPD, and the broader community to strengthen democratic accountability, transparency, and safety.

Sincerely,



Joshua Cayetano, Chair
Police Accountability Board

Cc: Paul Buddenhagen, City Manager
David White, Deputy City Manager
Jennifer Louis, Chief of Police
Jen Tate, Deputy Chief of Police
Farimah Brown, City Attorney
Mark Numainville, City Clerk
Hansel Aguilar, Director of Police Accountability

Attachments:

1. PAB's Proposed Revision to BMC 2.100 "Police Equipment and Community Safety Ordinance"
2. Sample Combined Military Equipment Report
3. Oakland Police Department's 2024 Annual Military Equipment Report
4. Oakland Municipal Code Chapter 9.65 "Regulations on City's Acquisition and Use of Military and Militaristic Equipment
5. East Bay Regional Park District Police Department's 2024 AB 481 Annual Report
6. Images of Controlled Equipment Deployments in Berkeley

Attachment 1
PAB's Proposed Revision to BMC 2.100
“Police Equipment and Community Safety
Ordinance”

Chapter 2.100

POLICE EQUIPMENT AND COMMUNITY SAFETY ORDINANCE

Sections:

2.100.010	Name of Ordinance.
2.100.020	Definitions.
2.100.030	Controlled Military Equipment Use Policy Requirement.
2.100.040	Acquisition and Use of Controlled Military Equipment.
2.100.050	Reports on the Use of Controlled Military Equipment.
2.100.060	Enforcement.
2.100.070	Transparency.
2.100.080	Whistleblower Protections.
2.100.090	Severability.

2.100.010 Name of Ordinance.

(A) This Ordinance shall be known as the Police Equipment and Community Safety Ordinance. (Ord. 7760-NS § 1, 2021)

2.100.020 Definitions.

(A) "~~Controlled Military~~ Equipment" is equipment that is militaristic in nature and includes, but is not limited to, all of the following:

(1) Vehicles that are built or modified to provide ballistic protection to their occupants, such as mine-resistant ambush protected (MRAP) vehicles or armored personnel carriers.

(a) Police versions of standard passenger vehicles are specifically excluded from this section.

(2) Multi-purpose wheeled vehicles that are: built to operate both on-road and off-road, such as a high mobility multipurpose wheeled vehicle (HMMWV), commonly referred to as a Humvee, a two and one-half-ton truck, or a five-ton truck; or built or modified to use a breaching or entry apparatus as an attachment.

(a) Unarmored all-terrain vehicles (ATVs) and motorized dirt bikes are specifically excluded from this section.

(3) Tracked vehicles that are built or modified to provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion.

(4) Aircraft, vessels, or vehicles of any kind, whether manned or unmanned, with attached or mounted weapons.

(5) Breaching apparatus designed to provide rapid entry into a building or through a secured doorway, including equipment that is mechanical, such as a battering ram, and equipment that is ballistic, such as a slug, or equipment that is explosive in nature. Items

designed to remove a lock, such as bolt cutters, small gauge frangible rounds, or a handheld ram, are excluded from this policy.

(6) Firearms of .50 caliber or greater.

(7) Ammunition of .50 caliber or greater.

(8) Specialized firearms, including the Colt M4, and associated ammunition of less than .50 caliber, as defined in Sections [30510](#) and [30515](#) of the California Penal Code.

(9) Projectile launch platforms and their associated munitions, such as 40mm projectile launchers, "bean bag," rubber bullet, or specialty impact munition (SIM) weapons, and equipment used to disperse chemical agents.

(10) Any knife designed to be attached to the muzzle of a rifle, shotgun, or long gun for purposes of hand-to-hand combat.

(11) Explosives, pyrotechnics, such as "flashbang" grenades, and chemical weapons such as "teargas," CS gas, pepper spray, and "pepper balls".

(12) Batons 30 inches or longer in length.

(13) Active area denial weapons, such as the Taser Shockwave, microwave weapons, and water cannons and the Long Range Acoustic Device (LRAD). Use of the LRAD for the purpose of communicating lifesaving information to residents during disasters, in evacuation exercises, to conduct search and rescue operations, or communicate to persons threatening suicide who are in an inaccessible location shall be exempt from the reporting requirements under Section [2.100.050](#) of this Chapter.

(14) Any other equipment as determined by a majority of the City Council to require additional oversight.

(B) "City" means any department, agency, bureau, and/or subordinate division of the City of Berkeley.

(C) "[ControlledMilitary](#) Equipment Impact Statement" means a publicly released, written document that includes, at a minimum, all of the following:

(1) Description: A description of each type of [ControlledMilitary](#) Equipment, the quantity sought, its capabilities, expected lifespan, intended uses and effects, and how it works, including product descriptions from the manufacturer of the [ControlledMilitary](#) Equipment.

(2) Purpose: The specific purpose or purposes that each type of [ControlledMilitary](#) Equipment is intended to achieve.

(3) Fiscal Cost: The fiscal cost of each type of [ControlledMilitary](#) Equipment, including the initial costs of obtaining the equipment, the costs of each proposed use, the costs of potential adverse impacts, and the annual, ongoing costs of the equipment, including operating, training, transportation, storage, maintenance, and upgrade costs.

(4) Impact: An assessment specifically identifying any potential impacts that the use of [ControlledMilitary](#) Equipment might have on the welfare, safety, civil rights, and civil liberties of the public.

(5) Mitigations: Specific, affirmative technical and procedural measures that will be implemented to safeguard the public from such impacts.

(6) Alternatives: Alternative method or methods by which the Police Department can accomplish the purposes for which the [ControlledMilitary](#) Equipment is proposed to be used, and rationale for selection over alternative methods.

(7) Third Party Dependence: Whether use or maintenance of the [ControlledMilitary](#) Equipment will require the engagement of third party service providers.

(D) Except as provided below, "Deployed" means to utilize or employ [ControlledMilitary](#) 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 [ControlledMilitary](#) Equipment on their belt or elsewhere on their person.

(1) Batons 30 inches or longer in length shall only be deemed "deployed" when used for management or control of crowds.

(E) "Exigent Circumstances" means a law enforcement agency's good faith belief that an emergency involving the danger of, or imminent threat of death or serious physical injury to any person requires the use of unapproved [ControlledMilitary](#) Equipment.

(F) "Police Accountability Board" means the body established by Charter Article XVIII. The Police Review Commission, established by Ordinance No. 4,644-N.S., as amended, shall serve any and all functions and duties set forth by this chapter before and until they are transferred to the Police Accountability Board pursuant to Charter Article XVIII. (Ord. 7760-NS § 1, 2021)

2.100.030 [ControlledMilitary](#) Equipment Use Policy Requirement.

[ControlledMilitary](#) Equipment requires a publicly available use policy that identifies the purpose, any prohibited uses, training requirements, and any process required prior to use. (Ord. 7760-NS § 1, 2021)

2.100.040 Acquisition and Use of [ControlledMilitary](#) Equipment.

(A) Restrictions Prior to Submission and Approval

(1) The Police Department shall not engage in any of the following activities regarding a piece of [ControlledMilitary](#) Equipment before the Berkeley Police Accountability Board ("Police Accountability Board"), or any successive agency, reviews and recommends, and the City Council approves, a [ControlledMilitary](#) Equipment Impact Report and a [ControlledMilitary](#) Equipment Use Policy for that equipment in compliance with this section.

(a) Requesting the transfer of [ControlledMilitary](#) Equipment pursuant to Section 2576a of Title [10](#) of the United States Code.

(b) Seeking funds for [ControlledMilitary](#) 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 [ControlledMilitary](#) Equipment either permanently or temporarily, including by borrowing or leasing.

(d) Using any new [ControlledMilitary](#) Equipment for a purpose, in a manner, or by a person not previously approved by the City Council pursuant to this Ordinance.

(e) 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, [ControlledMilitary](#) Equipment.

(B) Submission to Police Accountability Board

(1) At least 15 days prior to any public meeting to consider the adoption of any [ControlledMilitary](#) Equipment Use Policy or [ControlledMilitary](#) Equipment Impact Report, the Use Policy and Impact report shall be published for public review.

(2) The final [ControlledMilitary](#) Equipment Impact Report and [ControlledMilitary](#) Equipment Use Policy shall be made publicly available on the Department's website for as long as the [ControlledMilitary](#) Equipment is available for use.

(3) The Police Accountability Board shall consider [ControlledMilitary](#) Equipment Impact Reports and [ControlledMilitary](#) Equipment Use Policies as an agenda item for review at an open session of a meeting.

(C) Criteria for Police Accountability Board Recommendations

(1) The Police Accountability Board shall recommend approval of a request to fund, acquire, or use [ControlledMilitary](#) Equipment pursuant to this chapter only if it determines all of the following:

(a) The [ControlledMilitary](#) Equipment is needed and there is no practicably available alternative equipment which is not [ControlledMilitary](#) Equipment that is sufficient for the purposes.

(b) The proposed [ControlledMilitary](#) Equipment Use Policy will safeguard the public's welfare, safety, civil rights, and civil liberties.

(c) The [ControlledMilitary](#) 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.

(2) If the submitted [ControlledMilitary](#) Equipment Impact Report identifies a risk of potential adverse effects on the public's welfare, safety, civil rights, or civil liberties, the Police Accountability Board's recommendation for approval for the funding, acquisition, or use of the [ControlledMilitary](#) Equipment shall not be deemed an acquiescence to those effects, but instead an acknowledgment of the risk of those effects and the need for the Police Department to take proactive steps to minimize those effects.

(D) Temporary Use in Exigent Circumstances

(1) Notwithstanding the provisions of this Chapter, the Police Department may borrow and/or temporarily use [ControlledMilitary](#) Equipment in Exigent Circumstances without following the requirements in Section [2.100.040](#). However, if the Department does so, it must take all of the following actions:

- (a) Provide written notice of that acquisition 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 [ControlledMilitary](#) Equipment Impact Report and [ControlledMilitary](#) Equipment Use Policy, as applicable, to the City Council within 90 days following the borrowing, acquisition or temporary use, and receive approval, as applicable, from the City Council pursuant to Section [2.100.040](#); and
- (c) Include the [ControlledMilitary](#) Equipment in the Department's next annual [ControlledMilitary](#) Equipment Report.

(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 [ControlledMilitary](#) Equipment Use Policy, and notify the Police Department of its recommendations.
- (2) The Police Accountability Board shall present its recommendations to City Council.
- (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.

(F) Police Accountability Board Review of Prior Recommendations

- (1) The Police Accountability Board shall determine, as part of its annual Work Plan, whether to include the review of any [ControlledMilitary](#) Equipment use policy in the coming year.
- (2) A Police Accountability Board recommendation to City Council that a prior approval be revoked shall be presented to Council. If City Council does not act on such a recommendation within four (4) City Council meetings from when the item is first scheduled, the Police Department shall cease its use of the [ControlledMilitary](#) Equipment.

(G) Review Process for Previously-Acquired Equipment

- (1) The Police Department shall have one year from the date of passage of this Ordinance to submit [ControlledMilitary](#) Equipment Use Policies and [ControlledMilitary](#) Equipment Impact Statements for approval if the Department wishes to continue the use of [ControlledMilitary](#) Equipment acquired prior to the passage of this Ordinance. If the Department fails to do so, it must cease use of such equipment.
- (2) To ensure that the review of previously-acquired [ControlledMilitary](#) Equipment is appropriately prioritized, the Police Department shall provide a prioritized ranking of

such ControlledMilitary Equipment, and the Police Accountability Board shall consider this ranking in determining the order in which to perform its review.

(H) *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 ControlledMilitary Equipment Impact Report and proposed ControlledMilitary Equipment Use Policy, and include Police Accountability Board recommendations, at least fifteen (15) days prior to a public meeting.

(2) 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 ControlledMilitary Equipment until such review and approval occurs. (Ord. 7760-NS § 1, 2021)

2.100.050 Reports on the Use of ControlledMilitary Equipment.

(A) *Annual Report on ControlledMilitary Equipment*

(1) The Police Department shall submit a report on ControlledMilitary 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-May~~ 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 ControlledMilitary Equipment is available for use.

(2) The annual report shall comply the requirements of Cal. Gov. Code § 7072(a)(1)-(6).

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(3) Additionally, tThe annual report shall, at a minimum, include the following information for the immediately preceding calendar year:

(a) Production descriptions for ControlledMilitary Equipment and inventory numbers of each product in the Police Department's possession.

(b) A summary of how ControlledMilitary 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.

(c) If applicable, a breakdown of where ControlledMilitary 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 ControlledMilitary 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 ControlledMilitary Equipment.

(e) The results of any internal audits, any information about violations of ControlledMilitary Equipment Use Policies, and any actions taken in response.

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(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 may~~ determine, based on the report, whether each piece of ControlledMilitary 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 ControlledMilitary 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 ControlledMilitary Equipment or modify the ControlledMilitary 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 ControlledMilitary Equipment. (Ord. 7760-NS § 1, 2021)

2.100.060 Enforcement.

(A) *Remedies for Violations of this Ordinance* This Chapter does not provide a private right of action upon any person or entity to seek injunctive relief against the City or any employee unless that person or entity has first provided written notice to the City Manager by serving the City Clerk, regarding the specific alleged violations of this Chapter. If a specific alleged violation is not remedied within 90 days of that written notice, a person or entity may seek injunctive relief in a court of competent jurisdiction. If the alleged violation is substantiated and subsequently cured, a notice shall be posted in a conspicuous manner on the City's website that describes, to the extent permissible by law, the corrective measures taken to address the violation. If it is shown that the violation is the result of arbitrary or capricious action by the City or an employee or agent thereof in their official capacity, the prevailing complainant in an action for relief may collect from the City reasonable attorney's fees in an amount not to exceed \$15,000 if they are personally obligated to pay such fees. (Ord. 7760-NS § 1, 2021)

2.100.070 Transparency.**(A) Disclosure Requirements**

(1) It shall be unlawful for the City to enter into any ControlledMilitary Equipment-related contract or other agreement that conflicts with the provisions of this Ordinance, and any conflicting provisions in such future contracts or agreements, including but not limited to non-disclosure agreements, shall be deemed void and legally unenforceable.

(2) To the extent permitted by law, the City shall publicly disclose all of its ControlledMilitary Equipment-related contracts, including any and all related non-disclosure agreements, if any, regardless of any contract terms to the contrary. (Ord. 7760-NS § 1, 2021)

2.100.080 Whistleblower Protections.

All provisions of Berkeley's Protection of Whistleblowers Workplace Policy, as promulgated by the City Manager on November 2, 2016, and including any updates or replacements thereto, shall apply. (Ord. 7760-NS § 1, 2021)

2.100.090 Severability.

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter. The Council of the City of Berkeley hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional. (Ord. 7760-NS § 1, 2021)

The Berkeley Municipal Code is current through Ordinance 7957-NS, passed April 15, 2025.

Disclaimer: The City Clerk's Office has the official version of the Berkeley Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

[City Website: www.berkeleyca.gov](http://www.berkeleyca.gov)

[Hosted by General Code.](#)

For the full list of attachments, please consult the complete document available on the Police Accountability Board's website at

[https://berkeleyca.gov/sites/default/files/documents/7.18.25%20-%20PAB%20Chair%20Ltr%20to%20PSPC Controlled%20Equipment wAttachments%28Final%29%20%281%29.pdf](https://berkeleyca.gov/sites/default/files/documents/7.18.25%20-%20PAB%20Chair%20Ltr%20to%20PSPC%20Controlled%20Equipment%20wAttachments%20Final%29%20%281%29.pdf)

Attachment 2

Please refer to the material for Item 21 in the Berkeley City Council's Regular Meeting on January 27, 2026.

- Agenda Link: <https://berkeleyca.gov/city-council-regular-meeting-eagenda-january-27-2026>
- Material Link: <https://berkeleyca.gov/sites/default/files/2026-01/2026-01-27%20Item%2021%20Rescission%20and%20replacement%20of%20the%20Police.pdf>

The material can also be found on Page 174 of the PAB's January 21, 2026 Regular Meeting Packet: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2026-01-21%20PAB%20Regular%20Meeting%20Pkt_0.pdf

Berkeley Municipal code 2.100 "Police Equipment and Community
Safety Ordinance"

Chapter 2.100

POLICE EQUIPMENT AND COMMUNITY SAFETY ORDINANCE

Sections:

- 2.100.010 Name of Ordinance.**
- 2.100.020 Definitions.**
- 2.100.030 Controlled Equipment Use Policy Requirement.**
- 2.100.040 Acquisition and Use of Controlled Equipment.**
- 2.100.050 Reports on the Use of Controlled Equipment.**
- 2.100.060 Enforcement.**
- 2.100.070 Transparency.**
- 2.100.080 Whistleblower Protections.**
- 2.100.090 Severability.**

2.100.010 Name of Ordinance.

(A) This Ordinance shall be known as the Police Equipment and Community Safety Ordinance. (Ord. 7760-NS § 1, 2021)

2.100.020 Definitions.

(A) "Controlled Equipment" is equipment that is militaristic in nature and includes, but is not limited to, all of the following:

(1) Vehicles that are built or modified to provide ballistic protection to their occupants, such as mine-resistant ambush protected (MRAP) vehicles or armored personnel carriers.

(a) Police versions of standard passenger vehicles are specifically excluded from this section.

(2) Multi-purpose wheeled vehicles that are: built to operate both on-road and off-road, such as a high mobility multipurpose wheeled vehicle (HMMWV), commonly referred to as a Humvee, a two and one-half-ton truck, or a five-ton truck; or built or modified to use a breaching or entry apparatus as an attachment.

(a) Unarmored all-terrain vehicles (ATVs) and motorized dirt bikes are specifically excluded from this section.

(3) Tracked vehicles that are built or modified to provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion.

- (4) Aircraft, vessels, or vehicles of any kind, whether manned or unmanned, with attached or mounted weapons.
 - (5) Breaching apparatus designed to provide rapid entry into a building or through a secured doorway, including equipment that is mechanical, such as a battering ram, and equipment that is ballistic, such as a slug, or equipment that is explosive in nature. Items designed to remove a lock, such as bolt cutters, small gauge frangible rounds, or a handheld ram, are excluded from this policy.
 - (6) Firearms of .50 caliber or greater.
 - (7) Ammunition of .50 caliber or greater.
 - (8) Specialized firearms, including the Colt M4, and associated ammunition of less than .50 caliber, as defined in Sections [30510](#) and [30515](#) of the California Penal Code.
 - (9) Projectile launch platforms and their associated munitions, such as 40mm projectile launchers, "bean bag," rubber bullet, or specialty impact munition (SIM) weapons, and equipment used to disperse chemical agents.
 - (10) Any knife designed to be attached to the muzzle of a rifle, shotgun, or long gun for purposes of hand-to-hand combat.
 - (11) Explosives, pyrotechnics, such as "flashbang" grenades, and chemical weapons such as "teargas," CS gas, pepper spray, and "pepper balls".
 - (12) Batons 30 inches or longer in length.
 - (13) Active area denial weapons, such as the Taser Shockwave, microwave weapons, and water cannons and the Long Range Acoustic Device (LRAD). Use of the LRAD for the purpose of communicating lifesaving information to residents during disasters, in evacuation exercises, to conduct search and rescue operations, or communicate to persons threatening suicide who are in an inaccessible location shall be exempt from the reporting requirements under Section [2.100.050](#) of this Chapter.
 - (14) Any other equipment as determined by a majority of the City Council to require additional oversight.
- (B) "City" means any department, agency, bureau, and/or subordinate division of the City of Berkeley.
- (C) "Controlled Equipment Impact Statement" means a publicly released, written document that includes, at a minimum, all of the following:
- (1) Description: A description of each type of Controlled Equipment, the quantity sought, its capabilities, expected lifespan, intended uses and effects, and how it works, including product descriptions from the manufacturer of the Controlled Equipment.
 - (2) Purpose: The specific purpose or purposes that each type of Controlled Equipment is intended to achieve.

(3) Fiscal Cost: The fiscal cost of each type of Controlled Equipment, including the initial costs of obtaining the equipment, the costs of each proposed use, the costs of potential adverse impacts, and the annual, ongoing costs of the equipment, including operating, training, transportation, storage, maintenance, and upgrade costs.

(4) Impact: An assessment specifically identifying any potential impacts that the use of Controlled Equipment might have on the welfare, safety, civil rights, and civil liberties of the public.

(5) Mitigations: Specific, affirmative technical and procedural measures that will be implemented to safeguard the public from such impacts.

(6) Alternatives: Alternative method or methods by which the Police Department can accomplish the purposes for which the Controlled Equipment is proposed to be used, and rationale for selection over alternative methods.

(7) Third Party Dependence: Whether use or maintenance of the Controlled Equipment will require the engagement of third party service providers.

(D) Except as provided below, "Deployed" means 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.

(1) Batons 30 inches or longer in length shall only be deemed "deployed" when used for management or control of crowds.

(E) "Exigent Circumstances" means a law enforcement agency's good faith belief that an emergency involving the danger of, or imminent threat of death or serious physical injury to any person requires the use of unapproved Controlled Equipment.

(F) "Police Accountability Board" means the body established by Charter Article XVIII. The Police Review Commission, established by Ordinance No. 4,644-N.S., as amended, shall serve any and all functions and duties set forth by this chapter before and until they are transferred to the Police Accountability Board pursuant to Charter Article XVIII. (Ord. 7760-NS § 1, 2021)

2.100.030 Controlled Equipment Use Policy Requirement.

Controlled Equipment requires a publicly available use policy that identifies the purpose, any prohibited uses, training requirements, and any process required prior to use. (Ord. 7760-NS § 1, 2021)

2.100.040 Acquisition and Use of Controlled Equipment.**(A) Restrictions Prior to Submission and Approval**

(1) The Police Department shall not engage in any of the following activities regarding a piece of Controlled Equipment before the Berkeley Police Accountability Board ("Police Accountability Board"), or any successive agency, reviews and recommends, and the City Council approves, a Controlled Equipment Impact Report and a Controlled Equipment Use Policy for that equipment in compliance with this section.

- (a) Requesting the transfer of Controlled Equipment pursuant to Section 2576a of Title [10](#) of the United States Code.
- (b) Seeking funds for Controlled 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 Controlled Equipment either permanently or temporarily, including by borrowing or leasing.
- (d) Using any new Controlled Equipment for a purpose, in a manner, or by a person not previously approved by the City Council pursuant to this Ordinance.
- (e) 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, Controlled Equipment.

(B) Submission to Police Accountability Board

- (1) At least 15 days prior to any public meeting to consider the adoption of any Controlled Equipment Use Policy or Controlled Equipment Impact Report, the Use Policy and Impact report shall be published for public review.
- (2) The final Controlled Equipment Impact Report and Controlled Equipment Use Policy shall be made publicly available on the Department's website for as long as the Controlled Equipment is available for use.
- (3) The Police Accountability Board shall consider Controlled Equipment Impact Reports and Controlled Equipment Use Policies as an agenda item for review at an open session of a meeting.

(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.

(2) If the submitted Controlled Equipment Impact Report identifies a risk of potential adverse effects on the public's welfare, safety, civil rights, or civil liberties, the Police Accountability Board's recommendation for approval for the funding, acquisition, or use of the Controlled Equipment shall not be deemed an acquiescence to those effects, but instead an acknowledgment of the risk of those effects and the need for the Police Department to take proactive steps to minimize those effects.

(D) *Temporary Use in Exigent Circumstances*

(1) Notwithstanding the provisions of this Chapter, the Police Department may borrow and/or temporarily use Controlled Equipment in Exigent Circumstances without following the requirements in Section [2.100.040](#). However, if the Department does so, it must take all of the following actions:

(a) Provide written notice of that acquisition 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 receive approval, as applicable, from the City Council pursuant to Section [2.100.040](#); and

(c) Include the Controlled Equipment in the Department's next annual Controlled Equipment Report.

(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.

(2) The Police Accountability Board shall present its recommendations to City Council.

(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.

(F) *Police Accountability Board Review of Prior Recommendations*

(1) The Police Accountability Board shall determine, as part of its annual Work Plan, whether to include the review of any Controlled Equipment use policy in the coming year.

(2) A Police Accountability Board recommendation to City Council that a prior approval be revoked shall be presented to Council. If City Council does not act on such a recommendation within four (4) City Council

meetings from when the item is first scheduled, the Police Department shall cease its use of the Controlled Equipment.

(G) *Review Process for Previously-Acquired Equipment*

(1) The Police Department shall have one year from the date of passage of this Ordinance to submit Controlled Equipment Use Policies and Controlled Equipment Impact Statements for approval if the Department wishes to continue the use of Controlled Equipment acquired prior to the passage of this Ordinance. If the Department fails to do so, it must cease use of such equipment.

(2) To ensure that the review of previously-acquired Controlled Equipment is appropriately prioritized, the Police Department shall provide a prioritized ranking of such Controlled Equipment, and the Police Accountability Board shall consider this ranking in determining the order in which to perform its review.

(H) *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.

(2) 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. (Ord. 7760-NS § 1, 2021)

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:

(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.

(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.

(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)

2.100.060 Enforcement.

(A) *Remedies for Violations of this Ordinance* This Chapter does not provide a private right of action upon any person or entity to seek injunctive relief against the City or any employee unless that person or entity has first provided written notice to the City Manager by serving the City Clerk, regarding the specific alleged violations of this Chapter. If a specific alleged violation is not remedied within 90 days of that written notice, a person or entity may seek injunctive relief in a court of competent jurisdiction. If the alleged violation is substantiated and subsequently cured, a notice shall be posted in a conspicuous manner on the City's website that describes, to the extent permissible by law, the corrective measures taken to address the violation. If it is shown that the violation is the result of arbitrary or capricious action by the City or an employee or agent thereof in their official capacity, the prevailing complainant in an action for relief may collect from the City reasonable attorney's fees in an amount not to exceed \$15,000 if they are personally obligated to pay such fees. (Ord. 7760-NS § 1, 2021)

2.100.070 Transparency.

(A) Disclosure Requirements

(1) It shall be unlawful for the City to enter into any Controlled Equipment-related contract or other agreement that conflicts with the provisions of this Ordinance, and any conflicting provisions in such future contracts or agreements, including but not limited to non-disclosure agreements, shall be deemed void and legally unenforceable.

(2) To the extent permitted by law, the City shall publicly disclose all of its Controlled Equipment-related contracts, including any and all related non-disclosure agreements, if any, regardless of any contract terms to the contrary. (Ord. 7760-NS § 1, 2021)

2.100.080 Whistleblower Protections.

All provisions of Berkeley's Protection of Whistleblowers Workplace Policy, as promulgated by the City Manager on November 2, 2016, and including any updates or replacements thereto, shall apply. (Ord. 7760-NS § 1, 2021)

2.100.090 Severability.

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter. The Council of the City of Berkeley hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional. (Ord. 7760-NS § 1, 2021)

The Berkeley Municipal Code is current through Ordinance 7992-NS, passed December 2, 2025.

Disclaimer: The City Clerk's Office has the official version of the Berkeley Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

[City Website: www.berkeleyca.gov](http://www.berkeleyca.gov)

[Hosted by General Code.](#)

Draft Letter to the Berkeley Police Department with the Subject Line
"Formal Request for Single Annual Report from BPD in Compliance with
California Gov. Code §§ 7070 & Berkeley Municipal Code 2.100 et. seq.
by May 31st"



Joshua Cayetano | Chair
Police Accountability Board
JCayetano@berkeleyca.gov

January 20, 2026

VIA ELECTRONIC MAIL [Email]

Chief Jennifer Louis
2100 Martin Luther King, Jr. Way,
Berkeley, CA 94704

Re: Formal Request for Single Annual Report from BPD in Compliance with California Gov. Code §§ 7070 & Berkeley Municipal Code 2.100 et. seq. by May 31st

Dear Chief Louis,

The Police Accountability Board (PAB) formally requests that the Berkeley Police Department (BPD) submit a single annual report that satisfies the requirements of both California Government Code §§ 7070 et. seq. and Berkeley's Police Equipment and Community Safety Ordinance, Berkeley Municipal Code 2.100 et. seq., no later than May 31st of each year.

The submission of a single annual report describing the use and deployment of military equipment within Berkeley would reduce unnecessary administrative burdens on both BPD and the PAB while ensuring compliance with critical transparency, oversight, and accountability measures.

BPD indicated that the current March 15 deadline does not align with BPD's submission of the annual Military Equipment Report, which typically occurs in the summer. BMC 2.100.050(A) states: "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 PAB expects that the revised May 31st deadline would allow for the submission of a single report to City Council before the August recess, with sufficient time for the PAB to make an informed recommendation.

Sincerely,

Joshua Cayetano, Chair
Police Accountability Board