



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

March 12, 2026

VIA ELECTRONIC MAIL [Email]

Honorable Mayor Ishii and Members of the City Council
City Manager Paul Buddenhagen
City Attorney Farimah Brown
Council@berkeleyca.gov
2180 Milvia Street
Berkeley, CA 94704

Re: Urgent Concern Regarding BPD's Unilateral Revision of Council-Approved Use of Force Policy 300

Dear Honorable Mayor and Councilmembers, City Manager Buddenhagen, and City Attorney Brown:

The Police Accountability Board (PAB) writes to bring to your awareness an urgent matter regarding the Berkeley Police Department's unilateral decision to revise its Use of Force Policy 300—a policy that the Council previously considered and explicitly approved—that requires your immediate attention.

On December 17, 2025, Deputy Chief Jen Tate and Sergeant Darrin Rafferty presented the PAB with a proposal to substantially revise (and significantly weaken) BPD's Use of Force Policy 300. At that meeting, I informed Deputy Chief Tate and Sergeant Rafferty that BPD's Use of Force Policy was the product of years of negotiation between many stakeholders, brought together by an urgent resolution of the City Council, and, relevant here, explicitly approved by the City Council at its July 23, 2020 meeting. See **Attachment A** (June 29, 2020 Resolution No. 69,527–N.S.)¹

¹ On June 9, 2020, the Berkeley City Council [held a special meeting](#) and passed [an urgency resolution](#), **Resolution No. 69,527–N.S.**, resolving that the City Council directs the Police Review Commission and City Manager to:

- (1) Finalize revisions to the use of force policy as referred by Council and drafted by the department for PRC review.
- (2) Submit revised Use of Force Policy directly to the full City Council for the Council to review and adopt before the 2020 Summer recess

and **Attachment B** (July 23, 2020 Special Meeting Minutes).² I further told Deputy Chief Tate and Sergeant Rafferty that they cannot revise the Use of Force Policy 300 without first bringing the revisions to the City Council, precisely because they are seeking to overturn policy that was debated and ultimately approved by the City Council.³ The Office of the Director of Police Accountability confirmed in a memo dated December 30, 2025 that the City Council approved the Use of Force Policy 300, with certain amendments, by a vote of 7-0 with 2 abstentions. See **Attachment C**.⁴

Nevertheless, on Friday, March 6, 2026, Deputy Chief Jen Tate informed me via email that the Berkeley Police Department revised its Use of Force Policy 300 and that the revision was issued to all Departmental personnel. See **Attachment D** (Policy 300 Redlines). To the PAB's knowledge, BPD never sought Council approval for this revision that effectively overturns the decision of Berkeley's democratically-elected, legislative body.

The Police Accountability Board urges the City Council and the City Manager to call a special meeting and immediately direct the Department to cease and desist their implementation of their revised Use of Force Policy 300 until the Council decides to overturn its prior decision—if that time ever comes. The PAB also respectfully requests that the Council refrain from considering the Department's proposed revisions until the PAB has had an opportunity to fully assess the policy implications and issue a formal recommendation to the Council.

Sincerely,



Joshua Cayetano, Chair
Police Accountability Board

Cc: David White, Deputy City Manager
Jennifer Louis, Chief of Police
Jen Tate, Deputy Chief of Police
Jose Murillo, Acting Director of Police Accountability
Mark Numainville, City Clerk

(3) Incorporate revisions included the October 31, 2017 Council referral and all outstanding “8 Can’t Wait” use of force policy reforms.

² After hours of deliberation and public comment, the Berkeley City Council approved the Use of Force Policy 300, with specific revisions.

³ See minutes 1:11:59–1:12:50 of the December 17, 2025 PAB Regular Meeting recording: <https://www.youtube.com/watch?v=k6mhDQWO9H0>

⁴ See Attachment C, ODPa Memo Titled “Overview of Development and Council Approval of BPD Policy 300 Use of Force”

Attachments:

- A. Resolution No. 69,438-N.S. "Directing the Police Review Commission and City Manager to Submit Revised Berkeley Police Department Use of Force Policy for Council Review and Approval Before the 2020 Summer Recess"
- B. July 23, 2020 Minutes for the Special Meeting of the Berkeley City Council (See Item 3)
- C. December 30, 2025 ODPa Memo Titled "Overview of Development and Council Approval of BPD Policy 300 Use of Force"
- D. Redlined Version of Berkeley Police Department Policy 300, "Use of Force," Reflecting Adopted Revisions

Attachment A

Resolution No. 69,438-N.S. “Directing the Police Review Commission and City Manager to Submit Revised Berkeley Police Department Use of Force Policy for Council Review and Approval Before the 2020 Summer Recess”

RESOLUTION NO. 69,438-N.S.

DIRECTING THE POLICE REVIEW COMMISSION AND CITY MANAGER TO SUBMIT REVISED BERKELEY POLICE DEPARTMENT USE OF FORCE POLICY FOR COUNCIL REVIEW AND APPROVAL BEFORE THE 2020 SUMMER RECESS

WHEREAS, the recent murders of George Floyd, Breonna Taylor and Ahmaud Arbery have ignited the nation in passionate protest against police brutality and racial injustice, and across the country, citizens have protested for the past week demanding change and calling out the enduring systemic racism, white supremacy and police brutality that has defined the United States for too long; and

WHEREAS, among the more immediate demands are calls for local jurisdictions to use their power to implement reforms that restrict the prevalence of police force and the circumstances in which police can use force; and

WHEREAS, on October 31, 2017 the Council unanimously directed the City Manager to urgently amend the BPD's General Order U-2 governing use of force policy to address deficiencies and to update it consistent with best practices and community concerns; and

WHEREAS, on January 8, 2020, more than two years after the Council passed the referral, and 1 year and 10 months after the deadline Council established for presenting a final updated policy, BPD presented a proposed revised Use of Force Policy to the PRC; and

WHEREAS, the current PRC draft represents a marked improvement from the effective 2017 General Order U-2 Use of Force policy, enhancing the Department's policy statement, including a more expansive definition of force (including physical force), encouraging de-escalation tactics, expanding reporting requirements, increasing transparency and facilitating analysis, and requiring annual Council reporting; and

WHEREAS, the 8 Can't Wait campaign is a project of Campaign Zero, an organization established by Black Lives Matter activists and focused on clear policy solutions to reduce and end police deaths and other forms of police violence; and

WHEREAS, the campaign's studies demonstrate that eight use of force policies are effective at decreasing police violence by up to 72%; and

WHEREAS, according to Campaign Zero, requiring police officers to exhaust less than lethal means before shooting or requiring comprehensive reporting each decreases police killings by 25% for each policy. In addition, prioritizing de-escalation decreases violence by 15%, and banning shooting at moving vehicles reduces police killings by 8%; and

WHEREAS, the Council relied on the campaign when drafting the 2017 referral and the project has enjoyed increased exposure following the deaths of George Floyd and

Breonna Taylor, and the countless others whose lives have been lost at the hands of law enforcement; and

WHEREAS, in a matter of days, hundreds of Berkeley residents have contacted the Mayor's office and City Council to express their support for this campaign and urging immediate adoption of all outstanding policies.

NOW THEREFORE BE IT RESOLVED that the City Council endorses these essential reforms to ensure harm reduction and alignment with best practices;

BE IT FURTHER RESOLVED that the City Council directs the Police Review Commission and City Manager to:

1. Finalize revisions to the use of force policy as referred by Council and drafted by the department for PRC review.
2. Submit revised Use of Force Policy directly to the full City Council for the Council to review and adopt before the 2020 Summer recess;
3. Incorporate revisions included the October 31, 2017 Council referral and all outstanding "8 Can't Wait" use of force policy reforms.

BE IT FURTHER RESOLVED that the City Council directs the Police Review Commission to review the use of control holds.

BE IT FURTHER RESOLVED that the City Council directs the City Manager to allow anonymized access to records about use of force to the Police Review Commission to inform deliberation of the use of force general order.

The foregoing Resolution was adopted by the Berkeley City Council on June 9, 2020 by the following vote:

Ayes: Bartlett, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

Abstain: Davila.

Absent: None.

Attest:


Rose Thomsen, Deputy City Clerk


Jesse Arreguin, Mayor

Attachment B

July 23, 2020 Minutes for the Special Meeting of the Berkeley City Council (See Item 3)

**MINUTES
SPECIAL MEETING OF THE
BERKELEY CITY COUNCIL**

Thursday, July 23, 2020

6:00 P.M.

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – CHERYL DAVILA
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – RIGEL ROBINSON
DISTRICT 8 – LORI DROSTE

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

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

Live audio is available on KPFB Radio 89.3. Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at <http://www.cityofberkeley.info/CalendarEventWebcastMain.aspx>.

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/81015840931>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

*To join by phone: Dial **1-669-900-9128** and enter Meeting ID: **810 1584 0931**. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

To submit an e-mail comment during the meeting to be read aloud during public comment, email clerk@cityofberkeley.info with the Subject Line in this format: "PUBLIC COMMENT ITEM ##." Please observe a 150 word limit. Time limits on public comments will apply. Written comments will be entered into the public record.

Please be mindful that the teleconference will be recorded as any Council meeting is recorded, and all other rules of procedure and decorum will apply for Council meetings conducted by teleconference or videoconference.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900. The City Council may take action related to any subject listed on the Agenda. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.

Preliminary Matters

Roll Call: 7:30 p.m.

Present: Kesarwani, Davila, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin

Absent: None.

Action Calendar – Old Business

- 1. Animal Services Contract with the City of Piedmont** (*Continued from July 14, 2020*)
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract, with any amendments, with the City of Piedmont for animal care services for FY2021-FY2025, which increases the existing contract by up to \$180,134, with a total contract amount not to exceed \$441,984.
Financial Implications: See report
Contact: Erin Steffen, City Manager's Office, (510) 981-7000
Action: 0 speakers. M/S/C (Arreguin/Robinson) to adopt Resolution No. 69,506–N.S.
Vote: Ayes – Kesarwani, Bartlett, Hahn, Robinson, Droste, Arreguin; Noes – None; Abstain – Davila, Harrison; Absent – Wengraf.

Action Calendar – Public Hearings

- 2. ***Removed from Agenda – Scheduled for a special meeting on July 23, 2020 at 4:30 p.m.*** ZAB Appeal: 1533 Beverly Place, Administrative Use Permit #ZP2018-0153** (*Continued from July 14, 2020*)
From: City Manager
Contact: Jordan Klein, Planning and Development, (510) 981-7400

Action Calendar

3. Referral Response: Police Review Commission Recommendation on a Revised Berkeley Police Department Policy 300, Use of Force

From: Police Review Commission

Recommendation: Approve a revised Use of Force policy for the Berkeley Police Department as recommended by the Police Review Commission.

Financial Implications: See report

Contact: Katherine Lee, Commission Secretary, (510) 981-4950

Action: M/S/C (Arreguin/Hahn) to accept revised materials from Councilmember Harrison for Item 3.

Vote: All Ayes.

Recess 10:17 p.m. – 10:28 p.m.

Action: M/S/C (Arreguin/Droste) to suspend the rules and extend the meeting to 11:30 p.m.

Vote: All Ayes.

Action: M/S/C (Arreguin/Hahn) to suspend the rules and extend the meeting to 12:00 a.m.

Vote: All Ayes.

Action: M/S/C (Arreguin/Harrison) to suspend the rules and extend the meeting to 12:30 a.m.

Vote: All Ayes.

Action: M/S/Failed (Hahn/Arreguin) to suspend the rules and extend the meeting to 12:45 a.m.

Vote: Ayes – Davila, Harrison, Hahn, Robinson, Arreguin; Noes – Bartlett, Droste; Abstain – Kesarwani, Wengraf.

Action: M/S/Carried (Hahn/Arreguin) to suspend the rules and extend the meeting to 12:45 a.m.

Vote: Ayes – Davila, Bartlett, Harrison, Hahn, Robinson, Arreguin; Noes – None; Abstain – Kesarwani, Wengraf, Droste.

Action: M/S/C (Harrison/Arreguin) to call for the previous question on Item 3.

Vote: All Ayes.

Action: 56 speakers. M/S/C (Harrison/Davila) to approve the revised use of force as proposed in Councilmember Harrison's item accepted at the meeting with the following amendments.

- Section 300.1.3 – amended to read:
C. MINIMIZING THE USE OF DEADLY FORCE. Deadly force may only be used when it is objectively reasonable that such action is immediately necessary to protect the officer or another person from imminent danger or death or serious bodily harm. Officers shall not use deadly force if it is objectively reasonable that alternative techniques will eliminate the imminent

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danger and ultimately achieve the law enforcement purpose with less risk of harm to the officer or to other persons

- Section 300.4 – amended to read:
An officer's use of deadly force is justified only when it is objectively reasonable based on the totality of the circumstances, that such force is objectively necessary to, 1) defend against an imminent threat of death or serious bodily injury to the officer or another or 2) apprehend a suspected fleeing person for any felony that threatened or resulted in death or serious bodily injury, provided it is objectively reasonable that the person will cause imminent death or serious bodily injury to another unless immediately apprehended.

Where feasible, the officer shall, prior to the use of deadly force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless it is objectively reasonable that the person is aware of those facts.

An officer shall not use deadly force against another person unless it is objectively reasonable that using deadly force would not unnecessarily endanger innocent people.

Lethal force is prohibited when its sole purpose is to effect an arrest, overcome resistance or prevent a subject from escaping when the subject does not present an immediate danger of death or serious bodily injury. Lethal force is also prohibited solely to prevent property damage or prevent the destruction of evidence.

An "imminent" threat of death or serious bodily injury exists when, based on the totality of the circumstances, it is objectively reasonable to believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. An officer's subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention.

- Section 300.6 is amended to read as follows:
All uses of force shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident and the level of force used. The officer should articulate the factors perceived and why they believed the use of force was objectively reasonable and objectively necessary under the circumstances. Whenever an officer or employee uses Oleoresin Capsicum (pepper spray) they must also complete a "Use of Pepper Spray Report." Whenever an officer or employee use body wrap or spit hood restraint devices they must also complete a "Use of Restraint Device Report" and document, review and report such uses in accordance with section 300.11.

Upon receiving notification of a use of force, an uninvolved supervisor, when feasible, shall determine the level of force reporting level, investigation,

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documentation and review requirements.

- The adopted Use of Force Policy 300 will be effective October 1, 2020.
- The adopted policy does not make any changes to the previously adopted ban on tear gas.
- The Council refers to the City Manager a request for an analysis by the City Attorney of the recent court decision in Oakland regarding the use of tear gas and mutual aid.
- The Council refers to the Police Review Commission and the Public Safety Committee the issue of providing an allowance for the Special Response Team to use tear gas in certain circumstances.

Vote: Ayes – Davila, Bartlett, Harrison, Hahn, Wengraf, Robinson, Arreguin; Noes – None; Abstain – Kesarwani, Droste.

4. Changes to the Berkeley Municipal Code and City of Berkeley Policies with Respect to Local Emergency Declarations and First Amendment Curfews
(Continued from June 9, 2020)

From: Councilmember Hahn (Author), Councilmember Bartlett (Co-Sponsor), Councilmember Harrison (Co-Sponsor), Mayor Arreguin (Co-Sponsor)

Recommendation:

1. Direct the City Manager to return to the City Council for adoption amendments to the Berkeley Municipal Code and/or policies to approve that clarify and codify the following with respect to the declaration of a Local Emergency:

a. A Local Emergency can only be declared by the Director of Emergency Services if a regular or special meeting and session of the City Council cannot be called due to physical impossibility of holding a meeting, because a quorum cannot be established, or because the urgency of the Local Emergency is such that waiting 24 hours for the City Council to convene a session and/or Special Meeting would endanger the community;

b. Should the Director declare a Local Emergency without action of the City Council (due to one of the reasons stated at (a), above), Council ratification of such action occurs at the first possible opportunity, even if it requires calling a Special Meeting and/or session of the Council; and

c. The applicable statutory and legal standards (Federal, State and Local) for calling a Local Emergency shall be presented to the City Council when seeking declaration or ratification of a Local Emergency, along with facts to support meeting those standards, so that the City Council, likely acting under rushed and exigent circumstances, is able to make a carefully considered and fact-based determination that declaration of such Local Emergency conforms with the legal standards and is supported by facts.

2. Direct the City Manager to return to the City Council for adoption amendments to the Berkeley Municipal Code and/or policies to approve that clarify and codify policies, terms and procedures for the order, scope, terms, duration, and all other elements and conditions of curfews called in response to, or likely to have the effect of limiting or banning, planned, expected or reasonably foreseeable first amendment activity, including rallies, marches, demonstrations and assemblies of all kinds (“First Amendment Curfews”), as enumerated (1-8) under the “Background” section of this item, below.

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3. Advise the City Manager and/or Director of Emergency Services that approval of this item represents the will and direction of the City Council with respect to declarations of Local Emergencies and imposition of First Amendment Curfews, and should the occasion to declare a Local Emergency or impose a First Amendment curfew arise prior to formal Council adoption of the requested amendments and policies, the City Manager and/or Director of Emergency Services shall, to the greatest extent possible under existing law, strive to encompass actionable elements, and meet spirit, of this item.

Financial Implications: See report

Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150

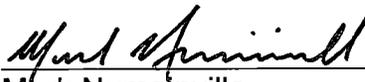
Action: M/S/C (Arreguin/Hahn) to continue Item 4 to July 28, 2020.

Vote: All Ayes.

Adjournment

Adjourned at 12:45 a.m.

I hereby certify that the foregoing is a true and correct record of the special meeting of the City Council held on July 23, 2020.



Mark Numainville
City Clerk

Communications

- None

Supplemental Communications and Reports 1

- None

Supplemental Communications and Reports 2

Item #3: Referral Response: Police Review Commission Recommendation on a Revised Berkeley Police Department Policy 300, Use of Force

1. Revised material, submitted by Councilmember Harrison
2. Revised material, submitted by the City Manager
3. Supplemental material, submitted by the Police Department
4. City of Oakland Community Police Review Agency
5. BART, Office of the Independent Police Auditor
6. James Chanin
7. Moni Law (2)

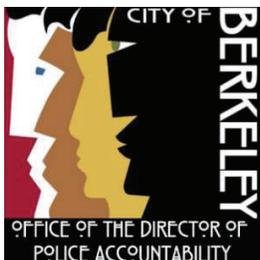
Supplemental Communications and Reports 3

Item #3: Referral Response: Police Review Commission Recommendation on a Revised Berkeley Police Department Policy 300, Use of Force

8. Revised material, submitted by Councilmember Harrison
9. Juli Dickey
10. Janice Schroeder (2)
11. Diana Bohn
12. Lisa Teague
13. Erica Etelson
14. Max Ventura (2)
15. Elizabeth Ferguson
16. Sanah Basrai
17. Marjorie Fletcher
18. Lindsey Yamane
19. Wynd Kaufmyn
20. Mariah Castle
21. Judith Grether
22. Kate Geronemus
23. David Seegal
24. Moni Law
25. Smeeta Mahanti
26. Christine Garibian
27. Marcy Rein
28. George Perezvelez
29. Martha-Lou Wolff
30. Julie Leftwich
31. Ivar Diehl and Siobhan Lettow
32. Michael Chang
33. John Lopez
34. Julia Sen
35. Amy Garlin
36. MJ Baumann
37. Councilmember Harrison
38. Michael McBride
39. Thomas Lord
40. Karen Pita Loor

Attachment C

December 30, 2025 ODPa Memo Titled "Overview of Development and Council Approval of BPD Policy 300 Use of Force"



MEMORANDUM

Date: December 30, 2025
To: Honorable Members of the Police Accountability Board (PAB)
From: Hansel A. Aguilar, Director of Police Accountability (DPA) *HA*
Jose D. Murillo, ODPa Policy Analyst
Subject: Overview of Development and Council Approval of BPD Policy 300 "Use of Force"

This memorandum provides the PAB with a brief overview of the historical development of BPD Policy 300, "Use of Force" to aid their annual review of the BPD's policy.¹

Background

On July 23, 2020, the Berkeley City Council reviewed a recommendation from the Police Review Commission (PRC), following a directive issued by the City Council on June 9, 2020.² This directive instructed the PRC and the City Manager's Office (CMO) to finalize a Use of Force policy for the Berkeley Police Department (BPD) for the Council's review and approval prior to its 2020 recess.³ The recommendation was a continuation of the Council's original referral on October 31, 2017,⁴ which directed the CMO to amend the use-of-force policy, previously General Order (GO) U-2.⁵ The initial referral required that the BPD's draft revised policy be submitted to the PRC for review before its implementation.

The revised policy was submitted to the PRC by former Chief of Police Andy Greenwood on January 2, 2020. This was followed by a memo clarifying that GO U-2

¹ See Attached BPD Policy 300, "Use of Force."

² July 23, 2020 PRC Staff Report Titled "Referral Response: Police Review Commission Recommendation on a Revised Berkeley Police Department Policy 300, Use of Force":

<https://records.cityofberkeley.info/PublicAccess/api/Document/ATnfp4tGBN!%C3%81nKqp8eFHYGogupNd1lcs25rJqp1WMCwEkxwK6bKv5Lmkve6lF%3%894NQ%3%89SQumTlAnT33XE9bmCJ24%3D/>

³ Berkeley City Council Resolution 69,438-N.S.:

<https://records.cityofberkeley.info/PublicAccess/api/Document/Ae2SKTCnGOMlvKBoXVhr1rE40osCeV81hcK0I08e!%C3%89gyndcoE0mblfrTTv21CRQWZBh2tPkWmUcNKICHz3Yi6Zc%3D/>

⁴ October 31, 2017 Regular Meeting Minutes of the Berkeley City Council:

<https://records.cityofberkeley.info/PublicAccess/api/Document/AXO%3%89Ct86ANdVEGN67LGd6JC4ZQlknQDrMuOa2sIZFnYXRggFxoKpANuRQnqFBnhy0C68JdcG5xRgwfCGOVM0BHM%3D/>

⁵ General Order U-2 "Use of Force" (See Page 55):

<https://records.cityofberkeley.info/PublicAccess/api/Document/ATnfp4tGBN!%C3%81nKqp8eFHYGogupNd1lcs25rJqp1WMCwEkxwK6bKv5Lmkve6lF%3%894NQ%3%89SQumTlAnT33XE9bmCJ24%3D/#Page=55>

would remain in effect until the PRC’s review, with a Special Order supplementing it to meet the deadly force standards set forth by Assembly Bill 392,⁶ which became available in January 2020. After several months of collaboration between the PRC's subcommittee and the BPD, the PRC approved its final recommendation on July 8, 2020. During the City Council meeting on July 23, 2020, both this version of the recommended policy and a version proposed by then-Councilmember Harrison were presented. Council voted to approve the revised Use of Force policy proposed by Councilmember Harrison with various amendments made by Council.⁷

Overview of July 23, 2020 Adopted Use of Force Policy

Former Councilmember Harrison’s proposed use of force policy⁸ was accepted at the meeting, subject to the following amendments and conditions:⁹

Council Amendments	
Section	Amended to read:
300.1.3	C. MINIMIZING THE USE OF DEADLY FORCE. Deadly force may only be used when it is objectively reasonable that such action is immediately necessary to protect the officer or another person from imminent danger or death or serious bodily harm. Officers shall not use deadly force if it is objectively reasonable that alternative techniques will eliminate the imminent danger and ultimately achieve the law enforcement purpose with less risk of harm to the officer or to other persons.
300.4	An officer’s use of deadly force is justified only when it is objectively reasonable based on the totality of the circumstances, that such force is objectively necessary to, 1) defend against an imminent threat of death or serious bodily injury to the officer or another or 2) apprehend a suspected fleeing person for any felony that threatened or resulted in death or serious bodily injury, provided it is objectively reasonable that the person will cause imminent death or serious bodily injury to another unless immediately apprehended. Where feasible, the officer shall, prior to the use of deadly force, make reasonable efforts to identify themselves as a peace officer and to warn that

⁶ Assembly Bill No. 392 (Weber):

https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB392

⁷ July 23, 2020 Special Meeting Minutes of the Berkeley City Council:

<https://records.cityofberkeley.info/PublicAccess/api/Document/AXjjUxOBBAogruxeA7MQWPky8wBLcczSZppEtiZT8g2LpLcaHBPWrpSBY8l%C3%89fBx8GXSbceJXhoQL4RNLZMvtdc0%3D/>

⁸ July 23, 2020 Revised Agenda Material for Supplemental 3 (Harrison):

<https://records.cityofberkeley.info/PublicAccess/api/Document/AcsHyeWyT%C3%89KdM6m1P%C3%81IH3RpUbrqZusDiekW1E7LWtXMGRetbCpfAtcG5PePwQ10qTFA4Di3nJly%C3%81XGB1OYIrqIY%3D/>

⁹ See July 23, 2020 Special Meeting Minutes of the Berkeley City Council

	<p>deadly force may be used, unless it is objectively reasonable that the person is aware of those facts.</p> <p>An officer shall not use deadly force against another person unless it is objectively reasonable that using deadly force would not unnecessarily endanger innocent people.</p> <p>Lethal force is prohibited when its sole purpose is to effect an arrest, overcome resistance or prevent a subject from escaping when the subject does not present an immediate danger of death or serious bodily injury. Lethal force is also prohibited solely to prevent property damage or prevent the destruction of evidence.</p> <p>An “imminent” threat of death or serious bodily injury exists when, based on the totality of the circumstances, it is objectively reasonable to believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. An officer’s subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention.</p>
300.6	<p>All uses of force shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident and the level of force used. The officer should articulate the factors perceived and why they believed the use of force was objectively reasonable and objectively necessary under the circumstances. Whenever an officer or employee uses Oleoresin Capsicum (pepper spray) they must also complete a “Use of Pepper Spray Report.” Whenever an officer or employee use body wrap or spit hood restraint devices they must also complete a “Use of Restraint Device Report” and document, review and report such uses in accordance with section 300.11.</p> <p>Upon receiving notification of a use of force, an uninvolved supervisor, when feasible, shall determine the level of force reporting level, investigation, documentation and review requirements.</p>

As part of the Council’s action on the Use of Force Policy, the following actions were also directed:

1. The adopted Use of Force Policy 300 will be effective October 1, 2020.
2. The adopted policy does not make any changes to the previously adopted ban on teargas.

3. The Council refers to the City Manager a request for an analysis by the City Attorney of the recent court decision in Oakland regarding the use of tear gas and mutual aid.
4. The Council refers to the PRC and the Public Safety Committee (PSPC) the issue of providing an allowance for the Special Response Team to use tear gas in certain circumstances.

The action was passed with the following votes:

- Ayes – Davila, Bartlett, Harrison, Hahn, Wengraf, Robinson, Arreguin;
- Noes – None;
- Abstain – Kesarwani, Droste.

Attachments:

1. Revised Agenda Material for July 23, 2020 Supplement Packet 3 Submitted by Councilmember Harrison (Proposed Policy 300)
2. BPD Policy 300 (Updated: December 12, 2024)

Attachment D

Redlined Version of Berkeley Police Department Policy 300, “Use of Force,” Reflecting Adopted Revisions

Redlines of Use of Force Policy

~~300.1~~ ~~SANCTITY OF LIFE~~ PURPOSE AND SCOPE

~~The Berkeley Police Department's highest priority is safeguarding the life, dignity, and liberty of all persons. Officers shall demonstrate this principle in their daily interactions with the community they are sworn to protect and serve. The Department is committed to accomplishing this mission with respect and minimal reliance on the use of force by using rapport building communication, crisis intervention, and de-escalation tactics before resorting to force. Officers must respect the sanctity of all human life, act in all possible respects to preserve human life, do everything possible to avoid unnecessary uses of force, and minimize the force that is used, while still protecting themselves and the public.~~

This policy provides guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this department is expected to use these guidelines to make such decisions in a professional, impartial, and reasonable manner (Government Code § 7286).

In addition to those methods, techniques, and tools set forth below, the guidelines for the reasonable application of force contained in this policy shall apply to all policies addressing the potential use of force, including but not limited to the Control Devices and Techniques and Conducted Energy Device policies.

Retaliation prohibitions for reporting suspected violations are addressed in the Anti-Retaliation Policy.

~~300.1.1~~ ~~PURPOSE AND SCOPE~~

~~This policy sets forth criteria governing the use of force. All officers are responsible for knowing and complying with this policy and conducting themselves in a manner that reflects the Berkeley Police Department's Use of Force Core Principles. Violations of this policy may result in disciplinary action, including and up to termination, and may subject the officer to criminal prosecution. Supervisors shall ensure that all personnel in their command know the content of this policy and operate in compliance with it.~~

~~300.1.2~~ ~~USE OF FORCE STANDARD~~

~~In dealing with suspects, officers shall use alternatives to physical force whenever reasonably possible. In all cases where physical force is used, officers shall use a minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict.~~

~~The United States Supreme Court in *Graham v. Connor*, 490 U.S. 386 (1989), held that, in order to comply with the U.S. Constitution, an officer's use of force must be objectively reasonable under the totality of circumstances known to the officer at the~~

~~time. Additionally, Penal Code section 835(a) imposes further restrictions on an officer's use of force. But these standards merely set the minimum standard for police conduct, below which an officer's conduct would be regarded as unlawful.~~

~~In fulfilling this Department's mission to safeguard the life, dignity, and liberty of officers themselves and all members of the community they are sworn to protect and serve, this policy requires more of our officers than simply not violating the law. As a result, this policy is more restrictive than the minimum constitutional standard and state law in two important respects.~~

~~First, it imposes a higher duty upon officers to use a minimal amount of force objectively necessary to safely achieve their legitimate law enforcement objective. And, second, this policy imposes a stricter obligation on officers to exert only such force that is objectively proportionate to the circumstances, requiring a consideration of the seriousness of the suspected offense, the availability of de-escalation and other less aggressive techniques, and the risks of harm presented to members of the public and to the officers involved.~~

~~Additionally, Penal Code section 835(a) imposes further restrictions on an officer's use of force.~~

300.1.3 CORE PRINCIPLES

~~**A. DE-ESCALATION AND FORCE MINIMIZATION.** Every officer's goal, throughout an encounter with a member of the public, shall be to de-escalate wherever possible and resolve the encounter without resorting to the use of force. Wherever possible, officers shall employ de-escalation techniques to increase the likelihood of voluntary compliance with law enforcement requests or directives and, thereby, decrease the likelihood that a use of force will become necessary during an incident. Further, in any encounters that do call for applying force, officers must always use a minimal amount of force that is objectively reasonable and objectively necessary to safely achieve their legitimate law enforcement objective.~~

~~**B. PROPORTIONALITY.** When determining the appropriate level of force, at all times officers shall balance the severity of the offense committed and the level of resistance based on the totality of the circumstances known to or perceived by the officer at the time. It is particularly important that officers apply proportionality and critical decision making when encountering a subject who is unarmed or armed with a weapon other than a firearm.~~

~~**C. MINIMIZING THE USE OF DEADLY FORCE.** Deadly force may only be used when it is objectively reasonable that such action is immediately necessary to protect the officer or another person from imminent danger of death or serious bodily harm. Officers shall not use deadly force if it is objectively reasonable that alternative techniques will eliminate the imminent danger and ultimately achieve the law enforcement purpose with less risk of harm to the officer or to other persons~~

~~**D. DUTY TO INTERCEDE.** Whenever possible, officers shall intervene when they know or have reason to know that another officer is about to use, or is using, unnecessary force. Officers shall promptly report any use of unnecessary force and the efforts made to intervene to a supervisor.~~

~~**E. VULNERABLE POPULATIONS.** Officers should be particularly sensitive when considering the use of force against vulnerable populations, including children, elderly persons, pregnant women, people with physical and mental disabilities, and people with limited English proficiency.~~

~~**F. FOSTER STRONG COMMUNITY RELATIONSHIPS.** The Berkeley Police Department understands that uses of force, even if lawful and proper, can have a damaging effect on the public's perception of the Department and the Department's relationship with the community. The Department is committed to fostering strong community relations by building on its historic tradition of progressive policing, ensuring accountability and transparency, and striving to increase trust with our community.~~

~~**G. FAIR AND UNBIASED POLICING.** Members of the Berkeley Police Department shall carry out their duties, including the use of force, in a manner that is fair and unbiased, in accordance with Policy 401, Fair and Impartial Policing.~~

300.1.41 DEFINITIONS

Definitions related to this policy include:

~~**Minimal amount necessary**— The least amount of force within a range that is objectively reasonable and objectively necessary to safely effect an arrest or achieve some other legitimate law enforcement purpose.~~

Deadly force

Blue Team (BT) – Computer software that allows officers to enter use of force and other incidents from a Department computer.

Control Hold - Any Department approved hold, designed to allow an officer to control the movement of a subject (e.g., twist lock, rear wrist lock, finger lock, etc.). A control hold can be applied without implementing pain.

Deadly force - Any use of force that creates a substantial risk of causing death or serious bodily injury, including

;

but not limited to

;

the discharge of a firearm ([Penal Code § 835a](#)).

~~Feasible – Reasonably capable of~~

[Feasible - Reasonably capable of](#) being done or carried out under the circumstances to successfully achieve the arrest or

~~lawful objective without~~

[lawful objective without](#) increasing risk to the officer or another person ([Government Code § 7286\(a\)](#)).

Force - The application of physical techniques or tactics, chemical agents, or weapons to another person. It is not a use of force when a person allows

~~themselves~~

[him/herself](#) to be searched, escorted, handcuffed

~~or restrained. Less Than Lethal Force – Any use of force which~~

,

~~due to possible physiological effects of application, presents less potential for causing death~~

or

~~serious injury than conventional lethal force options. Less than lethal force options include, but are not limited to, a specialized launcher, or other authorized 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.~~

~~Non-Lethal Force – Any use of force other than lethal force or less than lethal force.~~

~~Compliant Suspect – Cooperative and/or responsive to lawful commands.~~

~~Passive Resistance – When an individual does not follow the lawful verbal commands of a police officer, but does not physically resist in any way.~~

~~Examples: A person who goes completely limp, sits down and refuses to stand or walk, or who may stand with arms at their sides without attempting to strike at or physically resist officers.~~

~~Active Resistance – An individual who is uncooperative and fails to comply with the lawful verbal commands of a police officer, and attempts to avoid physical control and/or~~

~~arrest by physically struggling to free oneself from being restrained. The individual may also use verbal non-compliance (refusing a lawful order or direction).~~

~~Examples: A person who attempts to avoid physical control and/or arrest by pulling or pushing away from the officer, tensing arm or muscles, hiding from the officer, and/or fleeing.~~

~~**Combative Resistance**—An individual not only resists the officer, but poses a threat of harm to the officer or others, in an aggressive manner that may cause physical injury.~~

~~Examples: A person who violently attempts to or attacks an officer. This action is sometimes preceded by “pre-assault” cues such as taking a threatening stance (clenching fists, facial expressions, threats, etc.) and verbal non-compliance.~~

~~**Control Hold**—Any Department approved hold, designed to allow an officer to control the movement of a subject (e.g., twist lock, rear wrist lock, finger lock, etc.). A control hold can be applied without implementing pain.~~

~~**Pain Compliance Technique**—Involves either the manipulation of a person’s joints or activating~~

~~restrained.~~

~~**Pain Compliance Technique** - Involves either the manipulation of a person's joints or activating certain pressure points intended to create sufficient pain for the purpose of motivating a person~~

~~to comply with verbal commands (examples of pressure points include buccal nerve, gum nerve~~

~~to comply with verbal commands (examples of pressure points include buccal nerve, gum nerve, sternum rub).~~

~~**Control Techniques**—Personal Impact Weapons and Take Downs.~~

~~**Personal Body Weapons**—An officer’s use of his/her body part, including but not limited to hand, foot~~

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~~**Personal Body Weapons**—An officer's use of their body part, including but not limited to hand, foot, knee, elbow, shoulder, hip, arm,~~

~~leg or head by means of kinetic energy transfer (impact) to~~

~~leg or head by means of impact to gain control of a subject.~~

~~**Blue Team (BT)**— Computer software that allows officers to enter use of force and other incidents from a Department computer.~~

~~**Concealment**— Anything which conceals a person from view.~~

~~**Cover**— Anything which provides protection from bullets or other projectiles fired or thrown. Cover is subjective and its effectiveness depends upon the threat's ballistic capability (handgun, rifle, etc.).~~

~~**Blocking**— The positioning of a police vehicle in the path of an occupied subject vehicle where contact between the vehicles is not anticipated or is anticipated to be minimal.~~

~~**Ramming**— The use of a vehicle to intentionally hit another vehicle~~

~~**Serious bodily injury**— A bodily injury that creates a substantial risk of death, causes serious, permanent disfigurement or results in a prolonged loss or impairment of the functioning~~

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~~**Serious Bodily Injury**— A serious impairment of physical condition, including but not limited to the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ~~

~~**Officer (or) Police Officer**— Any sworn peace officer.~~

~~**Authorized Employee**— Any non-sworn employee who has received defensive tactics training and has been authorized by the Chief of Police to use non-lethal force.~~

~~**Employee**— Any non-sworn employee of the Berkeley Police Department, including those deemed “authorized employees.”~~

~~**Objectively Reasonable**— “Objectively reasonable” means an officer’s conduct will be evaluated through the eyes of the hypothetically reasonable officer standing in the shoes of the involved officer.~~

~~**Totality of the circumstances**—~~

~~; a wound requiring extensive suturing; and serious disfigurement (Penal Code § 243(f)(4)).~~

~~**Totality of the Circumstances**— All facts known to the officer at the time, including the conduct of the officer and the subject leading up to the use of force (Penal Code § 835a).~~

~~300.2~~ ~~**DUTY TO INTERCEDE AND DUTY TO REPORT**~~ **POLICY**

~~Any officer who observes another officer or member of the Berkeley Police Department using force that is clearly in violation of this policy shall immediately take reasonable action to attempt to mitigate such use of force. This may include verbal intervention or, when in a position to do so, physical intervention. Further, any officer who learns of a potentially unauthorized use of force, even if the officer did not witness it personally, shall promptly report this information to an on-duty sergeant or a command officer at the first opportunity.~~

~~Any officer who observes an employee or member of a different law enforcement agency use force that exceeds the degree of force permitted by law shall promptly report these observations to an on-duty sergeant or a command officer at the first opportunity.~~

The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.

Officers must have an understanding of, and true appreciation for, their authority and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties.

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation and a careful balancing of all interests.

300.2.1 ~~FAILURE TO INTERCEDE~~ FAIR AND UNBIASED USE OF FORCE

~~An officer who has received the required training on the duty to intercede and then fails to act to intercede when required by law, may be disciplined in the same manner as the officer who used force beyond that which is necessary.~~ Officers are expected to carry out their duties, including the use of force, in a manner that is fair, unbiased (Government Code § 7286(b)). See the Fair and Impartial Policing Policy for additional guidance.

300.2.2 DUTY TO INTERCEDE

Any officer present and observing another law enforcement officer or an employee using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, shall, when in a position to do so, intercede (as defined by Government Code § 7286) to prevent the use of unreasonable force.

When observing force used by a law enforcement officer, each officer should take into account the totality of the circumstances and the possibility that other law enforcement

officers may have additional information regarding the threat posed by the subject (Government Code § 7286(b)).

300.2.3 FAILURE TO INTERCEDE

An officer who has received the required training on the duty to intercede and then fails to act to intercede when required by law, may be disciplined in the same manner as the officer who used force beyond that which is necessary (Government Code § 7286(b)).

300.2.4 DUTY TO REPORT EXCESSIVE FORCE

Any officer who observes a law enforcement officer or an employee use force that potentially exceeds what the officer reasonably believes to be necessary shall immediately report these observations to a supervisor (Government Code § 7286(b)).

300.3 USE OF FORCE ~~TO EFFECT AN ARREST~~

~~Any peace officer may use objectively reasonable, objectively necessary, and proportional force to effect an arrest, to prevent escape, or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance on the part of the person being arrested; nor shall an officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest, prevent escape, or to overcome resistance. For the purpose of this policy, "retreat" does not mean tactical repositioning or other de-escalation tactics.~~

Officers shall use only that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to or perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose (Penal Code § 835a).

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain, and rapidly evolving.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident. Officers may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance (Government Code § 7286(b)).

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the approved or

authorized tools, weapons, or methods provided by the Berkeley Police Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be objectively reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

~~300.3.1 FACTORS USED TO DETERMINE THE REASONABLENESS, NECESSITY, AND PROPORTIONALITY OF FORCE~~ ALTERNATIVE TACTICS - DE-ESCALATION

~~When determining whether to apply force and evaluating whether an officer has used reasonable, objectively necessary, and proportional force, a number of factors should be taken into consideration, as time and circumstances permit. These factors include but are not limited to:~~

- ~~a. The apparent immediacy and severity of the threat to officers or others.~~
- ~~b. The conduct of the individual being confronted, as reasonably perceived by the officer at the time.~~
- ~~c. Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).~~
- ~~d. The conduct of the involved officer.~~
- ~~e. The effects of drugs or alcohol.~~
- ~~f. The individual's apparent mental state or capacity.~~
- ~~g. The individual's apparent ability to understand and comply with officer commands.~~
- ~~h. Proximity of weapons or dangerous improvised devices.~~
- ~~i. The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.~~
- ~~j. The availability of other reasonable and feasible options and their possible effectiveness.~~
- ~~k. Seriousness of the suspected offense or reason for contact with the individual.~~
- ~~l. Training and experience of the officer.~~
- ~~m. Potential for injury to officers, suspects, bystanders, and others.~~
- ~~n. Whether the person appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.~~
- ~~o. The risk and reasonably foreseeable consequences of escape.~~
- ~~p. The apparent need for immediate control of the subject or a prompt resolution of the situation.~~
- ~~q. Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.~~
- ~~r. Prior contacts with the subject or awareness of any propensity for violence.~~
- ~~s. Any other exigent circumstances.~~

~~The level of resistance that an officer encounters is a key factor in determining the proportionate amount of force. It is not possible to determine ahead of time what the proportionate level of force is for every possible situation that officers may face. Nevertheless, one of the key factors in determining what level of force is objectively reasonable, objectively necessary, and proportionate in a given situation is the level of resistance that an officer encounters. In general, the less resistance an officer faces, the less force the officer should use. The types of resistance officers may encounter fall along a continuum, from a cooperative person to an active assailant. Consistent with training, the following general rules apply when officers are exercising judgment in determining what level of force is necessary and proportionate:~~

~~Compliant—In general, when dealing with a compliant person, officers may rely on police presence and/or verbal control techniques, but should not use greater force. Passive resistance—In general, when dealing with a suspect involved in passive resistance, officers may rely on police presence, verbal control techniques, or control holds, but should not use greater force. Active resistance—In general, in dealing with a suspect involved in active resistance, in addition to the options available for passive resistance, officers may rely on pain compliance techniques or takedowns, but should not use greater force. Combative resistance—In general, in dealing with a suspect involved in combative resistance, officers have all use of force options available to them, but deadly force shall only be used in compliance with this policy as described in Section 300.4.~~

As time and circumstances reasonably permit, and when community and officer safety would not be compromised, officers should consider actions that may increase officer safety and may decrease the need for using force:

- a. Summoning additional resources that are able to respond in a reasonably timely manner.
- b. Formulating a plan with responding officers before entering an unstable situation that does not reasonably appear to require immediate intervention.
- c. Employing other tactics that do not unreasonably increase officer jeopardy.

In addition, when reasonable, officers shall evaluate the totality of circumstances presented at the time in each situation and, when feasible, consider and utilize reasonably available alternative tactics and techniques that may persuade an individual to voluntarily comply or may mitigate the need to use a higher level of force to resolve the situation before applying force (Government Code § 7286(b)). Such alternatives may include but are not limited to:

- a. Attempts to de-escalate a situation.
- b. If reasonably available, the use of crisis intervention techniques by properly trained personnel.

300.3.2 USE OF FORCE ~~CONTINUUM~~TO EFFECT AN ARREST

~~The Department uses a "use of force continuum" that refers to the concept that there are reasonable responses for every threat an officer faces in a hostile situation. The force utilized need not be sequential (e.g., gradual or preceded by attempts at lower levels of force) if those lower levels are not appropriate. All Uses of Force must be objectively reasonable, objectively necessary, and proportional, based on a totality of the circumstances. All progressions must rest on the premise that officers shall escalate and de-escalate their level of force in response to the subject's actions.~~

Continuum of Force

- ~~**Officer Presence — No force is used. Considered the best way to resolve a situation.**~~
 - ~~The mere presence of a law enforcement officer works to deter crime or diffuse a situation.~~
 - ~~Officers' attitudes are professional and nonthreatening.~~
- ~~**Verbalization — Force is not physical.**~~
 - ~~Officers issue calm, nonthreatening commands, such as "Let me see your identification and registration."~~
 - ~~Officers may increase their volume and shorten commands in an attempt to gain compliance. Short commands might include "Stop," or "Don't move."~~
- ~~**Weaponless defense — Officers use bodily force to gain control of a situation.**~~
 - ~~Pain Compliance and control holds. Officers use grabs, holds and joint locks to restrain an individual.~~
 - ~~Personal body weapons. Officers may use punches and kicks to restrain an individual.~~
- ~~**Less-Lethal Force Methods — Officers use less-lethal technologies to gain control of a situation.**~~
 - ~~Blunt impact. Officers may use a baton or projectile to immobilize a combative person.~~
 - ~~Chemical. Officers may use chemical sprays or projectiles embedded with chemicals to restrain an individual (e.g., pepper spray).~~
- ~~**Lethal Force — Officers may use lethal weapons only in compliance with Section 300.4.**~~

Any peace officer may use objectively reasonable force to effect an arrest, to prevent escape, or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from their efforts by reason of resistance or threatened resistance on the part of the person being arrested; nor shall an officer be deemed the aggressor or lose their right to self-defense by the use of reasonable force to effect the arrest, prevent escape, or to overcome resistance. Retreat does not mean tactical repositioning or other de-escalation techniques (Penal Code § 835a).

300.3.3 USE FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE TO SEIZE EVIDENCE

~~In general, officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, officers are discouraged from using force solely to prevent a person from swallowing evidence or contraband. In the instance when force is used, officers should not intentionally use any technique that restricts blood flow to the head, restricts respiration or which creates a reasonable likelihood that blood flow to the head or respiration would be restricted. Officers are encouraged to use techniques and methods taught by the Berkeley Police Department for this specific purpose.~~

When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit (Government Code § 7286(b)). These factors include but are not limited to:

- a. The apparent immediacy and severity of the threat to officers or others (Penal Code § 835a).
- b. The conduct of the individual being confronted, as reasonably perceived by the officer at the time (Penal Code § 835a).
- c. Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- d. The conduct of the involved officer leading up to the use of force (Penal Code § 835a).
- e. The effects of suspected drugs or alcohol.
- f. The individual's apparent mental state or capacity (Penal Code § 835a).
- g. The individual's apparent ability to understand and comply with officer commands (Penal Code § 835a).
- h. Proximity of weapons or dangerous improvised devices.
- i. The degree to which the subject has been effectively restrained and their ability to resist despite being restrained.
- j. The availability of other reasonable and feasible options and their possible effectiveness (Penal Code § 835a).
- k. Seriousness of the suspected offense or reason for contact with the individual prior to and at the time force is used.
- l. Training and experience of the officer.
- m. Potential for injury to officers, suspects, bystanders, and others.
- n. Whether the person appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.
- o. The risk and reasonably foreseeable consequences of escape.
- p. The apparent need for immediate control of the subject or a prompt resolution of the situation.
- q. Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- r. Prior contacts with the subject or awareness of any propensity for violence.
- s. Any other exigent circumstances.

300.3.4 ~~DE-ESCALATION TACTICS~~ PAIN COMPLIANCE TECHNIQUES

~~De-escalation tactics and techniques are actions used by officers which seek to minimize the need to use force during an incident. Such tactics and techniques may increase the likelihood of voluntary compliance when employed and shall be used when it is safe to do so. De-escalation tactics emphasize slowing an incident down to allow time, distance and flexibility for the situation to resolve. Officers shall continually assess the dynamics of a situation, and modulate their response and actions appropriately. Officers may be justified in using force at one moment, but not justified in using force the next moment due to a change in dynamics.~~

~~The application of these tactics is intended to increase the potential for resolution with a minimal reliance on the use of force, or without using force at all.~~

~~If immediate action is not necessary, an officer(s) shall attempt to use verbal de-escalation techniques. When available and when practicable, a Crisis Intervention Team (CIT) officer, crisis negotiator, or Berkeley Mental Health Mobile Crisis Team member shall be called upon as a resource.~~

~~Officers shall gather information about the incident, assess the risks, assemble resources, attempt to slow momentum and communicate and coordinate a response. In their interaction with subjects, officers should use advisements, warnings, verbal persuasion and other tactics and alternatives to any levels of force. Officers should move to a position that is tactically more secure or allows them greater distance to consider or deploy a greater variety of force options.~~

- ~~a. De-escalation techniques may include verbal persuasion, warnings and tactical de-escalation techniques, such as: slowing down the pace of an incident; "waiting out" subjects; creating distance (and thus the reactionary gap) between the officer and the threat; and requesting additional resources (e.g., specialized units, mental health care providers, negotiators, etc.) to resolve the incident.~~
- ~~b. Officers should recognize that they may withdraw to a position that is tactically advantageous or allows them greater distance to de-escalate a situation.~~
- ~~c. Officers should consider a variety of options, including lesser force or no force options.~~
- ~~d. Officers should attempt to understand and consider possible reasons why a subject may be noncompliant or resisting arrest.~~
- ~~e. A subject may not be capable of understanding the situation because of a medical condition; mental, physical, or hearing impairment; language barrier; drug interaction; or emotional crisis, and have no criminal intent. These situations may not make the subject any less dangerous, but understanding a subject's situation may enable officers to calm the subject and allow officers to use de-escalation techniques while maintaining public and officer safety.~~
- ~~f. Officers should continue de-escalation techniques, when feasible and appropriate, and take as much time as reasonably necessary to resolve the incident, in effort to avoid and/or minimize the use of force.~~
- ~~g. When an officer recognizes that mental illness, post-traumatic stress disorder, alcohol and/or drug addictions, or other health issues are causing an individual to~~

- ~~behave erratically, the officer shall, when feasible and appropriate, try to de-escalate the situation using de-escalation and/or crisis Intervention techniques.~~
- ~~h. Establishing communication with non-compliant subjects is often most effective when officers establish rapport, use the proper voice intonation, ask questions and provide advice to defuse conflict and achieve voluntary compliance before resorting to force options.~~
 - ~~i. The officer's physical actions may also de-escalate a potentially volatile/violent situation; e.g., exhibiting relaxed body language.~~

~~When time and circumstances allow, officers shall consider the following tactical principles:~~

- ~~j. Make a tactical approach to the scene.~~
- ~~k. Maintain a safe distance.~~
- ~~l. Use available cover or concealment and identify escape routes.~~
- ~~m. Stage Berkeley Fire Department.~~
- ~~n. Control vehicle and pedestrian traffic.~~
- ~~o. Establish communication, preferably with one officer.~~
- ~~p. Create an emergency plan and a deliberate plan with contingencies.~~
- ~~q. The officer's physical actions may also de-escalate a potentially volatile/violent situation; e.g., exhibiting relaxed body language.~~

Pain compliance techniques may be effective in controlling a physically or actively resisting individual. Officers may only apply those pain compliance techniques for which they have successfully completed department-approved training. Officers utilizing any pain compliance technique should consider:

- a. The degree to which the application of the technique may be controlled given the level of resistance.
- b. Whether the person can comply with the direction or orders of the officer.
- c. Whether the person has been given sufficient opportunity to comply.

The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved.

300.3.5 PAIN COMPLIANCE TECHNIQUES RESTRICTIONS ON THE USE OF CAROTID CONTROL HOLD

~~Pain compliance techniques may be effective in controlling a physically or actively resisting individual. Officers may only apply those pain compliance techniques for which they have successfully completed department-approved training. Officers utilizing any pain compliance technique should consider:~~

- ~~a. The degree to which the application of the technique may be controlled given the level of resistance.~~
- ~~b. Whether the person can comply with the direction or orders of the officer.~~

- c. ~~Whether the person has been given sufficient opportunity to comply.~~

~~The purpose of pain compliance is to direct a person's actions. The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved.~~

Officers of this department are not authorized to use a carotid restraint hold. A carotid restraint means a vascular neck restraint or any similar restraint, hold, or other defensive tactic in which pressure is applied to the sides of a person's neck that involves a substantial risk of restricting blood flow any may render the person unconscious in order to subdue or control the person (Government Code § 7286.5).

300.3.6 RESTRICTION ON THE USE OF ~~NON-LETHAL FORCE~~ CHOKE HOLD

~~When lethal force and less than lethal force~~ Officers of this department are not authorized ~~, officers and authorized employees may use objectively reasonable, objectively necessary, and proportional approved non-lethal force techniques and weapons in the following circumstances:-~~

~~To protect themselves or another person from physical injury; To restrain or subdue a resistant individual; or To bring an unlawful situation safely and effectively under control.~~

to use a choke hold. A choke hold means any defensive tactic or force option in which direct pressure is applied to a person's trachea or windpipe (Government Code § 7286.5).

300.3.7 ~~RESTRAINT AND CONTROL DEVICES~~

~~Restraint and control devices shall not be used to punish, to display authority or as a show of force. Handcuffs, body wraps and spit hoods shall only be used consistent with Policy 302. Batons, approved less-lethal projectiles, and approved chemical agents shall only be used consistent with Policy 303. As per City Council resolution (June 9, 2020), the use of tear gas by employees of the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, is prohibited. Pepper spray or smoke for crowd control by employees of the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, is prohibited during the COVID-19 pandemic, or until such time as the City Council removes the prohibition.~~

300.3.8 ~~CHOKEHOLD PROHIBITION~~

~~The use of a Carotid Restraint Hold is prohibited. Carotid Restraint Hold: Council Resolution No. 52,605 – N.S., February 14, 1985, “Prohibiting use of ‘chokehold’ for law enforcement purposes in the City of Berkeley” states: “Be it resolved by the Council of the City of Berkeley as follows: That the chokehold, including but not limited to the~~

~~carotid restraint and the bar-arm hold, is hereby banned from use for law enforcement purposes in the City of Berkeley."~~

~~The term bar-arm refers to a variety of techniques. The use of any chokehold is strictly prohibited. A chokehold is any hold or contact with the neck—including a carotid restraint—that may inhibit breathing by compression of the airway in the neck, may inhibit blood flow by compression of the blood vessels in the neck, or that applies pressure to the front, side, or back of the neck. As defined in the City Council Resolution, "bar-arm hold" refers to any use of the forearm to exert pressure against the front of the neck. However, other types of arm hold techniques (e.g., those that involve control of the arm, wrist or elbow) remain authorized.~~

300.3.9 7 ADDITIONAL RESTRICTIONS

Terms such as "positional asphyxia," "restraint asphyxia," and "excited delirium" continue to remain the subject of debate among experts and medical professionals, are not universally recognized medical conditions, and frequently involve other collateral or controlling factors such as narcotics or alcohol influence, or pre-existing medical conditions. While it is impractical to restrict an officer's use of reasonable control methods when attempting to restrain a combative individual, officers are not authorized to use any restraint or transportation method which might unreasonably impair an individual's breathing or respiratory capacity for a period beyond the point when the individual has been adequately and safely controlled. Once controlled, the individual is safely secured, the officers should promptly check and continuously monitor the individual's condition should for signs of medical distress (Government Code § 7286.5).

Per City Council Resolution (June 9, 2020), the use of tear gas by employees of the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, is prohibited. Pepper spray or smoke for crowd control by employees of the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, is prohibited during the COVID-19 pandemic, or until such time as the City Council removes the prohibition.

300.3.8 USE OF FORCE TO SEIZE EVIDENCE

In general, officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, officers are discouraged from using force solely to prevent a person from swallowing evidence or contraband. In the instance when force is used, officers should not intentionally use any technique that restricts blood flow to the head, restricts respiration or which creates a reasonable likelihood that blood flow to the head or respiration would be restricted. Officers are encouraged to use techniques and methods taught by the Berkeley Police Department for this specific purpose.

300.4 USE OF DEADLY FORCE

~~An officer's use of deadly force is justified only when it is objectively reasonable, based on the totality of the circumstances, that such force is objectively necessary to, 1) defend against an imminent threat of death or serious bodily injury to the officer or another or 2) apprehend a suspected fleeing person for any felony that threatened or resulted in death or serious bodily injury, provided that it is objectively reasonable that the person will cause imminent death or serious bodily injury to another unless immediately apprehended.~~

Where feasible, the officer shall, prior to the use of deadly force, make reasonable efforts to identify

~~themselves~~

themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to

~~believe the~~

believe the person is aware of those facts

.

(Penal Code § 835a).

~~An officer shall not use deadly force against another person if it reasonably appears that doing so would unnecessarily endanger innocent people.~~

~~Lethal force is prohibited when its sole purpose is to effect an arrest, overcome resistance or prevent a subject from escaping when the subject does not present an immediate danger.~~ If an objectively reasonable officer would consider it safe and feasible to do so under the totality of the circumstances, officers shall evaluate and use other reasonably available resources and techniques when determining whether to use deadly force. To the extent that it is reasonably practical, officers should consider their surroundings and any potential risks to bystanders prior to discharging a firearm (Government Code § 7286(b)).

The use of deadly force is only justified when the officer reasonably believes it is necessary in the following circumstances (Penal Code § 835a):

- a. An officer may use deadly force to protect themselves or others from what the officer reasonably believes is an imminent threat of death or serious bodily injury
- ~~. Lethal force is also prohibited solely to prevent property damage or prevent the destruction of evidence~~
- b. to the officer or another person.

- c. An officer may use deadly force to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.

Officers shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or to another person (Penal Code § 835a).

Additionally, an officer shall not use deadly force against a person whose actions are a threat solely to property unless the person poses an imminent danger of death or serious physical injury to the officer or others in close proximity.

An "imminent" threat of death or serious bodily injury exists when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to ~~the officer~~ the officer or another person. An officer's subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require ~~instant attention~~ instant attention (Penal Code § 835a).

300.4.1 ~~DRAWING AND POINTING~~ DISPLAYING OF FIREARMS

Given that individuals ~~may~~ might perceive the display of a firearm as a potential application of force, ~~officers~~ officers should carefully evaluate each tactical situation and use sound discretion when drawing ~~a firearm~~ a firearm in public by considering the following guidelines: (Government Code § 7286(b)).

- a. If the officer does not initially perceive a threat but it is objectively reasonable that the potential for such threat exists, firearms should generally be kept in the low-ready or other position not directed toward an individual.
- b. If ~~it is objectively reasonable~~ the officer reasonably believes that a ~~significant~~ threat exists based on the totality of the circumstances presented at the time (e.g., high-risk stop, tactical entry, armed encounter), firearms may be directed toward ~~said~~ such threat until the officer no longer perceives such threat.

Once it is reasonably safe to do so, officers should carefully secure all firearms.

300.4.2 DIRECTED FIRE

Officers may use controlled gunfire that is directed at the suspect, reducing the suspect's ability to return fire while a group or individual movement is conducted, such as in a rescue operation.

Officers may only employ this tactic when dealing with a suspect who poses an immediate and ongoing lethal threat and only under circumstances where the use of deadly force is legally justified. Target acquisition and communication are key elements in the successful use of this tactic. Officers remain accountable for every round fired under these circumstances. Officers must consider their surroundings and potential risks to bystanders, to the extent reasonable under the circumstances, before discharging a firearm.

300.4.3 SHOOTING AT OR FROM MOVING VEHICLES

Shots fired at or from a moving vehicle are rarely effective and involve considerations and risks in addition to the justification for the use of deadly force. When feasible, officers shall take reasonable steps ~~to move~~ to move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants.

An officer should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the imminent threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others (Government Code § 7286(b)).

Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle.

~~Because this policy may not cover every situation that may arise, a deviation from this policy may be objectively reasonable and objectively necessary depending on the totality of the circumstances. A deviation from this policy would, for instance, be justified if the officer used a firearm in an attempt to stop an imminent vehicle attack on a crowd or a mass casualty terrorist event.~~

~~Factors that may be used to evaluate the reasonableness of the use of a firearm against a vehicle include:~~

- ~~a. The availability and use of cover, distance and/or tactical relocation~~
- ~~b. Incident command and personnel placement~~
- ~~c. Tactical approach~~
- ~~d. Regard for viable target acquisition and background including location, other traffic, the presence of innocent persons, and police officers.~~

300.65 ~~REPORTING REQUIREMENTS~~ THE USE OF FORCE

All ~~uses~~ use of force by a member of this department shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident ~~and the level of force used~~. The officer should articulate the factors perceived and why they believed the use of force was ~~objectively~~ reasonable ~~and objectively necessary~~ under the circumstances. To collect data for purposes of training, resource allocation, analysis, and related purposes, the Department may require the completion of additional report forms, as specified in department policy, procedure or

law. Whenever an officer or employee uses Oleoresin Capsicum (pepper spray) they must also complete a ~~“Use-~~Use of Pepper Spray Report.” ~~Whenever an officer or employee use body wrap or spit hood restraint devices they must also complete a “Use of Restraint Device Report” and document, review and report such uses in accordance with section 300.11.”~~

Upon receiving notification of a use of force, an uninvolved supervisor, when feasible, shall determine the level of force reporting level, investigation, documentation and review requirements.

300.~~65~~.1 ~~SUPERVISOR RESPONSIBILITY~~REPORT RESTRICTIONS

~~A supervisor should respond to any reported use of force, if reasonably available. The responding supervisor is expected to:~~

- ~~a. Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.~~
- ~~b. Ensure that any injured parties are examined and treated.~~
- ~~c. Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.~~
- ~~d. Identify any witnesses not already included in related reports.~~
- ~~e. Review and approve all related reports.~~
- ~~f. Review body worn camera footage related to the incident.~~

~~In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit~~Officers shall not use the term "excited delirium" to describe an individual in an incident report. Officers may describe the characteristics of an individual's conduct, but shall not generally describe the individual's demeanor, conduct, or physical and mental condition at issue as "excited delirium" (Health and Safety Code § 24402).

300.~~65~~.2 ~~USE OF FORCE REPORTING LEVELS~~NOTIFICATION TO SUPERVISORS

Level 1

~~The officer used any of the following, and the circumstances of the application would lead an objectively reasonable officer to conclude that the subject did not experience more than momentary discomfort:~~

- ~~1. Control holds/ pain compliance techniques~~

~~2. Leverage~~

~~3. Grab~~

~~4. Bodyweight~~

~~5. The officer lowered the subject to a seated position or to the ground while partially or completely supporting the person's bodyweight.~~

~~6. Takedown~~

~~If the incident fits the parameters for a Level 1 incident, the supervisor will enter all applicable data into the Blue Team template with a brief summary.~~

Level 2

- ~~a. No suspect injury or complaint of continuing pain due to interaction with officer.~~
- ~~b. Officer's use of force was limited to the following:~~

~~1. Firearm drawn from the holster or otherwise deployed during an interaction with an individual, and/or pointed at an individual. For the purposes of this section, "interaction" shall be defined as a situation in which an individual could reasonably believe the deployment and/or pointing of a firearm could be an attempt to gain compliance.~~

~~2. Control hold, pressure point, leverage, grab, takedown, and/or bodyweight, and the application would lead a reasonably objective~~

- ~~a. The application caused a visible injury.~~
- ~~b. The application would lead a reasonable officer to conclude that the individual may have experienced more than momentary discomfort.~~

Level 3

- ~~c. Suspect has sustained an injury or complains The application of control holds or pain compliance techniques (but not as part of routine handcuffing).~~
- ~~d. The individual subjected to the force complained of injury or continuing pain ~~due to interaction with the officer.~~~~
- ~~e. Would have otherwise been classified as a Level 2, except officer body worn camera was not activated in a timely manner, prior to the enforcement contact, per policy.~~
- ~~f. The officer used any of the following force options:
 - ~~1. Chemical Agents/Munitions~~
 - ~~2. Impact Weapon Strikes~~
 - ~~3. Personal Body Weapons~~~~
- ~~g. The officer used any of the following pursuit intervention tactics:~~

- ~~1. Vehicle Containment Tactic (VCT), if vehicle contact is made~~
- ~~2. Ramming~~
- ~~3. Pursuit Immobilization Technique (PIT)~~
- ~~4. Roadblocks, if vehicle contact is made~~

~~An uninvolved supervisor, when feasible, will respond to the scene and conduct a Use of Force Investigation, ensuring that statements are taken from the suspect and witnesses, and that photos are taken of all involved parties. If the incident fits the parameters for a Level 2 incident, the supervisor will enter all applicable data into the Blue Team template with a brief summary.~~

~~An uninvolved supervisor, when practical, will respond to the scene and conduct a Use of Force Investigation, ensuring that statements are taken from the suspect and witnesses. If the incident fits the parameters for a Level 3 incident, the supervisor will enter all applicable data into the Blue Team template.~~

~~The supervisor will also complete a Use of Force Investigation Report narrative in Blue Team for review through the Use of Force Review process. Suspect and witness statements from the crime report will be attached to the use of force investigation.~~

Level 4

~~Any incident involving deadly force or any force likely to cause death or serious bodily injury will be investigated under the protocols outlined in Policy P-12~~

- a. ~~.~~
- b. The individual indicates intent to pursue litigation.
- c. Any application of a conducted energy device or control device.
- d. Any application of a restraint device other than handcuffs, shackles, or belly chains.
- e. The individual subjected to the force was rendered unconscious.
- f. An individual was struck or kicked.
- g. An individual alleges unreasonable force was used or that any of the above has occurred.

As used in this subsection, "immediately" means as soon as it is safe and feasible to do so.

300.65.3 EMPLOYEE USE OF FORCE REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

~~When any Berkeley Police Department employee has engaged in a Statistical data regarding all officer-involved shootings and incidents involving use of force as defined in this policy, the use of force must be reported to a Berkeley Police supervisor and investigated in accordance with this policy.~~

- a. ~~In the event a use of force as described as Level 1, Level 2, or Level 3 occurs during an unusual occurrence, such as a widespread disaster or civil disturbance, the officer shall prepare a supplemental report as soon as practical following the incident.~~

~~Each officer shall include in the report, to the extent possible, specific information regarding each use of force, e.g. the reason for the use of force, location, description of the individual(s) upon whom force was used, type of force used, etc.~~

resulting in serious bodily injury is to be reported to the California Department of Justice as required by Government Code § 12525.2. See the Records Maintenance Policy.

~~300.6.4 PUBLIC RECORDS~~

~~Records related to use of force incidents shall be retained and disclosed in compliance with California Penal Code section 832.7, California Government Code section 6254(f), and the Records Management and Release policy.~~

300.76 MEDICAL CONSIDERATIONS

Once it is reasonably safe to do so, properly trained officers should promptly provide or procure medical assistance for any person injured or claiming to have been injured in a use of force incident (Government Code § 7286(b)).-

Prior to booking or release, medical assistance shall be obtained for any person who exhibits signs of physical distress, who has sustained visible injury, expresses a complaint of injury or continuing pain, or who was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until the individual can be medically assessed.

Based upon the officer's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff, or medical staff at the jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another officer and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible.

The on-scene supervisor or, if the on-scene supervisor is not available, the primary handling officer shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force. This notification shall include a description of the force used and any other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain, or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Officers who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage away if appropriate.

See the Medical Aid and Response Policy for additional guidelines.

300.87 USE OF FORCE ADMINISTRATIVE REVIEW SUPERVISOR RESPONSIBILITY

~~The Division Captain shall review the Use of Force Report (and when applicable, Use of Pepper Spray Report or Use of Restraint Device Report) and route the report to the Chief of Police with a recommendation of findings. The Chief of Police may convene a Review Board as outlined in Policy 301 instead of utilizing Division Captain Review.~~

~~The Chief of Police shall make a finding that the use of force was either within policy or initiate additional administrative review/investigation as may be appropriate.~~

~~Any determination concerning the propriety of force used shall be based on the facts and information available to the officer at the time the force was employed, and not upon information gained after the fact.~~

~~All Use of Force Reports shall be reviewed to determine whether Departmental use of force regulations, policies, or procedures were: 1) violated or followed; 2) clearly understood, effective, and relevant to the situation; 3) require further investigation; and/or, 4) require revision or additional training.~~

~~Use of Force Reports shall be held in file for at least five (5) years~~

A supervisor should respond to any reported use of force, if reasonably available. The responding supervisor is expected to (Government Code § 7286(b)):

- a. Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- b. Ensure that any injured parties are examined and treated.
- c. For Level 3 Uses of Force or when otherwise appropriate, separately obtain a recorded interview with the subject upon whom force was applied. If this interview is conducted without the person having voluntarily waived their Miranda rights, the following should apply:
 1. The content of the interview should not be summarized or included in any related criminal charges

2. The fact that a recorded interview was conducted should be documented in a property or other report.
3. The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.
- d. Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.
- e. Identify any witnesses not already included in related reports.
- f. Review and approve all related reports.
- g. Review body worn camera footage related to the incident.
- h. Determine if there is any indication that the subject may pursue civil litigation.
 1. If there is an indication of potential civil litigation, the supervisor should complete and route a notification of a potential claim through the appropriate channels.
- i. Evaluate the circumstances surrounding the incident and initiate an administrative investigation if there is a question of policy non-compliance or if for any reason further investigation may be appropriate.

In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

300.7.1 WATCH COMMANDER RESPONSIBILITY

The Watch Commander shall review each use of force by any personnel within their command to ensure compliance with this policy.

300.7.2 USE OF FORCE REPORTING LEVELS

Level 1

The officer used any of the following, and the circumstances of the application would lead an objectively reasonable officer to conclude that the subject did not experience more than momentary discomfort:

- a. Control holds/ pain compliance techniques (but not as part of routine handcuffing)
- b. Takedown

If the incident fits the parameters for a Level 1 incident, the supervisor will enter all applicable data into the Blue Team template with a brief summary.

Level 2

- a. No suspect injury or complaint of continuing pain due to interaction with officer.
- b. Officer's use of force was limited to the following:
 - 1. Firearm drawn from the holster or otherwise deployed during an interaction with an individual, and/or pointed at an individual. For the purposes of this section, "interaction" shall be defined as a situation in which an individual could reasonably believe the deployment and/or pointing of a firearm could be an attempt to gain compliance.
 - 2. Control hold, pressure point, leverage, grab, takedown, and/or bodyweight, and the application would lead a reasonably objective officer to conclude that the individual may have experienced more than momentary discomfort.

An uninvolved supervisor, when feasible, will respond to the scene and conduct a Use of Force Investigation. If the incident fits the parameters for a Level 2 incident, the supervisor will enter all applicable data into the Blue Team template with a brief summary.

Level 3

- a. Suspect has sustained an injury or complains of injury or continuing pain due to interaction with the officer.
- b. Would have otherwise been classified as a Level 2, except officer body worn camera was not activated in a timely manner, prior to the enforcement contact, per policy.
- c. The officer used any of the following force options:
 - 1. Chemical Agents/Munitions
 - 2. Impact Weapon Strikes
 - 3. Personal Body Weapons
- d. The officer used any of the following pursuit intervention tactics:
 - 1. Vehicle Containment Tactic (VCT), if vehicle contact is made
 - 2. Ramming
 - 3. Pursuit Immobilization Technique (PIT)
 - 4. Roadblocks, if vehicle contact is made

An uninvolved supervisor, when practical, will respond to the scene and conduct a Use of Force Investigation, ensuring that statements are taken from the suspect and witnesses and that photos are taken of all involved parties. If the incident fits the parameters for a Level 3 incident, the supervisor will enter all applicable data into the Blue Team template.

The supervisor will also complete a Use of Force Investigation Report narrative in Blue Team for review through the Use of Force Review process.

Level 4

Any incident involving deadly force or any force likely to cause death or serious bodily injury will be investigated under the protocols outlined in Policy P-12.

300.98 ~~WATCH COMMANDER RESPONSIBILITY~~ USE OF FORCE ADMINISTRATIVE REVIEW

~~The Watch Commander shall review each use of force by any personnel within his/her command to ensure compliance with this policy.~~ Division Captain shall review the Use of Force Report (and when applicable, Use of Pepper Spray Report) and route the report to the Chief of Police with a recommendation of findings. The Chief of Police may convene a Review Board as outlined in the Use of Force Review Board Policy instead of utilizing Division Captain Review.

The Chief of Police shall make a finding that the use of force was either within policy or initiate additional administrative review/investigation as may be appropriate.

Any determination concerning the propriety of force used shall be based on the facts and information available to the officer at the time the force was employed, and not upon information gained after the fact.

All Use of Force Reports shall be reviewed to determine whether Departmental use of force regulations, policies, or procedures were: 1) violated or followed; 2) clearly understood, effective, and relevant to the situation; 3) require further investigation; and/or, 4) require revision or additional training.

Use of Force Reports shall be held in file for at least five (5) years.

300.9 USE OF FORCE COMPLAINTS

The receipt, processing, and investigation of civilian complaints involving use of force incidents should be handled in accordance with the Personnel Complaints Policy (Government Code § 7286(b)).

300.10 TRAINING

Officers, investigators, and supervisors will receive annual training on this policy and demonstrate their knowledge and understanding (Government Code § 7286(b)).

300.10.1 TRAINING REQUIREMENTS

Required annual training shall include:

1. Legal updates.
2. De-escalation tactics, including alternatives to force.
3. The duty to intercede.
4. The duty to request and/or render medical aid.

5. All other subjects covered in this policy (e.g., use of deadly force, chokehold and carotid hold prohibition, discharge of a firearm at or from a moving vehicle, verbal warnings).
6. Training courses required by and consistent with POST guidelines set forth in Penal Code § 13519.10.

See the Training Policy for restrictions relating to officers who are the subject of a sustained use of force complaint.

300.10.2 STATE-SPECIFIC TRAINING REQUIREMENTS

Required state-specific training shall include guidelines regarding vulnerable populations, including but not limited to children, elderly persons, pregnant individuals, and individuals with physical, mental, and developmental disabilities (Government Code § 7286(b)).

[Additionally, training should include training courses required by and consistent with POST guidelines set forth in Penal Code § 13519.10.](#)

300.11 USE OF FORCE ANALYSIS

~~The Professional Standards Division Captain or his or her designee shall prepare a comprehensive~~

[At least annually, the Office of Strategic Planning and Accountability shall prepare an analysis report on use of force incidents. The report should be submitted to the Chief of Police, Police Accountability Board, and as part of the Department's annual report to City Council.](#) ~~The report~~ shall not contain the names of officers, suspects, or case numbers, and should include

~~but not be limited to~~

:

- a. An analysis of use of force incidents ~~with demographic details of the individual impacted including, but not limited to race, gender and age.~~
- b. ~~All types of force as delineated in Levels 1, 2, 3 and 4 in Section 300.6.(2).~~
- c. ~~The identification of any trends in the use of force by members.~~
- d. Training needs recommendations.
- e. Equipment needs recommendations.
- f. Policy revisions recommendations.

300.11.1 REPORTING FREQUENCY

- a. On a quarterly basis via the City's Open Data Portal website;
- b. On a ~~quarterly basis to the Police Accountability Board; and~~ On a yearly basis as part of the Police Department's Annual Report to City Council

300.12 CIVILIAN COMPLAINTS POLICY REVIEW

~~Complaints by members of the public related to this policy may be filed with the Berkeley Police Department Internal Affairs Bureau (IAB) and/or the Police Accountability Board (PAB). Complaints will be investigated in compliance with the respective applicable procedures of the IAB and the PAB. The Chief of Police or the authorized designee shall regularly review and update this policy to reflect developing practices and procedures. (Government Code § 7286(b)).~~

300.13 POLICY AVAILABILITY

The Chief of Police or the authorized designee should ensure this policy is accessible to the public (Government Code § 7286(c)).

300.1314 ~~POLICY REVIEW AND UPDATES~~ PUBLIC RECORDS REQUESTS

~~This policy shall be regularly reviewed and updated to reflect developing practices and procedures.~~

~~At least annually, the Berkeley Police Department and the PAB shall convene to review and update the Use of Force Policy to reflect developing practices and procedures per SB 230.~~

Requests for public records involving an officer's personnel records shall be processed in accordance with Penal Code section 832.7, and the Personnel Records and Records Management and Release policies (Government Code § 7286(b)).

-

300.5 ~~USE OF VEHICLES~~

~~Officers shall not use police vehicles to ram other vehicles, persons, or moving objects in a manner that reasonably appears to constitute the use of lethal force, except under circumstances outlined in section 300.4 and in Policy V-6 that covers vehicle operations.~~

~~The Vehicle Containment Technique (VCT) is the positioning of a police vehicle in the path of a suspect vehicle where contact between the vehicles is not anticipated or is anticipated to be minimal. VCT shall only to be used on vehicles that are either stationary or moving at a slow speed. This technique is designed to contain a suspect vehicle to a single stationary location, thereby preventing a pursuit from initiating, or a potentially violent situation (e.g. a hostage situation or person barricaded inside a vehicle) from becoming mobile.~~

~~When properly utilized, the VCT can give officers time, distance, and cover in order to safely and effectively resolve a situation. See the VCT policy for more details on this tactic.~~

~~300.5.1 REPORT RESTRICTIONS~~

~~Officers shall not use the term "excited delirium" to describe an individual in an incident report. Officers may describe the characteristics of an individual's conduct, but shall not generally describe the individual's demeanor, conduct, or physical and mental condition at issue as "excited delirium" (Health and Safety Code § 24402).~~