



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

**Monday, November 21, 2022
10:30 AM**

Committee Members:

Councilmembers Rashi Kesarwani, Terry Taplin, and Susan Wengraf
Alternate: Councilmember Sophie Hahn

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

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the City Council Public Safety Committee will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.

To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL - <https://us02web.zoom.us/j/85723890728>. 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 on the screen.

To join by phone: Dial **1-669-900-9128** or **1-877-853-5257 (Toll Free)** and Enter Meeting ID: **857 2389 0728**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair.

Written communications submitted by mail or e-mail to the Public Safety Policy Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record.

AGENDA

Roll Call

Public Comment on Non-Agenda Matters

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes - September 19, 2022

Committee Action Items

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

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

2a. Measure FF Budget Recommendation - Expanded Fire Prevention Inspection Program

From: Disaster and Fire Safety Commission

Referred: October 19, 2022

Due: April 11, 2023

Recommendation: With the risk of catastrophic wildfire steadily increasing due to climate change, the Disaster and Fire Safety Commission (DFSC) recommends prioritizing wildfire fuel reduction in the FY 23 and FY 24 Measure FF budget by expanding the Fire Department's Fire Prevention Inspection Program and fully enforcing the existing Fire Code to clear vegetation build-up and overgrowth within 100 feet of structures in Berkeley's Very High Fire Severity Zones (VHFSZs) (Fire Zones 2 and 3). In addition, the Fire Code would be strengthened as needed to require removal of hazardous vegetation on the entirety of properties beginning in FY 25. The program would provide for City vegetation management crews to clear vegetation where property owners opt into the program or fail to comply, with no-interest liens placed upon properties to recover direct costs upon transfer. Special emphasis should be placed on eucalyptus groves due to their high flammability and potential to create spot fires. Funding for this expanded program, together with the Fire Department's existing home inspection program, which is focused on creating defensible space around structures, would be supported by devoting 21 percent and 26 percent of Measure FF revenues for FY 23 and FY 24, respectively.

Financial Implications: See Report

Contact: Keith May, Commission Secretary, (510) 981-3473

Committee Action Items

2b. Companion Report: Measure FF Budget Recommendation – Expanded Fire Prevention Inspection Program

From: City Manager

Referred: October 19, 2022

Due: April 11, 2023

Recommendation: That the Berkeley City Council reaffirms its support for the work being conducted by the Fire Department (Department) and considers the Disaster and Fire Safety Commission's (DFSC) Report during the FY24 budget process if the DFSC so chooses to resubmit an updated version at that time.

Financial Implications: None

Contact: David Sprague, Fire, (510) 981-3473

3. Review of Policy 1043 Extra Duty Employment

From: City Manager

Contact: Jennifer Louis, Police, (510) 981-5900

Unscheduled Items

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

4. Information Report Request: Alternatives to Chemical Agents for Response to Violent Large-Scale Crowd Scenarios

Referred: August 29, 2022

Due: January 25, 2023

From: Councilmember Taplin (Author)

Recommendation: Direct the City Manager to study alternatives to chemical agents to improve the Berkeley Police Department's ability and capacity to respond to and de-escalate large-scale crowd scenarios, including violent militias, and return a report to the City Council by the end of Fiscal Year 2023. Report should include but not be limited to the following factors: -BPD intelligence-gathering capabilities on potentially violent large crowd scenarios; - BPD response protocols including procedures for protecting bystanders, peaceful protesters, and businesses; -Tools and tactics available for crowd control in potentially violent scenarios; -Mutual aid and support from other local/state/federal agencies; -Applicable state and federal laws on crowd control and First Amendment rights.

Financial Implications: Staff time

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

Items for Future Agendas

- Discussion of items to be added to future agendas

Adjournment

Written communications addressed to the Public Safety Committee and submitted to the City Clerk Department will be distributed to the Committee prior to the meeting.

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



COMMUNICATION ACCESS INFORMATION:

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date.

I hereby certify that the agenda for this meeting of the Standing Committee of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on Thursday, November 17, 2022.

A handwritten signature in black ink that reads "Mark Numainville".

Mark Numainville, City Clerk

Communications

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

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

**Monday, September 19, 2022
10:30 AM**

Committee Members:

Councilmembers Rashi Kesarwani, Terry Taplin, and Susan Wengraf
Alternate: Councilmember Sophie Hahn

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

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MINUTES

Roll Call: 10:36 am. Councilmembers Kesarwani, Taplin, and Wengraf present.

Public Comment on Non-Agenda Matters: 1 speaker.

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes - June 6, 2022

Action: M/S/C (Kesarwani/Taplin) to approve the June 6, 2022 minutes.

Vote: Ayes – Kesarwani, Taplin; Noes – None; Absent – Wengraf; Abstain – None.

Committee Action Items

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

2. Adopt an Ordinance Adding Chapter 13.09 to the Berkeley Municipal Code Prohibiting Discriminatory Reports to Law Enforcement

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

Referred: June 14, 2021

Due: October 31, 2022

Recommendation: 1. Adopt an Ordinance Amending Chapter 13.09 to the Berkeley Municipal Code Prohibiting Discriminatory Reports to Law Enforcement.

2. Refer to the City Manager to report to Council within six months with anonymized data and information regarding discriminatory reports to law enforcement.

Financial Implications: Staff time

Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Action: 1 speaker. Discussion held. M/S/C (Taplin/Kesarwani) to approve the item with a positive recommendation.

Vote: All Ayes.

Unscheduled Items

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

3. **Information Report Request: Alternatives to Chemical Agents for Response to Violent Large-Scale Crowd Scenarios**
From: Councilmember Taplin (Author)
Referred: August 29, 2022
Due: January 25, 2023
Recommendation: Direct the City Manager to study alternatives to chemical agents to improve the Berkeley Police Department's ability and capacity to respond to and de-escalate large-scale crowd scenarios, including violent militias, and return a report to the City Council by the end of Fiscal Year 2023. Report should include but not be limited to the following factors: -BPD intelligence-gathering capabilities on potentially violent large crowd scenarios; - BPD response protocols including procedures for protecting bystanders, peaceful protesters, and businesses; -Tools and tactics available for crowd control in potentially violent scenarios; -Mutual aid and support from other local/state/federal agencies; -Applicable state and federal laws on crowd control and First Amendment rights.
Financial Implications: Staff time
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Items for Future Agendas

- The committee noted that there would be no regular meeting held in October, as the regular meeting date is on a day of religious or cultural significance.

Adjournment

Action: M/S/C (Kesarwani/Taplin) to adjourn the meeting.

Vote: All Ayes.

Adjourned at 10:53 am.

I hereby certify that this is a true and correct record of the Public Safety Committee meeting held on September 19, 2022.

Sarah K. Bunting, Assistant City Clerk

Communications

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[Commission Name]

ACTION CALENDAR
November 3, 2022

To: Honorable Mayor and Members of the City Council

From: Disaster and Fire Safety Commission

Submitted by: Weldon Bradstreet, Vice Chairperson, Disaster and Fire Safety Commission

Subject: Measure FF Budget Recommendation - Expanded Fire Prevention Inspection Program

RECOMMENDATION

Summary. With the risk of catastrophic wildfire steadily increasing due to climate change, the Disaster and Fire Safety Commission (DFSC) recommends prioritizing wildfire fuel reduction in the FY 23 and FY 24 Measure FF budget by expanding the Fire Department's Fire Prevention Inspection Program and fully enforcing the existing Fire Code to clear vegetation build-up and overgrowth within 100 feet of structures in Berkeley's Very High Fire Severity Zones (VHFSZs) (Fire Zones 2 and 3). In addition, the Fire Code would be strengthened as needed to require removal of hazardous vegetation on the entirety of properties beginning in FY 25. The program would provide for City vegetation management crews to clear vegetation where property owners opt into the program or fail to comply, with no-interest liens placed upon properties to recover direct costs upon transfer. Special emphasis should be placed on eucalyptus groves due to their high flammability and potential to create spot fires.

Funding for this expanded program, together with the Fire Department's existing home inspection program, which is focused on creating defensible space around structures, would be supported by devoting 21 percent and 26 percent of Measure FF revenues for FY 23 and FY 24, respectively. (See table below.)

Description. The Fire Department's existing home inspection program is focused primarily on ensuring 30 feet of defensible space around structures in Fire Zones 2 and 3. Consistent with Berkeley's and California's regulations, the DFSC recommends that the program be expanded to routinely require defensible space within 100 feet of any structure, particularly on any portion of a slope, including the removal of particularly fire-prone vegetation. The City should develop additional regulations to require removal of highly fire-prone vegetation on the entirety of properties beginning in FY 25. Highly fire-prone vegetation is widely recognized to include eucalyptus, Monterey pine, juniper, and limited other species.

The DFSC also recommends that the City expand its capability, possibly in conjunction with the Parks and Recreation Department, to clear brush and remove trees as necessary to meet existing regulations where property owners fail to comply, with liens placed upon properties to recover direct costs upon transfer, as provided under BFC Sec. 4907.2.2. As a City program is likely to provide economies of scale, other efficiencies, and expert guidance, and as the health and safety of Berkeley residents is promoted by facilitating compliance, property owners should be allowed to opt into the City's vegetation clearance program with cost-recovery provided through property liens. In either case, no interest should be assessed on direct costs, given the public benefits and the availability of Measure FF funds to carry the cost.

This proposed program is consistent with the recommendations of the Hills Emergency Forum, of which the City is a member along with other East Bay authorities, to thin and remove hazardous vegetation on private property as well as public property.¹ The initial phase of the program (FY 23) would be focused on requiring removal of debris build-up on the ground, loose bark to 8 feet above ground, tree limbs to 10 feet above ground, and saplings and subordinate trees that could ignite upper canopy throughout each property. The second phase (planned in FY 23, implemented beginning no later than FY 24) would require removal of hazardous trees and other hazardous vegetation, provide for any necessary erosion control measures, and encourage revegetation with native, fire-resistant species. Beginning in FY 25, property owners would be required to properly maintain their entire property, adding or clarifying Fire Code provisions as necessary that the Fire Department and the DFSC would develop in consultation with the City Attorney for Council's consideration. The proposed budgets may include a program manager, additional inspectors, expert consultants, and crews as needed.

Three additional elements of the program should include: (a) removal of trees and vegetation on private and City property to meet existing regulations that require unobstructed 20-foot clearance for emergency egress and emergency vehicle access²; (b) removal of hazardous trees and vegetation on City property as needed,³ and (c) removal of large trees posing public safety hazards on private property that have been identified outside of the VHFSZs, included in this program as an equity measure, if possible.⁴ The cost of clearing City property could be funded through Measure FF as needed.

¹ See Hills Emergency Forum (<http://www.hillsemergencyforum.org/MgmtRecmdtn.html>).

² Cal. Code Regs. tit. 14 § 1273.01.

³ The City's Parks and Recreation Department is currently addressing these hazards in city parks and may largely complete the effort in FY 22.

⁴ Consultation with the City Attorney as to the ability to expend Measure FF funds on trees posing safety hazards other than wildfire is advised.

RECOMMENDATIONS - EXPANDED INSPECTION PROGRAM		
	FY 23 \$	FY 24 \$
Continue current (FY 22) spending on Inspection Program, recurring) (Estimated)	\$ 1,000,000	\$ 1,080,000
Expanded Program*	\$ 770,000	\$ 1,140,000
Develop new fire safety regulations as needed	\$ -	\$ -
Total	\$ 1,770,000	\$ 2,220,000
Measure FF Annual Revenue	\$ 8,500,000	\$ 8,500,000
TOTAL % FF Funds	21%	26%

* Cost of fuel removal, where necessary, to be recovered via property liens

FISCAL IMPACTS OF RECOMMENDATION

This DFSC recommendation addresses the prioritization of Measure FF funds and will have no impact on General Funds. However, by prioritizing the reduction of flammable vegetation throughout Berkeley’s VHFSZs, these recommendations will reduce the likelihood of wildfire and the intensity and severity of any wildfires that occur in the City, which would destroy homes and other property and have other far-reaching negative fiscal impacts, including exacerbation of the existing housing crisis.

The Fire Department recently abandoned an application for a CalOES/FEMA grant to address hazardous vegetation due to competing priorities, disqualifying events, costs and disproportionate commitment of staff time needed for grant application and performance.⁵

CURRENT SITUATION AND ITS EFFECTS

At the April 27 Special Meeting, the commission passed a motion to recommend prioritizing wildfire fuel reduction in the FY 23 and FY 24 Measure FF budget by expanding the Fire Department’s Fire Prevention Inspection Program and fully enforcing the existing Fire Code to clear vegetation build-up and overgrowth within 100 feet of structures in Berkeley’s Very High Fire Severity Zones (VHFSZs) (Fire Zones 2 and 3). M/SC: (Stein, Bradstreet) Ayes: Bradstreet, Rader, Cutler, Stein, Simmons; Noes: Bedolla, Abstain: None; Absent: Dean, Degenkolb.

The Fire Department’s existing home inspection program is generally limited to addressing a 30-foot radius around structures in Fire Zones 2 and 3, and removal of hazardous vegetation (e.g., eucalyptus and junipers) is generally not required.

⁵ BFD Monthly Report to the DFSC, March 23, 2022.

Therefore, the inspection program does not address major areas of vegetation build-up and hazardous trees on private land. Such vegetation is widely recognized to contribute to the likelihood, severity and speed of a wildfire and thus poses an immediate wildfire threat to the City. As discussed below, however, California's and Berkeley's regulations provide for more aggressive inspections and enforcement.

BACKGROUND

Measure FF passed on November 3, 2020, with a 74.2 percent "yes" vote and generates approximately \$8.5 million annually. Among other important objectives, including improvements to the 9-1-1 dispatch system, training facility improvements, and funding of new ambulances and technicians, the measure supports wildfire prevention and preparedness activities including vegetation management. In a 2020 community survey, a tax for wildfire prevention received 69 percent approval from residents and was the most popular rationale for a new tax to support fire and emergency services.⁶

Measure FF funds have been used in part to create a home inspection program housed in the Fire Department, which is aimed primarily at creating 30 feet of "defensible space" around structures. "Defensible space" means the area adjacent to a structure where wildfire prevention or protection practices are implemented to provide defense from an approaching wildfire or to minimize the spread of a structure fire to wildlands or surrounding areas.⁷ Slope is a primary factor that increases an area's susceptibility to wildfire.⁸ Berkeley's Fire Department inspectors may require additional treatments within 100 feet of any property,⁹ however this is the "exception rather than the rule."¹⁰ State law, however, requires 100 feet of defensible space for all properties in wildfire-urban interface areas,¹¹ and most of Fire Zones 2 and 3 is on slopes. Given the threat of wildfire and given that many private property areas within Berkeley contain dense and hazardous vegetation that will go untreated under current practice, Berkeley should fully enforce state requirements, which are consistent with Berkeley's Fire Code that requires maintenance of an effective firebreak by "removing and clearing away flammable vegetation and combustible growth." Flammable vegetation is widely recognized to include eucalyptus, Monterey pine, juniper and limited other species.^{12,13}

Berkeley has many areas of vegetative fuel build-up that are beyond 30 feet of any structure. Examples of large such areas include numerous concentrations of eucalyptus

⁶ See p. 5 of the supplemental material for item 13 on the June 2, 2020 Council meeting: https://www.cityofberkeley.info/Clerk/City_Council/2020/06_June/City_Council_06-02-2020_-_Regular_Meeting_Agenda.aspx.

⁷ See Cal. Gov. Code Sec. 51177(a) and BFC Sec. 4907.2.1. <https://berkeley.municipal.codes/BMC/19.48.020>.

⁸ See CalFire, Prepare for Wildfire – Defensible Space, <https://www.readyforwildfire.org/prepare-for-wildfire/get-ready/defensible-space/>.

and other hazardous vegetation that exist throughout Fire Zones 2 and 3, including canyons with creeks, such as Cerritos Creek and Codornices Creek canyons, and areas between homes on the long slopes between tiered streets that are often untended and overgrown. Eucalyptus trees are a particular hazard, due to their high fuel-loading per acre, ease of ignition, fire intensity and flame length.¹⁴

The Hillside Fire Safety Group has identified seven eucalyptus groves of 15 trees or more on 103 private properties and three groves of 15 trees or more in three City parks (Remillard, Cragmont Rock and Glendale-La Loma). Smaller groups or single trees have also been found on 16 private properties and on seven other City properties (Two parks and 5 Right-of-Ways). In total, Eucalyptus trees have been found on approximately 119 private properties and 10 City locations. The 10 groves private and City property account for most of the approximately 717 eucalyptus trees north of the UC Berkeley and Berkeley Lab campuses.¹⁵ When one adds the approximately 415

⁹ Berkeley Fire Department, "Fire Prevention Inspection Report, Wildland-Urban Interface Area" (Rev. 05/2020) (included in June 1, 2021, Berkeley Fire Department mailing to Berkeley property owners).

¹⁰ According to Chief May of the BFD, "State law technically makes a property owner responsible for providing defensible space on their property out to a distance of 100 ft. from structures. However, the same law allows for varying intensity of vegetation management between 0 ft. – 30 ft. and 30 ft. – 100 ft. from structures. Based on our local lot size and geometry the Berkeley Fire Department is concentrating on the space 0 ft. – 30 ft. from structures as well as within 10 ft. of road and street frontages. There may be some circumstances where [defensible space] greater than 30 ft. is necessary and achievable, but these will be exceptions rather than the rule. There is no requirement to 'groom hillsides' (i.e., to cut/trim vegetation just to cut vegetation). Vegetation management is required where conditions in one of the defensible spaces around a structure or other target area require it." (Response to October 18, 2021, questions posed by DFSC Commissioner Rader.)

¹¹ See CalFire, "Homeowners Checklist" (2009). <https://www.readyforwildfire.org/wp-content/uploads/Homeowners-Checklist.pdf>

¹² See notes 13, 14, 22, and 28 *infra*.

¹³ Flammable vegetation expressly does not include "[s]pecimens of trees, ornamental shrubbery or similar plants which are used as ground cover, if they do not form a means of rapidly transmitting fire from the native growth to any building or structure." BFC Sec. 4907.2.

¹⁴ See East Bay Regional Park District, "Blue Gum Eucalyptus: A Wildfire Threat" (<http://www.hillsemergencyforum.org/docs/EucTreatment.pdf>); Russell and McBride, 2002, Agree et al., 1973, and Chenny, 1981, as cited in J.R. McBride's Fuel Management Proposal for Claremont and Strawberry Canyons, 2019. (Available at <https://www.claremontcanyon.org/fuel-management-proposal>.)

¹⁵ Hillside Fire Safety Group presentation to the DFSC (February 23, 2022), plus Cragmont Rock Park and additional groves and trees in areas north of Marin Avenue.

Eucalyptus trees along the northern boundary of the UC Berkeley and Berkeley Lab campus, the total number of Eucalyptus trees in north Berkeley is 1,132. This does not include the Eucalyptus trees further to the south inside the UC Berkeley and Berkeley Lab campuses.

A significantly smaller number of additional hazardous trees exist in Fire Zone 3 (Panoramic Hill) and in the Fire Zone 2 area south of campus (areas of which burned in the 1991 Tunnel Fire). Many, if not most, of these areas require clean up. Better fuel management can also enable firefighters to assemble and more safely undertake fire suppression activities.¹⁶

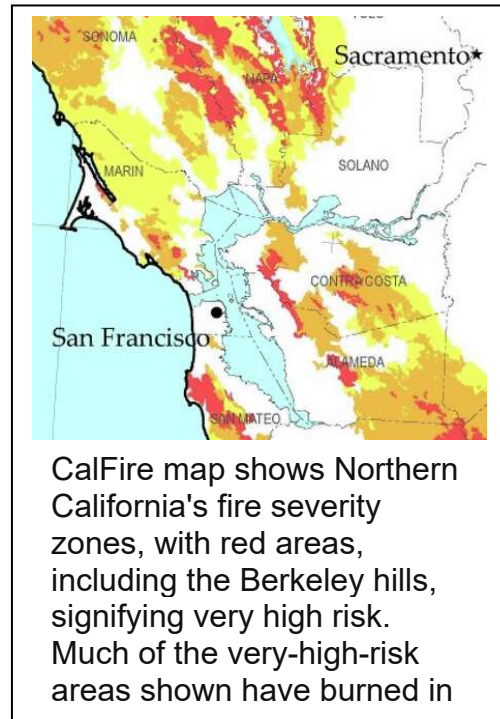
The consultant recently hired by the Fire Department to prepare its Community Wildfire Protection Plan (CWPP) has explained the “unparalleled” potential of burning eucalyptus embers to create spot fires, which create some of the most destructive wildfires. The consultant noted that “[p]revention of crown fire in eucalyptus in the Berkeley/Oakland hills, and elsewhere in the East Bay *is of paramount importance to the fire safety of a very large population.*”¹⁷ For this reason, eucalyptus groves should be prioritized in the City’s inspection program.

¹⁶ Note 14 *supra* (McBride 2019).

¹⁷ Carol Rice, Wildland Res Mgt, UC Berkeley [Wildland Vegetative Fuel Management Plan](#) at pp. 25-27 (July 2020 Draft). Emphasis added.

It is well understood that ladder fuels can carry fire from ground fuels to tree crowns where it can become a devastating fire that quickly spreads.¹⁸ Within its “State Responsibility Area,” CalFIRE has embarked on many programs to reduce fuel loads and create horizontal and vertical fuel breaks to protect California’s most wildfire-vulnerable communities.¹⁹ CalFIRE is not responsible for densely populated areas, however, which falls to local governments such as Berkeley. (See Figure at right.) While CalFIRE addresses fuel loads in areas near or adjacent to vulnerable urban areas, it is obviously at least equally important to address fuel loads *within* dense urban areas to reduce the likelihood and impacts of catastrophic wildfire.

The California Constitution generally prohibits “gifts of public funds” to any public or private person; however, such gifts are allowed for a public purpose, and that public purpose is to be liberally construed.²⁰ The city and state have numerous programs that spend public funds on private property for the purposes of disaster preparedness and public safety.²¹ Using public funds to reduce fuels that significantly contribute to the risk of wildfire would likely be considered a public purpose, particularly given the limited



¹⁸ See CalFIRE, Fire and Fuels Treatment: <https://www.fire.ca.gov/programs/resource-management/resource-protection-improvement/wildfire-resilience/forest-stewardship/fire-and-fuels-treatment/>.

¹⁹ See, e.g., CalFIRE’s Fuel Reduction Guide (2021) (<https://www.fire.ca.gov/media/4jqerfjh/fuels-reduction-guide-final-2021-interactive.pdf>).

²⁰ See League of California Cities, “Gift of Public Funds (Spoiler Alert: It’s Illegal)” at p. 1. Available at: https://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2016/Annual-2016/10-2016-Annual_Forboth_Gift-of-Public-Funds_Spoile.aspx.

²¹ Several City of Berkeley programs provide public funds for private benefit, including a FEMA-funded seismic retrofit program providing grants of up to \$150,000 (see https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Building_and_Safety/RetrofitGrants_ProgramRules.pdf), and a free fuel chipper and debris bin program, funded through a refuse bill surcharge (see https://www.cityofberkeley.info/fire_fuel_program/). Alameda County offers grants of up to \$10,000 per homeowner to abate lead hazards (see <https://www.achhd.org/programs/leadfunding.htm>).

incidental benefits that would accrue to landowners. Berkeley's City Attorney should confirm this view.

ENVIRONMENTAL SUSTAINABILITY

Acting on these recommendations will reduce the likelihood, intensity and severity of a wildfire in the City, potentially avoiding devastating and far-reaching human and environmental impacts in our City. Burnt landscapes can be slow to recover and can lead to polluted water sources, erosion or landslides, and health impacts from airborne ash.²²

The proposed City-run crews would promote the replacement of flammable, non-native tree and shrub species with natural, more fire-resistant native species that provide superior habitat for many insect, avian, and mammal species, compared with eucalyptus.²³ To prevent regrowth of eucalyptus, City crews should rely on non-pesticidal, manual sprouting control for several years following eucalyptus removal, if stumps are not removed. In drafting expanded or clarified portions of the Fire Code, the City should consider requiring property owners to employ manual sprouting control and revegetation with fire-resistant native species that also promote erosion control as necessary. The Hills Emergency Forum, of which the City is a member along with other East Bay authorities, has developed best management practices (BMPs) to reduce potential environmental impacts of fuel reduction projects and to comply with various laws and regulations which may be consulted.²⁴

The revegetation component of the program is expected to partially mitigate the carbon impact of removing hazardous trees. The City could mitigate remaining carbon impacts by using additional Measure FF funds to supplement the City's existing program to plant trees in northwest and southwest Berkeley.²⁵

²² Cartier, K. M. S. (2022), U.S. fires quadrupled in size, tripled in frequency in 20 years, *Eos*, 103, <https://doi.org/10.1029/2022EO220188>. Published on 08 April 2022.

²³ See: California Native Plant Society East Bay (<https://ebcnps.org/conservation/balancing-fire-safety-with-native-ecosystem-protection-2022-02/>); Hills Emergency Forum (<http://www.hillsemergencyforum.org/MgmtRecmdtn.html>); East Bay Regional Park District, "Blue Gum Eucalyptus: A Wildfire Threat" (<http://www.hillsemergencyforum.org/docs/EucTreatment.pdf>);

²⁴ See Hills Emergency Forum, Best Management Practices Working Paper, 10/17/08 (<http://www.hillsemergencyforum.org/docs/BMPs.pdf>).

²⁵ See *Berkeleyside*, "Berkeley residents can request free saplings to combat tree inequity" (March 8, 2022) (<https://www.berkeleyside.org/2022/03/08/trees-make-life-better-berkeley>). Also see: https://www.cityofberkeley.info/tree_planting/.

Permits are not required to prune or remove any tree on private property, with the exception of coast live oak²⁶ (which is not fire-prone).

Land use projects that require trees to be cut down are often not considered significant environmental effects under the California Environmental Quality Act (CEQA).²⁷ While the City may nevertheless find “detriment” under the City’s zoning ordinance for impacts not considered significant, the environmental and public safety benefits of removing hazardous vegetation more than outweigh any such detriments, particularly given the revegetation element of the program.

RATIONALE FOR RECOMMENDATION

The geography, weather patterns, drought conditions and dense vegetation in the East Bay create ideal conditions for wildfire, which could have devastating consequences to Berkeley. Reducing these fuels wherever they exist has been identified as a high priority in the CWPPs of other East Bay jurisdictions²⁸ that have identified eucalyptus and Monterey pine as a particular hazard “due to their rapid growth, height at maturity, dense foliage, shallow root structure, flammability, breakability or invasiveness.”²⁹ “[E]ucalyptus ... are subject to torching and crown fires with potential high ember flight rates into residential areas.”³⁰

UC Berkeley (UCB) has also recognized the threat, having cleared eucalyptus trees in Claremont Canyon.³¹ UCB is currently in the process of removing eucalyptus and other trees and ladder fuels in the hills behind UCB along the Jordan Fire Trail, as part of a larger plan entailing the widespread removal of eucalyptus trees.³² LBNL is currently seeking \$2.9 million from CalFire to remove all 1,500 eucalyptus trees on its property.³³

²⁶ See City of Berkeley, Tree Pruning and Removal (https://www.cityofberkeley.info/pruning_removal/).

²⁷ See City of Berkeley, General Information on CEQA ([https://www.cityofberkeley.info/Planning_and_Development/Land_Use_Division/Environmental_Review_\(CEQA\).aspx](https://www.cityofberkeley.info/Planning_and_Development/Land_Use_Division/Environmental_Review_(CEQA).aspx)).

²⁸ See the CWPPs of El Cerrito-Kensington, Contra Costa County, Alameda County and others available at the website of the Diablo Firesafe Council, www.diablofiresafe.org. Also see EBRPD, note 5 *supra*.

²⁹ See *El Cerrito - Kensington Wildfire Action Plan*, p. 1.7. Also see *Contra Costa County Community Wildfire Protection Plan Update*, p. 2.5 and *Sunol Wildfire Action Plan* at 4.2.

³⁰ *Ibid*.

³¹ See <https://www.dailycal.org/2021/01/19/uc-berkeley-project-removes-claremont-canyon-trees-for-evacuation-route/#:~:text=In%20a%20project%20spearheaded%20by%20UC%20Berkeley%2C%20eucalyptus,November%202020%2C%20according%20to%20campus%20spokesperson%20Janet%20Gilmore>.

³² See <https://www.berkeleyside.org/2021/09/06/popular-cal-trail-closes-fire-safety-work/>.

The areas containing the greatest mass of hazardous fuel build-up in Berkeley exist on private property beyond 30 feet of any structure (or 100 feet on slopes) and are not currently being routinely addressed by the Fire Department's residential vegetation management inspection program. Removal of hazardous vegetation is the most effective and timely means available to the City for reducing the severe risk of wildfire. In addition, tall trees posing public safety hazards have been identified outside of the VHFSZs and should be included in this program if possible.

The City could pattern the program after the Parks & Recreation's vegetation removal program (or expand the program), where Parks conducts competitive bidding and issues umbrella contracts to several firms that are then called upon for specific jobs. Parks may also have procedures to cost share where private property is involved.

The DFSC estimates that all of Berkeley's hazardous vegetation could be removed by continuing this program for an additional one to three years beyond FY 24, depending on the rate of homeowner opt-in to the City's clearance program and compliance failure rates, the actual cost of removing trees and revegetating, and the timeliness of any necessary changes to the Fire Code.

Adopting this recommendation will ensure that the City immediately reduces the extreme risk of wildfire, reduces the likelihood of ignition of homes and other structures in the event of wildfire, and meets the City's obligations under Measure FF.

ALTERNATIVE ACTIONS CONSIDERED

The DFSC considered and rejected an alternate proposal that would have used Measure FF funds to pay for the removal of hazardous vegetation, rather than requiring property owners to do so at their own expense or via placement of liens.

The Fire Department may have alternative proposed recommendations for the expenditure of Measure FF funds.

CITY MANAGER

See Companion Report

CONTACT PERSON

Keith May, Secretary, Disaster and Fire Safety Commission, 510-981-5508

³³ Personal correspondence between Jennifer Tang, Director of Community Relations, Lawrence Berkeley National Laboratory and Henry DeNero, Hillside Fire Safety Group, January 2022.



Office of the City Manager

ACTION CALENDAR
November 3, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: David Sprague, Interim Fire Chief

Subject: Companion Report: Measure FF Budget Recommendation – Expanded Fire Prevention Inspection Program

RECOMMENDATION

That the Berkeley City Council reaffirms its support for the work being conducted by the Fire Department (Department) and considers the Disaster and Fire Safety Commission's (DFSC) Report during the FY24 budget process if the DFSC chooses to resubmit an updated version at that time.

FISCAL IMPACTS OF RECOMMENDATION

There is no fiscal impact to this recommendation.

CURRENT SITUATION AND ITS EFFECTS

The Department continues to implement all the programs and projects funded by Measure FF which were reviewed and approved by the City Council and supported by the DFSC in the FY22 budget process. These included long-term projects associated with wildfire prevention and response, modernizing the city's Emergency Medical Services system, focusing on the training and development of an historically young and inexperienced workforce, and funding work to lay out a plan to modernize the communications center. These projects are critical to ensure the right resource is sent to the right call, the operational readiness of personnel and resources, ensure adequate staffing, improve retention, ensure that employees are trained and prepared to respond and mitigate all incidents to which they are called.

With regard to the DFSC's recommendation that the City expand defensible space inspection and mitigation efforts out to 100 feet from any structure, the Department already requires this of homeowners but has, and will continue to focus on, enforcement and mitigation of vegetation Zone 1 (0-30 ft) and the upcoming new State requirement to implement Zone 0 - Ember Resistant Zone that will start at the perimeter of a structure and extend five feet. When Zone 0 is implemented, Zone 1 will be modified to 5-30'.

The Department's early efforts to create defensible space in the VHFSZ 2 and 3 have included direction to property owners that they initially concentrate on Zone 1 (0-30').

However, Department messaging to property owners has been consistent in explaining that owners are responsible for vegetation management out to 100' from any structure. There are several reasons why early Department efforts have been concentrated more heavily on Zone 1 (0-30'). Most significantly, addressing fuels in Zone 1 (0-30') will mitigate almost 70% of the landmass in the VHFSZ 2 and 3. Zone 2 (30-100') only accounts for approximately 27% of landmass in VHFSZ 2 and 3. When the public right-of-way, of which large portions are paved and generally not considered combustible, is removed from the equation, the landmass of Zone 2 (30-100') drops to less than 18% (17.3%) of the VHFSZ 2 and 3 landmass. Vegetation on the margins of most paved areas falls within the Zone 1 (0-30'). The science of defensible space, State statutes, and the direction of the State Board of Forestry and Fire Protection place a greater emphasis on creation of defensible space closer to structures (Zone 0, 0-5' from structures), rather than farther from structures (Zone 2, 30-100').

Berkeley has prioritized the areas closest to structures and roadways for initial mitigation. Research on structure losses during wildfires shows that most structure ignitions occur within 30' of a structure based on combustibles in this area and ember cast. Vegetation adjacent to roadways potentially threatens evacuating residents and access for first responders. Property owners' efforts within these areas will provide the largest and quickest yield in terms of prevention of home ignition during a wildfire. Reducing fuels within 30' of structures, managing vegetation along the rights-of-way, and fire hardening structures will have more immediate and significant impacts than using limited available resources to enforce management of vegetation in Zone 2 (30-100').

BACKGROUND

At the April 27, 2022 special meeting of the DFSC, the Commission voted to recommend that City Council prioritize wildfire fuel reduction in the FY 23 and FY 24 Fire Department (Department) budget by expanding the fire Prevention Inspection Program and fully enforcing the existing Fire Code to clear vegetation build-up and overgrowth within the 100 feet of structures in Berkeley's Very High Fire Severity Zones (VHFSZs) (Fire Zones 2 and 3).

The Department is moving forward with creating a resilient, safe, connected, and prepared city through a variety of programs and projects, some of which are funded by Measure FF. The Department has provided the DFSC multiple reports and presentations through the FY22 and FY23 budget development seasons that included budget priorities and spending plans, budget process reporting timelines, fire code updates, mid-year and year-end expenditures. The Department acknowledges that the DFSC has requested more detailed reporting, and the Department is working to understand what is possible with the new financial management system "ERMA". The level of detail the DFSC is requesting is not something that has been traditionally provided to Commissions nor has it been easily available to Department administrators (requires significant manual staff work). Creating such a report would be mutually

beneficial. The process to do so, and determining what level of detail can be exported, is currently being researched by Staff. At the April 27, 2022 special meeting of the DFSC, Department Staff presented the “Measure FF Budget Proposal” as shared with the City Council Budget Committee on April 22, 2022. The Department’s budget was approved as part of the City’s budget by the City Council on June 28, 2022.

The Community Wildfire Protection Plan (CWPP) is well under way and scheduled to be completed in 2023. The CWPP is a comprehensive risk analysis that addresses local target hazards and includes a community-based action plan to mitigate threats, promote preparedness activities, and ensure resiliency. **The CWPP will serve as the foundation and roadmap for the City’s work to prevent wildfires and limit the spread when they ignite.** The Department has managed the procurement, configuration and implementation of a new mobile vegetation inspection and customer interaction platform. This software will substantively improve the way Department inspectors perform their work. The system will move the department from a paper to digital inspection platform. This will increase the accuracy and detail of information capture and improve data storage and analytics. Inspectors will have a fully customized and robust inspection tool that will allow them to create detailed reports, adding photos and using GPS mapping that will be emailed or mailed to the property owner following an inspection. These reports will include a prioritized list of actions that need to be taken to comply with the Fire Code and align with vegetation management and home hardening best practices. The reports are much more customer friendly than anything that has been used to date. This is anticipated to drive up the number of owners that move ahead with voluntary compliance. As of July 2022, this system is in the final stages of configuration and field testing.

Per California State regulation, the Department has expanded its traditional hazardous fire area vegetation inspection program to include all properties in fire zones 2 and 3; thus, increasing the number of inspections by 83% (+7,184). As the Department was unable to hire permanent staff, ten retired annuitants have spent the better part of the last year focused on completing these inspections, albeit with the legacy inspection system. Basic statistics as of the end of June 2022 are below.

Inspected	No Violations Found	Violations Found	Re-Inspection Completed	Re-Inspection No Violation Found	Re-Inspection w/Violations Found
8055	6015	2040	1595	1269	326

Our community has a robust network of Community Emergency Response Teams (CERT). While these groups have been indispensable in preparing neighbors for disaster, there is room for neighbors to be more engaged specific to wildfire. One of our retired annuitants has been focused on standing up an internal Department program to

encourage and support the creation of FireWise groups. The purpose of becoming a FireWise group is to build community, learn and implement vegetation management and home hardening practices, and be better positioned to take advantage of grant funding available for these purposes. The first FireWise group was recently approved by the National Fire Protection Association (NFPA) and there are a dozen more groups that have expressed interest. The process of becoming “recognized” as a Firewise neighborhood/zone is to organize, create a board, and develop a 3-year wildfire reduction plan.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Vegetation management is an important part of wildfire preparedness. The Berkeley hills have various species that will likely need to be addressed collectively as a system, balancing the benefits of removal against the impacts to ecosystems. The CWPP will perform a comprehensive analysis of this and include recommendations to move forward.

RATIONALE FOR RECOMMENDATION

The goals suggested by the DFSC for FY23 and FY24 have already been approved by City Council and are already underway via the Department’s defensible space inspection program.

Wildfire program requirements are changing at the State and local level (statutes, Board of Forestry regulations, city of Berkeley Community Wildfire Protection Plan) and the Department’s WUI Division is not yet fully formed and staffed. The Department will identify and allocate funding necessary to complete this important work as foundational plans are completed, and programs continue to be built. While the DFSC is well versed in wildfire prevention and is well intentioned in their proposal to divert additional funding at this time, doing so before the WUI Division is fully staffed is premature and would siphon funds from other equally critical programs mentioned in brief at the beginning of this report.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Keith May, Interim Deputy Fire Chief, 510-981-5508

Extra Duty Employment

1043.1 PURPOSE AND SCOPE

This policy covers extra duty employment, which consists of officers working special details wherein the City of Berkeley has a contractual agreement to provide services for a fee to private third parties.

1043.1.1 DEFINITIONS

Extra Duty Employment- Extra Duty Employment occurs when a member of this Department performs police services at the request of a private third party and receives overtime compensation or wages paid directly into their routine pay, the cost of which the City will recover pursuant to a Service Agreement between the private third party and the City. Approval shall be obtained from the Chief of Police prior to any overtime being posted for Extra Duty Employment.

1043.2 OBTAINING APPROVAL FOR EXTRA DUTY EMPLOYMENT

All requests for Extra Duty Employment will be offered only after a third party has signed a Service Agreement and completed an Application for Extra Duty Services prior to the officers being assigned.

The City is under no obligation to provide or approve Extra Duty Employment and all requests must consider the following criteria:

- The overall staffing needs of the Department, including Investigations and specialized patrols such as the Bike Force Team
- The impact of the request on officer wellness and fatigue mitigation
- The degree to which the extra duty employment supports overall public safety and builds connections with the community.
- The potential the extra duty employment has to cast discredit upon or create embarrassment for the Department or City Government.

In instances where the Department chooses not to staff an Extra Duty Employment opportunity, the private third party will not occur any charges.

The completion of a Service Agreement and Application for Extra Duty Services is required for all events in which the Berkeley Police Department will seek reimbursement. All police grant work is excluded from this policy. Mutual Aid response from the Berkeley Police Department may include incidents wherein reimbursement is expected, however it is explicitly excluded from the provisions of the Extra Duty Employment, and is covered under General Order M-02, and Policy 327 (upon its publication).

Any private third party seeking Extra Duty Employment shall complete the following:

- The private third party must complete the **Service Agreement** in order to request Extra Duty Employment. This form is available on the Police Department's website, and is attached to this policy.
- The **Service Agreement** may be entered into for a one-time event, for repeating events, or to cover continuous service. **Service Agreements** for Extra Duty Employment will span no longer than the duration of one calendar year, automatically resetting every January 1st for events that seek continuous services. In circumstances like the Berkeley Unified School District which may have different events spanning the year, the **Service Agreement** for Extra Duty Employment should identify what activities or events (i.e. sporting events, dances, graduation) are anticipated. Extra Duty Employment outside of these events will require an additional application. This allows for adjusted staffing consistent with the needs of each respective event.

Extra Duty Employment

- City Manager approval must be obtained for all **Service Agreements**.
- The private third party must complete an **Application for Extra Duty Employment**. This form is available on the Police Department's website, and is attached to this policy.
- The private third party must submit the **Application for Extra Duty Employment** and any additional supporting documents to the Special Events Sergeant.
- Chief of Police approval must be obtained for all **Applications for Extra Duty Employment**
- The Special Events Sergeant will be the contact person between the Department and the private third party on the status of their respective application.
- The Special Events Sergeant will be responsible for posting the overtime.
- The Special Event Sergeant shall maintain records of all submitted Extra Duty Employment requests and shall be responsible for annual renewal of Service Agreements.

1043.3 EXTRA DUTY EMPLOYMENT- SWORN PERSONNEL

Sworn personnel are subject to the following provisions regarding Extra Duty Employment while working in a law enforcement function representing the Berkeley Police Department:

- Officers will treat Extra Duty Employment overtime like regular patrol duty, and shall be dressed in full Police Uniform, and adhere to all policies and procedures of the Berkeley Police Department. Officers are permitted to use marked police vehicles as appropriate while working in this capacity.
- All officer conduct will be highly professional, and all law enforcement actions taken will be those authorized by the employee's status as a California police officer.
- In all Extra Duty Employment instances, the police personnel shall at all times be subject to the exclusive direction, supervision, and control of the Police Department.
- Equipment, including vehicles, may be assigned by the Police Department based on the nature and duration of the work to be performed.

CITY OF BERKELEY POLICE DEPARTMENT SERVICE AGREEMENT

This agreement for services (“Agreement”) is by and between the City of Berkeley, a chartered California municipal corporation (“City”) and _____ (“Organization”). The City and the Organization may be referred to herein individually as a “Party”, or collectively as the “Parties”.

The Parties agree to the following terms and conditions:

1. DATES: Unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on _____ and terminate on _____.
2. SERVICES; CONDITIONS; CITY EMPLOYEES: In exchange for the compensation from the Organization, as described in this Agreement, the City’s Police Department Peace Officer Personnel (“Personnel”) shall provide security services, crowd control, and/or traffic control (collectively, “Services”) as may be separately requested by the Organization and agreed upon by the City. In performing such Services, the Personnel shall be utilized only in their capacity as Peace Officers, as defined by California Government Code Section 50920 and Penal Code Sections 830 and 830.1.

The Personnel shall, at all times, be subject to the exclusive direction, supervision, and control of the City. The Personnel shall remain employees of the City when performing Services under this Agreement, and shall not be deemed employees of the Organization.

Services shall be provided only upon written request by the Organization via the completion of an Application for Extra Duty Services, attached hereto as Exhibit A. Any request shall include the date and time-period for which Services are required, the number of Personnel anticipated, and a description of the Services. The City may reject any request for any reason in its sole discretion.

The City’s ability to perform such Services is subject to the availability of its Personnel, as such availability may be determined by the City in its sole discretion. It is understood and agreed that the City assumes no liability for its rejection of any request for Services or its inability to provide Personnel for Services on any particular date and/or time.

3. BILLING: The Organization will be billed by the City for Services rendered by the Personnel at the overtime rate of the individual Personnel who provide the Services. The specific hourly rate for the individual Personnel shall be determined by the City and shall include a three-hour minimum charge per individual Personnel. Billing for Services shall begin from the time the officer leaves the police station to travel to the off-site work area and will continue until the officer has returned from the off-site work area to the police station.
4. INDEMNITY/HOLD HARMLESS: To the maximum extent permitted by law, and excluding the gross negligence or willful misconduct by the Personnel while providing the Services, the Organization shall defend, indemnify, and hold harmless, the City (including any City employee, officer, or agent), from any claim, injury, loss, or damage,

- 10. AMENDMENTS: The City or Organization may, from time to time, request changes in the terms and conditions of this Agreement. Such changes, which are mutually agreed upon in writing by the City and Organization shall be incorporated in amendments to this Agreement.
- 11. COUNTERPARTS: This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile or scanned email attachment, shall be sufficient to bind the Parties.
- 12. OTHER AGREEMENTS: This Agreement shall not supersede, amend, or otherwise alter any other contract, memorandum of understanding, or any other written agreement between the Parties.
- 13. UNDERSTANDING/AUTHORITY TO SIGN: The Parties hereby certify that they have read the above terms and conditions, and agree to conform to them and all laws and regulations pertaining to the use of City Personnel for the purposes as set forth in this Agreement. The signatories below warrant and represent they have the authority to bind the Party to the terms of this Agreement.

CITY OF BERKELEY

Dated: _____

Office of the City Manager
 City of Berkeley
 2180 Milvia Street, 5th Floor
 Berkeley, CA 94704

ORGANIZATION NAME: _____

Dated: _____

By: _____
 (Signature of Person authorized to bind the Organization)

Name: _____

Title: _____

Address: _____

Email Address: _____

Telephone: () _____

Fax: () _____

**EXHIBIT A
(APPLICATION FOR EXTRA DUTY SERVICES)**



BERKELEY POLICE DEPARTMENT
 2100 Martin Luther King Junior Way, Berkeley, CA 94704
 TEL: (510) 981-5900, TDD (510) 981-5799, FAX: (510) 981-5744
 EMAIL: police@cityofberkeley.info

APPLICATION FOR EXTRA DUTY SERVICES

Applicant Information	
Name: Click or tap here to enter text.	Address: Click or tap here to enter text.
Phone: Click or tap here to enter text.	Alternate Phone: Click or tap here to enter text.
Email: Click or tap here to enter text.	
Reason for Request and Officer Responsibilities	
One Time Event <input type="checkbox"/>	Annual Employer <input type="checkbox"/>
Reason for the Request: Click or tap here to enter text.	
List Responsibilities that Officer(s) will provide: Click or tap here to enter text.	
Number of Officer(s) Requested: Click or tap here to enter text.	
Event Information	
Date(s) of Event: Click or tap here to enter text.	
Event Address: Click or tap here to enter text.	
Company or Event Name: Click or tap here to enter text.	
Company Address: Click or tap here to enter text.	
Company Phone: Click or tap here to enter text.	Email: Click or tap here to enter text.

<p>Insurance: A completed general liability endorsement for \$1,000,000 naming the prospective employee(s) as the insured for the period of Extra Duty Employment is required. Insurance Agency Name: _____ Phone Number: _____ Policy Number: _____ Expiration Date: _____ A copy of the Insurance Policy Attached, If not explain: _____</p> <p>Billing: The Organization will be billed by the City for Services rendered by the Personnel at the overtime rate of the individual Personnel who provide the Services. The specific hourly rate for the individual Personnel shall be determined by the City and shall include a three-hour minimum charge per individual Personnel. Billing for Services shall begin from the time the officer leaves the police station to travel to the off-site work area and will continue until the officer has returned from the off-site work area to the police station.</p> <p>The applicant’s submission is an acknowledgement that any Police Services offered are subject to the City of Berkeley Police Department Service Agreement, and that Police Officers will adhere to all Berkeley Police Department policies, procedures, and all local, state, and federal laws. The applicant further acknowledges and agrees that in all instances, the police personnel shall at all times be subject to the exclusive direction, supervision, and control of the Police Department.</p>

Applicant Signature Applicant has declared that the information provided in this application is true and correct.	
Signature:	Date:

BPD USE Received By:	Date Received:
-------------------------------	----------------



CONSENT CALENDAR
September 13, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin

Subject: Information Report Request: Alternatives to Chemical Agents for Response to Violent Large-Scale Crowd Scenarios

RECOMMENDATION

Direct the City Manager to study alternatives to chemical agents to improve the Berkeley Police Department's ability and capacity to respond to and de-escalate large-scale crowd scenarios, including violent militias, and return a report to the City Council by the end of Fiscal Year 2023.

Report should include but not be limited to the following factors:

- BPD intelligence-gathering capabilities on potentially violent large crowd scenarios
- BPD response protocols including procedures for protecting bystanders, peaceful protesters, and businesses
- Tools and tactics available for crowd control in potentially violent scenarios
- Mutual aid and support from other local/state/federal agencies
- Applicable state and federal laws on crowd control and First Amendment rights

FINANCIAL IMPLICATIONS

Staff time.

CURRENT SITUATION AND ITS EFFECTS

Planning for large-scale crowd scenarios is a Strategic Plan Priority Project, advancing our goal to create a resilient, safe, connected, and prepared city.

As of June 9, 2020, the City of Berkeley has prohibited the use of tear gas, pepper spray, smoke canisters, and other chemical agents for crowd control by the Berkeley Police Department and any other outside agencies providing mutual aid in Berkeley. This prohibition was enacted due to concerns for the health and safety of peaceful protesters, including permanent lung damage and the potential to exacerbate the COVID-19 pandemic (see Attachment 1).

In 2021, the state legislature passed Assembly Bill 48 (see Attachment 2), which imposed restrictions on the use of chemical agents and kinetic energy projectiles by law enforcement officers during protests, including requirements for de-escalation, prohibiting their use for dispersing crowds, and restricting their use to "objectively

reasonable efforts” to only target violent individuals after all other options have been exhausted, while also establishing public reporting requirements.

In June of 2022, the Berkeley Police Department presented to the City Council’s Public Safety Policy Committee on regional best practices and conformance with AB-48 (see Attachment 3).

In August of 2022, the Berkeley City Council was briefly scheduled to discuss potentially lifting the prohibition on chemical agents on a temporary basis in response to reports of violence at protests near People’s Park, due to concerns that the Alameda County Sheriff’s Office would not provide mutual aid. The meeting was canceled, and the prohibition remains in place.¹ UCPD, which is overseeing law enforcement at the park, is permitted to use tear gas in limited situations under its use of force policy.² On August 5, 2022, the Sheriff Gregory Ahern clarified on KTVU that the Alameda County Sheriff’s Office would provide mutual aid to the City, not “to assist with the movement of the crowd.”³

Due to ongoing concerns regarding violent crowds outlined below, it is in the public interest to study feasible alternatives for responding to potentially violent large gatherings while protecting First Amendment rights, de-escalating and preventing bodily harm for all present pursuant to existing City of Berkeley policies.

BACKGROUND

The extreme far-right in the US has become increasingly violent since the election of President Donald Trump, with white supremacist propaganda and neo-Nazi rallies consistently condoned by the highest echelons of the Republican Party. Since former President Trump’s well-documented lies about election theft fomented an attempted insurrection and violent invasion of the US Capitol on January 6, 2021, the need to safeguard democratic institutions from violent extremism has only increased, as far-right figures have openly threatened to increase violent demonstrations while pivoting to more local, decentralized actions.⁴

Berkeley has been the site of several violent encounters with far-right militias and counter-protesters. On February 1, 2017, a faction of protesters opposing a UC

¹ Yelimeli, S. (Aug. 4, 2022). Berkeley City Council will not lift tear gas ban amid People’s Park protests. *Berkeleyside*. Retrieved from <https://www.berkeleyside.org/2022/08/04/berkeley-city-council-will-not-lift-tear-gas-ban-amid-peoples-park-protests>

² https://newspack-berkeleyside-cityside.s3.amazonaws.com/wp-content/uploads/2022/08/Use_of_Force-1.pdf

³ KTVU. (Aug 5, 2022). People’s Park project on hold; debate over tear gas in Berkeley. Retrieved from <https://www.ktvu.com/news/peoples-park-project-on-hold-debate-over-tear-gas-in-berkeley>

⁴ Holt, J. (2022). After the insurrection: How Domestic Extremists Adapted and Evolved After the January 6 US Capitol Attack. *Atlantic Council*. Retrieved from <https://www.atlanticcouncil.org/wp-content/uploads/2022/01/After-the-Insurrection.pdf>

Berkeley speaking event by far-right figurehead Milo Yiannopoulos engaged in looting of commercial retailers and injured peaceful protesters.⁵ On March 4, 2017, Berkeley police arrested 10 individuals following violent clashes at a “March 4 Trump” rally in Civic Center Park where 7 were injured. In response, then-President Trump praised the rallies and threatened to pull federal funding from UC Berkeley.⁶ On April 15, 2017, right-wing protesters (including neo-Nazi militia groups such as Oath Keepers) and counter-protesters fought violently with rocks, sticks, pepper spray, and smoke bombs, resulting in 21 arrests and 11 injuries, including one stabbing.⁷

The City of Berkeley must assess its preparedness for large crowd scenarios in order to prevent future violence.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

CONTACT PERSON

Councilmember Taplin Council District 2 510-981-7120

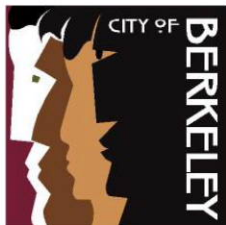
ATTACHMENTS

- 1: June 9, 2020: Prohibiting Use of Chemical Agents for Crowd Control During COVID-19 Pandemic
- 2: Assembly Bill 48 (2021)
- 3: June 6, 2022: Berkeley City Council Public Safety Policy Committee presentation

⁵ Bodley, M. (2017, Feb 2). At Berkeley Yiannopoulos protest, \$100,000 in damage, 1 arrest. *SFGate*. Retrieved from <https://www.sfgate.com/crime/article/At-Berkeley-Yiannopoulos-protest-100-000-in-10905217.php>

⁶ Wang, A.B. (2017, March 5). Pro-Trump rally in Berkeley turns violent as protesters clash with the president’s supporters. *Los Angeles Times*. Retrieved from <https://www.washingtonpost.com/news/post-nation/wp/2017/03/05/pro-trump-rally-in-berkeley-turns-violent-as-protesters-clash-with-the-presidents-supporters/>

⁷ St. John, P. (2017, Apr 15). 21 arrested as hundreds of Trump supporters and counter-protesters clash at Berkeley rally. Retrieved from <https://www.latimes.com/local/lanow/la-me-ln-berkeley-trump-rally-20170415-story.html>



Office of the Mayor

LATE AGENDA MATERIAL

Pursuant to Government Code Section 54954.2(b)

Meeting Date: June 9, 2020

Item Description: Prohibiting the use of Chemical Agents for Crowd Control during the COVID-19 pandemic

Submitted By: Mayor Arreguin, Councilmember Harrison, Councilmember Robinson

Pursuant to California Government Code Section 54954.2(b) (2), the Mayor submits the attached item to the City Council for placement on the June 9, 2020 meeting agenda. Gov. Code Section 54954.2(b) (2) states that *“Upon a determination by a two-thirds vote of the members of a legislative body presents at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).”*

This item meets the criteria for “immediate action” as follows:

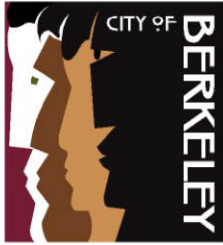
The City of Berkeley is currently in a declared state of emergency regarding the outbreak of a novel coronavirus, causing the respiratory disease COVID-19. COVID-19 is an acute respiratory illness that affects the lungs in addition to other symptoms. The severity of these symptoms increases based on underlying health conditions including asthma, heart and lung problems, diabetes, and other medical conditions.

Despite being in a declared public health emergency, the Berkeley Police Department can use chemical agents (tear gas, pepper spray, and smoke canisters) to disperse a crowd, but subject to the authorization and policies outlined in General Order U-2.

Public health experts have concluded that chemical agents like tear gas may make individuals more susceptible to COVID-19 and increase its community spread. Along with the immediate pain that can cause watering eyes and burning throats, tear gas may cause damage to people’s lungs and make them more susceptible to getting a respiratory illness, according to studies on the risks of exposure. The gas and smoke can also incite coughing, which can further spread the virus from an infected person.

On June 1, 2020, in response to a largely peaceful demonstration against the killing of George Floyd, Oakland Police fired tear gas into a crowd of demonstrators. The tear gas not only affected protestors by also bystanders in the immediate area. The police killing of George Floyd on May 25, 2020 and the deaths of other African Americans have sparked nationwide outrage and protests over police brutality, including demonstrations in the City of Berkeley. Additional protests may occur in the coming days and weeks.

Consideration of late agenda items is subject to approval by a two-thirds vote of the City Council. (California Government Code Section 54954.2(b)(2))



ACTION CALENDAR
June 9, 2020

To: Members of the City Council

From: Mayor Jesse Arreguín, Councilmember Kate Harrison and Councilmember Rigel Robinson

Subject: Prohibiting the use of Chemical Agents for Crowd Control during the COVID-19 pandemic

RECOMMENDATION

Adopt a motion to establish an official City of Berkeley policy prohibiting the use of tear gas (CS gas), pepper spray or smoke for crowd control by the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, during the COVID-19 pandemic, until such time that the City Council removes this prohibition.

BACKGROUND

The use of tear gas (CS gas) and pepper spray are authorized less-than-lethal uses of force which can be deployed in crowd control situations under Berkeley Police Department policy, with specific conditions (See [General Order U-2](#)).

On June 1, 2020, Oakland police deployed tear gas to disperse protesters who failed to move before a legally established curfew. The tear gas not only affected protestors by also bystanders in the immediate area. This has raised concerns over the police use of tear gas in protests, the chilling effect it has on people engaging in First Amendment activity, and the health impacts of tear gas during a public health emergency. In response to this incident, Oakland City Council President Rebecca Kaplan and Councilmembers Nikki Fortunato Bas and Sheng Thao issued a letter to Oakland City administrators requesting that OPD use of tear gas be immediately suspended and not used during the COVID-19 pandemic. Similarly, on June 5, 2020, Berkeley Councilmembers Harrison, Davila, Bartlett and Robinson made a similar request.

International, national, state and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2." and the disease it causes has been named "coronavirus disease 2019," abbreviated COVID-19, ("COVID-19"). In response to this emergency, on March 3, 2020, the City Manager acting as the Director of Emergency Services declared a local State of Emergency based on COVID-19 (hereinafter referred to as "the State of Emergency"), which the City Council subsequently ratified on March 10, 2020. In addition, on March 4, 2020, the Governor declared a state of emergency in California and the President of the United States declared a national state of emergency on March 13, 2020 regarding the novel coronavirus and COVID-19.

During the COVID-19 state of emergency, there is a heightened risk of individuals contracting the virus if they are exposed to tear gas, pepper spray or smoke. This will put people's safety and lives at risk. As a public health strategy, the deployment of tear gas, pepper spray and smoke must be suspended.

According to a June 2, 2020 KTVU article, infectious disease specialists are circulating an online petition calling for police to stop using tear gas to disperse crowds and calling on police to use "public health best practices" during demonstrations.¹

According to an article in the June 3, 2020, *New York Times*, **"Along with the immediate pain that can cause watering eyes and burning throats, tear gas may cause damage to people's lungs and make them more susceptible to getting a respiratory illness, according to studies on the risks of exposure. The gas can also incite coughing, which can further spread the virus from an infected person."**²

Researchers are concerned that the use of tear gas in crowds "might catalyze a new wave of Covid-19."³

Data show that African Americans are disproportionately impacted by COVID-19 in Berkeley and Alameda County. In addition, "many black Americans disproportionately have pre-existing conditions like asthma that could make tear gas lethal."

Tear gas has been banned for use in warfare, but is legal for police to use in the U.S. Yet, experts say it should be a weapon of last resort for crowd control and for addressing violent behavior of specific individuals because it affects everyone in the area including peaceful protestors.

The use of tear gas and other agents for crowd control adversely affects individuals in crowds of protestors as well as residents who are not involved in protesting, and it can have serious effects on medically vulnerable people and increase the spread of COVID-19.

Oakland Police Department's own police training bulletin (V-F.2. July 26, 2006) states that "Breathing CS (gas) may create a feeling of tightness in the chest, shortness of breath, coughing and/or sneezing." These are reactions that can spread COVID-19.

In response to mass protests over the killing of George Floyd, on Friday, June 5, 2020, Governor Newsom announced that he would work with the State Legislature, activists, law enforcement officers, and journalists to create new standards for policing protests in California.

"Protesters have the right not to be harassed," he said. **"Protesters have the right to protest peacefully. Protesters have the right to do so without being arrested, gassed, being shot at by projectiles."**⁴

¹ Lisa Fernandez, "Infectious disease specialists call for an end to tear gas during COVID-19 pandemic," KTVU News, June 2, 2020, <https://www.ktvu.com/news/infectious-disease-specialists-call-for-an-end-to-tear-gas-during-covid-19-pandemic>

² Mike Baker, "Corrosive Effects of Tear Gas Could Intensify Coronavirus Pandemic," The New York Times, <https://www.nytimes.com/2020/06/03/us/tear-gas-risks-protests-coronavirus.html>

³ Hilary Brueck and Canela López, "Tear gas is banned from war — but police still shoot it at protesters, who cough and bleed as a result. At least one has lost an eye," Business Insider, June 3, 2020, <https://www.insider.com/tear-gas-banned-from-war-why-dangerous-how-to-neutralize-2020-6>

⁴ Alexei Koseff, "Gavin Newsom calls for new protest policing standards in California, ban on carotid holds" San Francisco Chronicle, June 5, 2020 <https://www.sfchronicle.com/politics/article/Gavin-Newsom-calls-for-new-protest-policing-15320403.php>

The police killing of George Floyd on May 25, 2020 and the deaths of other African Americans have sparked nationwide outrage and protests over police brutality, including demonstrations in the City of Berkeley. Additional protests may occur in the coming days and weeks. Therefore, the Council should take immediate action to impose this moratorium on the use of chemical agents during the COVID-19 pandemic.

FINANCIAL IMPLICATIONS

None. Prohibiting the use of tear gas, pepper spray and smoke will require the Berkeley Police Department to use other tactics in crowd control situations.

CONTACT PERSONS

Mayor Jesse Arreguín	(510) 981-7100
Councilmember Harrison	(510) 981-7140
Councilmember Robinson	(510) 981-7170

Assembly Bill No. 48

CHAPTER 404

An act to amend Section 12525.2 of the Government Code, and to add Sections 13652 and 13652.1 to the Penal Code, relating to law enforcement.

[Approved by Governor September 30, 2021. Filed with
Secretary of State September 30, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 48, Lorena Gonzalez. Law enforcement: use of force.

(1) Existing law authorizes a peace officer to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. Existing law requires law enforcement agencies to maintain a policy on the use of force, as specified. Existing law requires the Commission on Peace Officer Standards and Training to implement courses of instruction for the regular and periodic training of law enforcement officers in the use of force.

This bill would prohibit the use of kinetic energy projectiles or chemical agents by any law enforcement agency to disperse any assembly, protest, or demonstration, except in compliance with specified standards set by the bill, and would prohibit their use solely due to a violation of an imposed curfew, verbal threat, or noncompliance with a law enforcement directive. The bill would include in the standards for the use of kinetic energy projectiles and chemical agents to disperse gatherings the requirement that, among other things, those weapons only be used to defend against a threat to life or serious bodily injury to any individual, including a peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control. The bill would define chemical agents to include, among other substances, chloroacetophenone tear gas or 2-chlorobenzalmalononitrile gas. The bill would make these provisions inapplicable within a county jail or state prison facility.

This bill would also require each law enforcement agency, within a specified timeframe, to post on their internet website a summary, as described, of any incident in which a kinetic energy projectile or chemical agent is deployed by that agency for the purpose of crowd control. The bill would require the Department of Justice to provide a compiled list of links to these reports on its internet website.

(2) Existing law requires each law enforcement agency to annually report specified use of force incidents to the Department of Justice and requires the Department of Justice to annually publish a summary of those incidents, as specified.

This bill would require these reports to be made monthly. By imposing new duties on law enforcement agencies, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Section 12525.2 of the Government Code is amended to read:

12525.2. (a) Each law enforcement agency shall monthly furnish to the Department of Justice, in a manner defined and prescribed by the Attorney General, a report of all instances when a peace officer employed by that agency is involved in any of the following:

- (1) An incident involving the shooting of a civilian by a peace officer.
- (2) An incident involving the shooting of a peace officer by a civilian.
- (3) An incident in which the use of force by a peace officer against a civilian results in serious bodily injury or death.

- (4) An incident in which use of force by a civilian against a peace officer results in serious bodily injury or death.

(b) For each incident reported under subdivision (a), the information reported to the Department of Justice shall include, but not be limited to, all of the following:

- (1) The gender, race, and age of each individual who was shot, injured, or killed.

- (2) The date, time, and location of the incident.

- (3) Whether the civilian was armed, and, if so, the type of weapon.

- (4) The type of force used against the officer, the civilian, or both, including the types of weapons used.

- (5) The number of officers involved in the incident.

- (6) The number of civilians involved in the incident.

- (7) A brief description regarding the circumstances surrounding the incident, which may include the nature of injuries to officers and civilians and perceptions on behavior or mental disorders.

(c) Each year, the Department of Justice shall include a summary of information contained in the reports received pursuant to subdivision (a) through the department's OpenJustice Web portal pursuant to Section 13010 of the Penal Code. This information shall be classified according to the reporting law enforcement jurisdiction. In cases involving a peace officer who is injured or killed, the report shall list the officer's employing jurisdiction and the jurisdiction where the injury or death occurred, if they are not the same. This subdivision does not authorize the release to the public of the badge number or other unique identifying information of the peace officer involved.

(d) For purposes of this section, “serious bodily injury” means a bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member or organ.

SEC. 2. Section 13652 is added to the Penal Code, to read:

13652. (a) Except as otherwise provided in subdivision (b), kinetic energy projectiles and chemical agents shall not be used by any law enforcement agency to disperse any assembly, protest, or demonstration.

(b) Kinetic energy projectiles and chemical agents shall only be deployed by a peace officer that has received training on their proper use by the Commission on Peace Officer Standards and Training for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control, and only in accordance with all of the following requirements:

(1) Deescalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed.

(2) Repeated, audible announcements are made announcing the intent to use kinetic energy projectiles and chemical agents and the type to be used, when objectively reasonable to do so. The announcements shall be made from various locations, if necessary, and delivered in multiple languages, if appropriate.

(3) Persons are given an objectively reasonable opportunity to disperse and leave the scene.

(4) An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and kinetic energy projectiles or chemical agents are targeted toward those individuals engaged in violent acts. Projectiles shall not be aimed indiscriminately into a crowd or group of persons.

(5) Kinetic energy projectiles and chemical agents are used only with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable.

(6) Officers shall minimize the possible incidental impact of their use of kinetic energy projectiles and chemical agents on bystanders, medical personnel, journalists, or other unintended targets.

(7) An objectively reasonable effort has been made to extract individuals in distress.

(8) Medical assistance is promptly provided, if properly trained personnel are present, or procured, for injured persons, when it is reasonable and safe to do so.

(9) Kinetic energy projectiles shall not be aimed at the head, neck, or any other vital organs.

(10) Kinetic energy projectiles or chemical agents shall not be used by any law enforcement agency solely due to any of the following:

(A) A violation of an imposed curfew.

(B) A verbal threat.

(C) Noncompliance with a law enforcement directive.

(11) If the chemical agent to be deployed is tear gas, only a commanding officer at the scene of the assembly, protest, or demonstration may authorize the use of tear gas.

(c) This section does not prevent a law enforcement agency from adopting more stringent policies.

(d) For the purposes of this section, the following terms have the following meanings:

(1) “Kinetic energy projectiles” means any type of device designed as less lethal, to be launched from any device as a projectile that may cause bodily injury through the transfer of kinetic energy and blunt force trauma. For purposes of this section, the term includes, but is not limited to, items commonly referred to as rubber bullets, plastic bullets, beanbag rounds, and foam tipped plastic rounds.

(2) “Chemical agents” means any chemical that can rapidly produce sensory irritation or disabling physical effects in humans, which disappear within a short time following termination of exposure. For purposes of this section, the term includes, but is not limited to, chloroacetophenone tear gas, commonly known as CN tear gas; 2-chlorobenzalmalononitrile gas, commonly known as CS gas; and items commonly referred to as pepper balls, pepper spray, or oleoresin capsicum.

(e) This section does not apply within any county detention facility or any correctional facility of the Department of Corrections and Rehabilitation.

SEC. 3. Section 13652.1 is added to the Penal Code, to read:

13652.1. (a) Each law enforcement agency shall, within 60 days of each incident, publish a summary on its internet website of all instances in which a peace officer employed by that agency uses a kinetic energy projectile or chemical agent, as those terms are defined in Section 13652, for crowd control. However, an agency may extend that period for another 30 days if they demonstrate just cause, but in no case longer than 90 days from the time of the incident.

(b) For each incident reported under subdivision (a), the summary shall be limited to that information known to the agency at the time of the report and shall include only the following:

(1) A description of the assembly, protest, demonstration, or incident, including the approximate crowd size and the number of officers involved.

(2) The type of kinetic energy projectile or chemical agent deployed.

(3) The number of rounds or quantity of chemical agent dispersed, as applicable.

(4) The number of documented injuries as a result of the kinetic energy projectile or chemical agent deployment.

(5) The justification for using the kinetic energy projectile or chemical agent, including any deescalation tactics or protocols and other measures that were taken at the time of the event to deescalate tensions and avoid the necessity of using the kinetic energy projectile or chemical agent.

(c) The Department of Justice shall post on its internet website a compiled list linking each law enforcement agency’s reports posted pursuant to subdivision (a).

SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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Berkeley Police Department



Background

- **June 2020:** City Council enacts a ban on tear gas and a moratorium on the use of smoke and pepper spray for crowd-control events.
- **2021 police reform bill AB 48** signed into law, placing restrictions on the types of force law enforcement can use in response to protests. As a general rule, the bill prohibits the use of “kinetic energy projectiles” and “chemical agents” to disperse any assembly, protest, or demonstration, except in compliance with several requirements.
- **January 1, 2022:** AB 48 codified as PC 13652 Section 2



Balanced Approach

Important considerations as to the appropriateness of using tear gas for law enforcement purposes:

Does the use of tear gas have a chilling effect on Free Speech?

Is the use of tear gas reasonable?

- Is the use of tear gas excessive?
- Is there accountability/oversight in its use?
- Is current policy in alignment with AB48?
- What are regional/State best practices?

Health concerns related to smoke and pepper spray during COVID-19

- Enacted when infections were up and there was no vaccine.



Protecting Free Speech

- History of use
- Allows for safe speech:
 - Intervene at lower levels
 - Mitigates co-opting of crowd by bad actors
 - Gives department ability to target individuals committing crimes and violence
 - Smaller contingent of officers able to protect large crowd



Is the use of tear gas reasonable?

- Allows a small number of officers to regain control over a much larger violent crowd.
- Minimal force used:
 - Consequences and level of force are much lower than all other options.
 - Effects are temporary.
 - Effects end as soon as no longer exposed.
 - Dissipates quickly.



Accountability and Oversight

New legal requirement created by AB48 aligns with the department's past use and current policy language. Some of the legal requirements are:

- Requires **de-escalation techniques or alternatives** to force before use.
- Limits use to defend against **threats to life, serious bodily injury**, or to bring objectively dangerous and unlawful situations safely and effectively under control.
- Requires **announcement before use**.
- Requires officers to make objectively reasonable efforts to **identify** persons engaged in **violent** acts and target those individuals.



Accountability and Oversight (continued)

AB48/Penal Code 13652 requirements (continued):

- **Minimize** the possible incidental **impact** on bystanders, medical personnel, journalist, or other unintended targets.
- Use must be **objectively reasonable and proportional** to the threat (including frequency and intensity of use).
- Specifically **prohibited** in response to verbal threats, noncompliance with law enforcement directives, or curfew violations.
- *Note: AB 48 anticipates certain instances where tear gas may be reasonably used and places that responsibility on the commanding officer of the event.*



Accountability and Oversight (continued)

- Our current Use of Force (Policy 300) and First Amendment Assembly (Policy 428) policies align with requirements set forth in Penal Code section 13652.
- Oversight is required and provided via Police Equipment and Community Safety Ordinance.
- If tear gas ban was removed state reporting requirements would require the department to publish an after-action report documenting the equipment's use and the reasons for it within 60 days of an incident.



What is the scope of use in Berkeley?

- To resolve a situation involving an armed barricaded person (SWAT call).
- Respond to a medical or fire emergency, or prevent catastrophic damage to critical infrastructure, where a violent crowd is present.
- To protect officers or community from large-scale violent assaults.
- To disburse a violent crowd through a minimal amount of force.



Regional/State Best Practices

What are other agencies doing?

- Oakland PD has a policy that aligns with State law
- No other local agencies have bans in place
- All agencies in the state are compelled to abide by the requirements and protections outlined in PC 13652.



Use of smoke and pepper spray

- Smoke has been used before deploying tear gas. Although not an alternative, it gives the department an option to try before deploying tear gas.
- Smoke is often used in conjunction with tear gas, and acts as a visual deterrent.
- Pepper Spray provides officers with an intermediate force option to use in response to an individual violent act.
 - Allows officers to respond to a specific threat up to 15 feet away.
 - Effects are temporary; there are no injuries once spray wears off.



Questions?

The mission of the Berkeley Police Department is to preserve the peace and allow for the peaceful expression of First Amendment Rights. These rights include, but are not limited to, assembling, marching, carrying signs, making speeches, or other lawful activity designed to express or advocate political, religious, or social opinions and beliefs.

