

Councilmember Kate Harrison
Mayor Jesse Arreguín

URGENCY RESOLUTION AGENDA MATERIAL

Meeting Date: June 9, 2020

Submitted By: Councilmember Harrison, Mayor Arreguín,
Councilmembers Davila and Bartlett

Item Description: Urgency Resolution: Directing the Police Review Commission and City Manager to Submit Revised Berkeley Police Department Use of Force Policy for Council Review and Approval Before the 2020 Summer Recess

Rationale:

Pursuant to California Government Code Section 54954.2(b)(2), there is a need to take immediate action which came to the attention of the local agency after posting of the meeting agenda.

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. Over the past few days over 1,000 residents have contacted the Mayor's Office and City Councilmembers asking that the City adopt the eight reforms put forward by Campaign Zero's 8 Can't Wait campaign. Four of the reforms on police use of force are already in place, but the remaining four are not yet Departmental procedures. These policies have been linked to reduced police violence.

In 2017, the Council directed the City Manager to strengthen Berkeley's use of force policy (General Order U2), based in part on findings from the Center for Policing Equity. Council had requested that this policy return for final adoption by February 27, 2018, some 26 months ago. In January, 2020, the Police Department brought forward and the Police Review Commission was beginning to review a revised BPD Use of Force Policy. This work was most recently put on hold by the City Manager's directive to suspend non-essential Boards and Commissions from meeting.

Given the growing demand for police reform and the Council recess period in late July, it is critical that this item be added to the June 9, 2020 City Council agenda so Council can provide direction to bring back a new Use of Force policy prior to the recess. This item also includes the four outstanding reforms suggested by the 8 Can't Wait campaign. This new policy will govern all BPD use of force and require greater reporting and transparency.

It is incumbent upon the City to continue its efforts towards addressing and remedying ongoing instances of inequity. These issues are of particular urgency given that the City has endowed the police with the responsibility to enforce the law and keep the peace. Most critically, the police are empowered to reasonably employ lethal, less-than-lethal and non-lethal force for the purpose of achieving these ends when justified by law and city protocols and procedures. In short, the City has the means and power to dramatically affect the lives and liberties of the people within its jurisdiction. Therefore, to ensure the public's safety and liberty, the utmost prudence must be demonstrated in internal policies governing the use of force.



Kate Harrison, Jesse Arreguín
Councilmember District 4, Office of the Mayor

ACTION CALENDAR

June 9, 2020

To: Members of the City Council

From: Councilmember Harrison (Co-Author), Mayor Jesse Arreguín (Co-Author),
Councilmembers Davila and Bartlett

Subject: Urgency Resolution: Directing the Police Review Commission and City
Manager to Submit Revised Berkeley Police Department Use of Force
Policy for Council Review and Approval Before the 2020 Summer Recess

RECOMMENDATION

Adopt an Urgency Resolution directing the Police Review Commission (“PRC”) and City Manager to:

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

BACKGROUND

A. Introduction

The recent murders of George Floyd, Breonna Taylor and Ahmaud Arbery have ignited the nation in passionate protest against police brutality and racial injustice. Across the country, citizens have protested for the past week demanding change and calling out enduring systemic racism and police brutality that has defined the United States for too long. Among the more immediate demands are calls for local jurisdictions to use their power to implement reforms that reduce or restrict the circumstances in which police can use force and expand use of force transparency and accountability.

Prior to the COVID-19 emergency, the Police Review Commission commenced its review of a revised BPD Use of Force Policy following Council direction in 2017 to strengthen the policy. Council had urgently requested that this policy return for final adoption approximately two years ago. This work was further delayed the COVID-19-related suspension of non-essential Boards and Commissions.

Given the growing interest and demands for police reform, and the upcoming Council recess period in late July, it is critical that this item be added to the June 9, 2020 City Council agenda so Council can provide direction to bring back a new Use of Force policy prior to our summer recess. This item also includes any outstanding reforms suggested by the 8 Can't Wait campaign. This new policy will govern all BPD use of force and require greater reporting and transparency.

It is incumbent upon the City to continue its efforts towards addressing and remedying ongoing instances of inequity. These issues are of particular urgency given that the City has endowed the police with the responsibility to enforce the law and keep the peace. Most critically, the police are empowered to reasonably employ lethal, less-than-lethal and non-lethal force for the purpose of achieving these ends when justified by law and city protocols and procedures. In short, the City has the means and power to dramatically affect the lives and liberties of the people within its jurisdiction. Therefore, to ensure the public's safety and liberty, the utmost prudence must be demonstrated in internal policies governing the use of force.

The BPD has embraced modern policing policies, including de-escalation training, and has not had an officer involved shooting in the last five years. Still, every step must be taken to ensure that the department is using the least amount of force necessary. Broadly supported reforms that were initiated in the last three to five years, including Council actions requesting refinement of the department's use of force protocols, have faced unfortunate delays. It is in the public interest that these initiatives and additional national use of force best practices be adopted as policy before the Council Summer Recess.

B. October 31, 2017 Council Direction to the City Manager on Use of Force

A June 27, 2017 draft report commissioned by BPD and authored by the Center for Policing Equity—an independent, non-profit, grant-funded organization—had advised that BPD policy is not comprehensive in tracking use of force by BPD officers:

“BPD departmental policy does not require the comprehensive tracking of use of force incidents. In particular, BPD policy does not require that an officer’s use of physical force be reported unless the officer used a weapon, the subject was injured, or the subject complains. As a result, incidents of physical force not involving a weapon are not comprehensively reported or tracked by BPD, and are not reflected.”¹

On October 31, 2017 the Council unanimously directed the City Manager to urgently amend the BPD’s General Order U-2 governing use of force policy to address these deficiencies and to update it consistent with best practices and community concerns and to provide an update by December 2017.² The Council item incorporated various use of force best practices adopted by neighboring Bay Area Departments in the wake of the Black Lives Matter movement and police reform campaigns such as Campaign Zero. The primary elements of the item were to:

1. Enhance BPD’s use of force policy statement;
2. Create a definition of use of force;
3. Require that all uses of force be reported;
4. Categorize uses of force into levels to facilitate reporting, investigation, documentation and review requirements;
5. Require Use of Force to be captured in a manner that allows for analysis; and
6. Require that the Department prepare and submit an annual analysis report about use of force to to the Chief of Police, Police Review Commission (“PRC”) and Council.

On December 21, 2017 the Deputy City Manager provided an Off-Agenda Memo³ to the Council stating that a BPD working group had formed and drafted new and revised

¹ The Science of Justice: Berkeley Police Department National Justice Database City Report Center for Policing Equity Report, Center for Policing Equity, May 2018, https://www.google.com/url?client=internal-element-cse&cx=017385055954264103894:kn5xiwd8ubm&q=https://www.cityofberkeley.info/uploadedFiles/Police_Review_Commission/Commissions/2018/Berkeley%2520Report%2520-%2520May%25202018.pdf&sa=U&ved=2ahUKEwjFveyU4_LpAhXKJzQIHSjFDHYQFjAAegQIAxAB&usg=AOvVaw3e931R0uxtMvplCy-AKoeV

² “Direct the City Manager and the Berkeley Police Department Regarding the Berkeley Police Department’s Use of Force Policy,” Berkeley City Council, October 31, 2020, https://www.cityofberkeley.info/Clerk/City_Council/2017/10_Oct/Documents/2017-10-31_Item_26_Direct_the_City_Manager_and_BPD_-_Rev.aspx

³ Update; Use of Force Policy Development, Berkeley City Manager’s Office, December 21, 2017, Office https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-

language to U-2, including:

- Language regarding the value of human life and dignity, without prejudice to anyone;
- Language regarding using de-escalation tactics and techniques which seek to minimize the need to use force and increase the likelihood of voluntary compliance;
- A definition of force;
Expanding the threshold for reporting force, including subcategories of physical force;
- Approaches to categorizing force levels; using plain language to increase transparency;
- Posting use of force statistics on the City's Open Data Portal;
- A model report to serve as a template for an annual use of force report.

The memo also noted that “[e]xternal factors which could affect implementation of the completed policy include: necessary review from the City Attorney’s office, and the need to meet and confer with the Berkeley Police Association. Once finalized, the policy will be provided to the Police Review Commission.”

In addition, Council directed the City Manager on April 24, 2018 to convene a broad task force to create, present and execute a departmental action plan to address racial disparities in policing, including use of force.⁴ The task force did not launch. On April 30, 2019 the Chief of Police stated his expectation that the final use of force policy would be ready for Council adoption in June 2019.⁵ That same meeting, Council referred the task force idea and related policing disparity referrals to the Council’s Public Safety Policy Committee.⁶

[_General/Use%20of%20Force%20Update%20Memo%20122117.pdf](#)

⁴ Accept and Acknowledge Report from the Berkeley Police Review Commission, “To Achieve Fairness and Impartiality,” and Refer Key Recommendations to the City Manager for Policy Development and Consideration in September 2018 Report to City Council, Berkeley City Council, April 24, 2018, https://www.cityofberkeley.info/Clerk/City_Council/2018/04_Apr/Documents/2018-04-24_Item_38b_Accept_and_Acknowledge_-_Rev.aspx

⁵ Referral Response: Update on Various Referrals and Recommendations Regarding Stop Data Collection, Data Analysis and Community Engagement, Berkeley City Manager, April 30, 2019, https://www.cityofberkeley.info/Clerk/City_Council/2019/04_Apr/Documents/2019-04-30_Item_29_Referral_Response_Update_on_Various.aspx

⁶ Annotated Agenda: April 30, 2019 Berkeley City Council Meeting, April 30, 2019, https://www.cityofberkeley.info/Clerk/City_Council/2019/04_Apr/Documents/04-

On June 3, 2019 the committee recommended that the Mayor convene the task force in lieu of the City Manager.⁷ On July 23, 2019, the Mayor announced that he would lead an ad hoc task force.⁸ The task force convened in December 2019 and continued to meet until the COVID-19 pandemic in March.

C. January 2020 BPD Proposed Use of Force Policy Draft Presented to PRC

On January 8, 2020, more than two years after the Council passed the referral, and approximately two year after the deadline Council established for presenting a final updated policy, BPD presented a proposed revised Use of Force Policy to the PRC.⁹

The PRC formed a subcommittee to review the updated policy and make recommendations to the Council, but by March, non-judicial PRC meetings were suspended due to the COVID-19 pandemic.

The current PRC draft represents a marked improvement from the 2017 General Order U-2 policy. For example, it enhances the Department's policy statement, includes a more expansive definition of force (including physical force), encourages de-escalation tactics, expands reporting requirements, increasing transparency and facilitating analysis, and requires annual Council reporting.

D. Campaign Zero's '8 Can't Wait' Use of Force Reforms

30_Annotated_Agenda_pdf.aspx

⁷ Minutes June 3, 2019 Berkeley City Council Public Safety Policy Committee, <https://www.cityofberkeley.info/uploadedFiles/Clerk/2019-6-3%20Annotated%20Agenda%20-%20Public%20Safety.pdf>.

⁸ Referral Response: Update on Various Referrals and Recommendations Regarding Stop Data Collection, Data Analysis and Community Engagement, Berkeley City Council, July 23, 2019, https://www.google.com/url?client=internal-element-cse&cx=017385055954264103894:kn5xiwd8ubm&q=https://www.cityofberkeley.info/Clerk/City_Council/2019/07_Jul/Documents/2019-07-23_Item_40_Referral_Response_Update_on_Various_Referrals.aspx&sa=U&ved=2ahUKEwjf5IO42fLpAhWoHzQIHd-tBfU4ChAWMAZ6BAgBEAI&usg=AOvVaw0Gkjo3kl6eqeltwmbYWinX

⁹ January 8, 2020 Police Review Commission Packet, Berkeley Police Review Commission, January 8, 2020, https://www.cityofberkeley.info/uploadedFiles/Police_Review_Commission/Commissions/2020/2020-01-08-prc-handouts.pdf

The 8 Can't Wait campaign is a project of Campaign Zero, an organization established by Black Lives Matter activists and focused on clear policy solutions to reduce and end police deaths and other forms of police violence.¹⁰ Their studies indicate that eight use of force policies are effective at decreasing police violence by up to 72%.

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

This project has enjoyed increased exposure following the deaths of George Floyd and Breonna Taylor, and others by law enforcement. In a matter of days, hundreds of Berkeley residents have contacted the Mayor's office and City Council to express their support for this campaign and urging immediate adoption. These eight policies are essential reforms and align with best national policing practices.

Over the past decades, Berkeley had already adopted four of the policies:

- Ban on chokeholds and strangleholds
- Requiring a warning before shooting
- A duty to intervene
- Implementing a Use of Force Continuum

The outstanding recommendations from the 8 Can't Wait campaign that Berkeley will implement under this Urgency Resolution are as follows:

- Requiring de-escalation tactics
- Exhausting all alternatives before using lethal force
- Banning the discharge of weapons at moving vehicles
- Requiring officers to report each time they use force or threaten to use force against civilians

E. Final Policy

The January 2020 BPD Revised Draft would achieve at least two additional Campaign Zero objectives, including: requiring de-escalation tactics wherever feasible and prohibiting officers from shooting at moving vehicles in instances where only the vehicle

¹⁰ 8 Can't Wait, Campaign Zero, <https://8cantwait.org/>.

itself is perceived as a threat, except for exigent circumstances such as a mass casualty vehicle event.

However, the current draft does not require that officers exhaust alternatives, including non-force and less lethal force options, before using lethal force. For example, the San Francisco Police Department's Policy Language: Section VI.G: states:

"It is the policy of this Department to use deadly force only as a last resort when reasonable alternatives have been exhausted or are not feasible to protect the safety of the public and police officers. The use of firearms and other deadly force is the most serious decision an officer may ever make. When safe and feasible under the totality of circumstances, officers shall consider other objectively reasonable force options before discharging a firearm or using other deadly force."¹¹

Although BPD's draft before the PRC incorporates significant improvements to use of force reporting, including a requirement to report all force to include physical force, the draft provides a blanket exemption for reporting use of control holds when no pain or injury is reported. While this exemption may be appropriate when escorting arrestees to custody, it is arguably not appropriate in other situations such as when officers gain control of an alleged suspect.

In addition, the PRC draft eliminates the existing General Order U-2's existing language regarding the use of force continuum. The Council's 2017 referral explicitly highlighted the importance of retaining and further clarifying the force continuum. The continuum concept is also one of the eight Campaign Zero policy objectives: "Force continuums restrict the most severe types of force to the most extreme situations and create clear policy restrictions on the use of each police weapon and tactic."

The 2017 Council referral also requested that any force used be broadly categorized into four categories,¹² as is done by the Oakland and BART Police Departments, so that

¹¹ San Francisco Police Department Use of Force Policy, [https://www.sanfranciscopolice.org/sites/default/files/Documents/PoliceDocuments/DepartmentGeneralOrders/DGO%205.01%20Use%20of%20Force%20\(Rov.%2012-21-16\)_0.pdf](https://www.sanfranciscopolice.org/sites/default/files/Documents/PoliceDocuments/DepartmentGeneralOrders/DGO%205.01%20Use%20of%20Force%20(Rov.%2012-21-16)_0.pdf)

¹² For example, categories could include:

Level 1 Incident Parameters:

- (a) No suspect injury or complaint of injury due to interaction with officer.
- (b) No allegation of misconduct against officer, regarding force.

the degree of force used by the department can be evaluated over time and approaches to reduce the level of force developed.

By implementing the proposed use of force amendments, the BPD would be furthering existing internal, local and national efforts to update its use of force policies, and would be acting to enhance safety of the public and the officers sworn to protect them. It is the public interest to act now to update Berkeley's use of force policy.

FINANCIAL IMPLICATIONS

Staff time.

ENVIRONMENTAL SUSTAINABILITY

-
- (c) Officer body camera was activated in a timely manner, per policy and recorded the use of force.
 - (d) Officer used lesser levels of force (e.g. Control holds/pressure point application; Leverage; Grab; Bodyweight; Physical technique or tactic applied to a vulnerable area, excluding strikes [e.g., hair grab, pressure to mastoid or jaw line; and shoulder muscle grab]; Vehicle pursuit with no collision; Firearm drawn/deployed but not fired, suspect contacted)

An uninvolved supervisor will respond to the scene and conduct a Use of Force Investigation and Report

Level 2 Incident Parameters:

- (a) Would have otherwise been classified as a Level 1, except one or more of the following apply:
Suspect injury or complaint of injury due to interaction with officer
 - (1) Suspect injury or complaint of injury due to interaction with officer.
 - (2) Allegation of misconduct against officer, regarding force.
 - (3) Officer body camera was not activated during use of force.
- (b) The use of force is Level 2 if the officer used more severe force (e.g. Takedowns, lifts and leg sweeps; Chemical Agents/Munitions [e.g., Oleoresin Capsicum, CS]; Impact weapon strikes [e.g., baton]; Use of body or body parts; Intentional pointing of a firearm at another person; Use of any other non-lethal or less-than-lethal weapon)

An uninvolved supervisor will respond to the scene and conduct a Use of Force Investigation and Report. Use of Force involving OC will be documented and reviewed additionally in a Use of Pepper Spray Report.

Level 3 Incident Parameters:

- (a) Use of firearm, officer involved shooting
- (b) Any intentional firearm discharge at a person, regardless of injury
- (c) Any unintentional firearms discharge
- (d) Any intentional impact weapon strike to the head
- (e) Any use of force investigation that is elevated to a Level 3 approved by a Watch Commander
- (f) Any force likely to cause death or serious bodily injury

An uninvolved supervisor will respond to the scene. The incident will be investigated, documented, and reviewed in adherence to General Order P-12 (See also General Order C-16).

Urgency Resolution: Directing the Police Review Commission and City Manager to Submit Revised Berkeley Police Department Use of Force Policy for Council Review and Approval Before the 2020 Summer Recess

No environmental impact.

CONTACT

Councilmember Kate Harrison

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Mayor Jesse Arreguín

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ATTACHMENTS:

1. Resolution
2. October 31, 2017 Council Direction to the City Manager on Use of Force
3. December 21, 2017 Off-Agenda Memo
4. January 8, 2020 Use of Force Policy Revised Draft

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

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

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

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

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

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

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

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

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

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

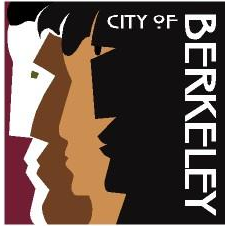
WHEREAS, the Council relied on the campaign when drafting the 2017 referral and the project has enjoyed increased exposure following the deaths of George Floyd and Breonna Taylor, and the countless others whose lives have been lost at the hands of law enforcement; and

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

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

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

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



Kate Harrison
Councilmember District 4

REVISED AGENDA MATERIAL

Meeting Date: **October 31, 2017**

Item Number: **26**

Item Description: **Direct the City Manager and the Berkeley Police Department
Regarding the Berkeley Police Department's Use of Force
Policy**

Submitted by: **Councilmember Kate Harrison**

1. Clarified that the item directs the City Manager and not the Berkeley Police Department.
2. Clarified that the City Manager shall present to the Council by February 27, 2018 a final version of General Order U-2.
3. Specified that prior to implementation, the revised General Order U-2 shall be submitted to the PRC.
4. Clarified that the item does not require adoption of the proposed amendments to General Order U-2 included in Attachment 1.
5. Simplified Attachment 1.



Kate Harrison
Councilmember District 4

ACTION CALENDAR
October 31, 2017

To: Honorable Mayor and Members of the City Council

From: Councilmember Harrison, Mayor Arreguin, and Councilmembers Bartlett and Worthington

Subject: Direct the City Manager ~~and the Berkeley Police Department~~ Regarding the Berkeley Police Department's Use of Force Policy

RECOMMENDATION

1. Direct the City Manager ~~and the Berkeley Police Department~~ ("BPD" or "~~the Department~~") to amend Berkeley Police Department ("BPD" or "the Department") General Order U-2: Use of Force ("General Order U-2") to:
 - a. Enhance BPD's use of force policy statement; and,
 - b. Create a definition of use of force; and
 - c. Require that all uses of force be reported; and
 - d. Categorize uses of force into levels for the purposes of facilitating the appropriate reporting, investigation, documentation and review requirements; and
 - e. Require Use of Force Reports to be captured in a manner that allows for analysis; and
 - f. Require that the Department prepare an annual analysis report relating to use of force to be submitted to the Chief of Police, Police Review Commission ("PRC") and Council.
2. Direct that the City Manager report to the Council by December 12, 2017 on the progress to date and present to the Council by February 27, 2018 a final version of General Order U-2.
- 2.3. Prior to implementation, the revised General Order U-2 shall be submitted to the PRC in accordance with BMC 3.32.090(B).

BACKGROUND

The BPD has a long record of embracing modern policing policies. A further enhancement would be to clarify the Department's use of force policies.

Specifically, the June 27, 2017 draft report commissioned by BPD and authored by CPE—an independent, non-profit, grant-funded organization—advised that BPD policy is not comprehensive in tracking use of force by BPD officers:

“BPD departmental policy does not require the comprehensive tracking of use of force incidents. In particular, BPD policy does not require that an officer's use of physical force be reported unless the officer used a weapon, the subject was injured, or the subject complains. As a result, incidents of physical force not involving a weapon are not comprehensively reported or tracked by BPD, and are not reflected.”

That same report confirmed that Hispanic and Black people in Berkeley are more likely to be subjected to the use of force by BPD. With respect to the latter group, the report noted that “Black residents of Berkeley were about six times more likely than White residents to be subjected to reported use of force.” This part of the report is not planned for revision in the final report.

Berkeley is not immune to the broader history of racial and ethnic disparities in the United States. It is incumbent upon the City to continue its efforts towards addressing and remedying ongoing instances of inequity. These issues are of particular urgency given that the City has endowed the police with the responsibility to enforce the law and keep the peace. Most critically, the police are empowered to reasonably employ lethal, less-than-lethal and non-lethal force for the purpose of achieving these ends when justified by law and city protocols and procedures. In short, the City has the means and power to dramatically affect the lives and liberties of the people within its jurisdiction. Therefore, to ensure the public's safety and liberty, the utmost prudence must be demonstrated in internal policies governing the use of force. Officers must strive to use the minimal amount of force necessary and use de-escalation techniques whenever feasible and appropriate.

Current BPD policy requires officers to submit an oral report to their supervisor in five situations relating to the use of force:

- (1) An officer discharges a firearm intentionally or unintentionally on duty (other than during training), or off-duty while acting in the capacity of a police officer.
- (2) When an officer or employee uses force that results in death or injury, or when a subject complains that an injury has been inflicted. (See also General Order C-16).
- (3) When an officer or employee uses a non-lethal weapon (e.g., Oleoresin Capsicum or baton) on a person, whether or not an injury is sustained.
- (4) When an officer or employee uses a force during a crowd situation.

- (5) When any officer or employee observes a potentially unauthorized use of force

Department supervisors are not required to report when other types of force are used.

It is necessary to ensure that the Department and City have a clear understanding of its use of force policies and how force is being used in practice. Current reporting policies are in some cases ambiguous and incomplete. Further review of BPD General Order U-2 has indicated that it could be improved with substantive and organizational amendments relating to use of force. The Council, deferring to the expertise of the BPD, is not requiring that the Department adopt the proposed amendments to General Order U-2 included in Attachment 1 of this item. Instead, Attachment 1 should serve as a template for accomplishing the broader goals of the Council and the recommendations outlined in item 1.

First, the BPD and the community would benefit from an updated policy statement regarding use of force in General Order U-2. The proposed policy statement attached to this item draws from the statements of the Bay Area Rapid Transit Police Department ("BART PD") and the Oakland Police Department ("OPD"). It also seeks to highlight BPD's commitment to valuing the protection and sanctity of human life, striving to use the minimal amount of force necessary, a requirement to de-escalate force when a lesser level of force is reasonable, increased attention to applying force to vulnerable populations and the necessity of transparency, accountability through rigorous reporting and review of all instances of the use of force, and not using force with bias, based upon: race; ethnicity or nationality; religion; sex, sexual orientation; economic status; age; cultural group; disability, or affiliation with any other similar identifiable group. While the policy statement references the importance of de-escalation, a more detailed section relating to de-escalation techniques is beyond the scope of this referral. BPD might consider referring to Section 300.2.2, De-Escalation Techniques, in BART PD's Use of Force policy.

Second, the proposed update adds a foundational definition of "Use of Force" to the definitions section of General Order U-2. The definition of force proposed here explicitly includes physical techniques and tactics, meaning force stemming from the utilization of an officer's body. While complaints about the improper use of officer hands and feet is referenced in General Order P-26 and a checkbox relating to physical force is included in the exemplar Use of Force Report attached to General Order U-2, there is no explicit reference in General Order U-2 to reportable use of an officer's body.

Third, the proposed update reorganizes and enhances the use of force reporting section. Similar to the general orders of BART PD and OPD, the proposed update requires all uses of force to be reported, and categorizes uses of force into levels for the purposes of facilitating the appropriate reporting, investigation, documentation and review, and for illustrating the force continuum. Physical force and the intentional

pointing of a weapon are explicitly referenced as a reportable uses of force. Body cameras are also referenced with the expectation that the body camera implementation will be finalized soon. If the program is not finalized by the time General Order U-2 is updated, the body camera language should be added upon implementation.

Fourth, the proposed update requires that the Use of Force Reports should be digitized and made available internally in a text-searchable format. The purpose of this provision is to encourage Department leadership to have use of force data readily available to them for analysis purposes. Analysis can rapidly inform the implementation of new policies to address disparities and other issues. In addition, the proposed update requires the Department to prepare an annual anonymized analysis report relating to use of force to be submitted to the Chief of Police, ~~Police Review Commission~~ PRC and Council.

BART PD and OPD have both categorized and organized use of force into levels of intensity, clarified physical uses of force and enhanced reporting policies for the purpose of analysis. These departments have clear policies about the force continuum available to officers and the responsibility for reporting, investigating, documenting and reviewing uses of force across their respective continua. In addition, the San Francisco Police Department ("SFPD") has begun implementing more than 200 recommendations made by the Department of Justice, including those related to use of force policies. SFPD has reported in 2017 an 11% decrease in use of force incidents and an 8.6% decrease in complaints to the San Francisco Department of Police Accountability as compared to the first six months of 2016. The Council, the City Manager and the BPD would benefit from the examples of neighboring departments in seeking to improve community policing and accountability. By implementing the proposed use of force amendments, the BPD would be furthering existing internal and national efforts to update its use of force policies, and would be acting to enhance safety of the public and the officers sworn to protect them. Officers would face less confusion about the force continuum and police leadership would enjoy improved understanding of how their officers are employing force. By acting now to further update its use of force policies, the City can empower both the BPD and the community to understand how to best address use of force disparities disproportionately affecting certain racial and ethnic groups.

FINANCIAL IMPLICATIONS

Staff time is necessary for amending General Order U-2, and additional training will be needed to comply with these updates. The City stands to potentially benefit from fewer instances of costly litigation and personnel investigations due to the increased clarity of General Order U-2.

ENVIRONMENTAL SUSTAINABILITY

No Ecological Impact

CONTACT PERSON

Councilmember Kate Harrison, Council District 4, 510-981-7140

ATTACHMENTS

1. Proposed amendments to General Order U-2
2. Use of Force policies of the BART PD and OPD

BERKELEY POLICE DEPARTMENT

DATE ISSUED: ~~September 20, 2017~~

GENERAL ORDER U-2

SUBJECT: USE OF FORCE

PURPOSE

- 1 - The purpose of this General Order is to provide Departmental standards on the reporting and use of force. This General Order supersedes all other Orders, Regulations, and training information to the extent that they are inconsistent with this Order.

POLICY

- 2 - The Berkeley Police Department values the protection and sanctity of human life. The Department is committed to accomplishing the police objective with respect and minimal reliance on the use of force, and de-escalation tactics before resorting to force, whenever feasible.
- 3 - The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force.
- 4 - Officers must strive to use the minimal amount of force necessary. The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary, with limited information and in circumstances that are tense, uncertain and rapidly evolving.
- 5 - Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident.
- 6 - Officers are required to de-escalate the force when the officer reasonably believes a lesser level or no further force is appropriate. Officers shall use de-escalation techniques whenever feasible and appropriate to potentially reduce or eliminate the need to use force; and to prevent injuries to the subject, the public and the officer(s).
- 7 - Officers and employees shall not use force with bias based upon: race; ethnicity or nationality; religion; sex, sexual orientation; economic status; age; cultural group; disability; or affiliation with any other similar identifiable group.
- 8 - Use of force against vulnerable populations (such as children, elderly, pregnant women, people with physical and mental disabilities, and people with limited English proficiency) can undermine public trust and should only be used if no other options appear reasonable or effective.
- 9 - Officers and employees shall intervene and prevent or stop the use of unreasonable force by other members. Officers and employees are prohibited from the use of unreasonable force and using force for interrogation or

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punishment.

10 - The Department recognizes that transparency and accountability in the use of force is essential to preserving the trust of the community and to maintaining professional standards. This policy therefore requires rigorous reporting and review of all instances of the use of force.

211 - Police officers may use reasonable force to (1) make an arrest, (2) prevent an escape of a suspect, (3) overcome resistance, or (4) maintain order.

(a) Under the Fourth Amendment of the United States Constitution, an officer can use reasonable force when doing so is reasonable under the totality of the circumstances as they appear through the eyes of the officer. Circumstances to be considered include the immediacy and severity of a threat to the safety of the officer or others, the severity of the crime involved, and whether a suspect is fleeing or resisting.

312 - In deciding what type of reasonable force to use, officers and employees must use sound judgment and their training to assess the degree of threat in a given situation, and to determine what Departmentally authorized force techniques or weapons will bring the situation under control in a reasonable manner.

(a) The Department uses a “use of force continuum” that refers to the concept that there are reasonable responses for every threat an officer faces in a hostile situation. The “spoked wheel” is one visual concept of the various options that an officer should consider in a threatening situation.

(b) The force utilized need not be sequential (e.g., gradual or preceded by attempts at lower levels of force) if those lower levels are not appropriate to the threat.

DEFINITIONS

13 - Use of Force: The application of physical techniques or tactics, vehicles, chemical agents or weapons to another person.

414 - Lethal Force: Any use of force that creates a substantial risk of causing death or serious bodily injury.

515 - Less-Than-Lethal Force: Any use of force which, due to possible physiological effects of application, presents less potential for causing death or serious injury than conventional lethal force options.

(a) Less-than-lethal force options include, but are not limited to, a specialized launcher, or other authorized device that can discharge, fire, launch or otherwise propel single or multiple flexible or non-flexible projectiles designed to cause physiological effects consistent with blunt force impact.

616 - Non-Lethal Force: Any use of force other than lethal force or less-than-

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lethal force.

~~717~~ - Officer (or) Police Officer: Any sworn peace officer.

~~818~~ - Authorized Employee: Any non-sworn employee who has received defensive tactics training and has been authorized by the Chief of Police to use non-lethal force.

~~919~~ - Employee: Any non-sworn employee of the Berkeley Police Department, including those deemed "authorized employees."

~~1020~~ - Deploy:

- (a) With respect to less-than-lethal munitions, removal of a launcher, projectile or other device from its storage container for the purpose of operational use.
- (b) With respect to chemical agents and smoke, removal of a canister or delivery device from its storage container for the purpose of operational use.

~~1121~~ - Use:

- (a) With respect to less-than-lethal munitions, to discharge a less-than-lethal munition.
- (b) With respect to chemical agents and smoke, to discharge the contents of a canister or delivery device.

PROCEDURES

Use of Lethal Force

~~1222~~ - Officers shall not discharge firearms or use other lethal force in connection with police duty, except in the following circumstances:

- (a) When the officer reasonably believes that doing so is necessary to protect the officer or others from death or serious bodily injury, and, where feasible, some warning has been given.
- (b) To apprehend a suspected fleeing felon:
 - (1) When necessary to prevent escape, and
 - (2) When the officer has probable cause to believe that the suspected fleeing felon poses a significant threat of death or serious bodily injury to the officer or others, and
 - (3) Where feasible, some warning has been given.
- (c) During other police duty:

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- (1) In supervised Department training sessions at an approved range, or other site.
- (2) To destroy an animal that represents a threat to public safety, or as a humanitarian measure where the animal is seriously injured. If possible, supervisory approval should be obtained prior to using lethal force to destroy an animal.

1323 - Officers shall not discharge firearms or use other lethal force in connection with police duty, except in the following circumstances:

Use of Vehicles

1424 - Officers shall not use police vehicles to ram or block other vehicles, persons, or moving objects in a manner that reasonably appears to constitute the use of lethal force, except in the following circumstances:

- (a) When the officer reasonably believes that doing so is necessary to protect the officer or others from death or serious bodily injury, and, where feasible, some warning has been given.
- (b) To apprehend a suspected fleeing felon:
 - (1) When necessary to prevent escape, and
 - (2) When the officer has probable cause to believe that the suspected fleeing felon poses a significant threat of death or serious bodily injury to the officer or others, and
 - (3) Where feasible, some warning has been given.

Deployment and Use of Less-Than-Lethal Force

1525 - Less-than-lethal munitions shall only be deployed and used by trained officers authorized by the Chief of Police.

1626 - Except during authorized training programs, less-than-lethal force shall be deployed only at the direction of a sergeant or command officer, or the Incident Commander in a crowd situation.

1727 - Less-than-lethal force shall only be used in the following situations, and, where feasible, after some warning has been given:

- (a) When an act of violence is occurring, or is about to occur;
- (b) To overcome the resistance of a physically combative person, or to gain compliance from a non-compliant person reasonably believed to be armed;

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- (c) To deter a person who is reasonably believed to be armed and is threatening to harm him/herself, another person, or an officer; or,
- (d) To resolve a potentially violent incident not otherwise described above, when deemed reasonable by the authorizing sergeant or commander.

~~1828~~ - When practical, approval for the deployment and use of less-than-lethal force will be obtained from the Patrol Division Watch Commander. If there is no Watch Commander on duty, deployment authorization will be requested from the Duty Command Officer (DCO).

- (a) Prior to deployment, efforts should be made to ensure an appropriate medical response is available.
- (b) In the event exigent circumstances preclude prior command approval, the supervisor authorizing less-than-lethal force deployment shall notify the Watch Commander, or in his/her absence the DCO, as soon as practical.

~~1929~~ - In crowd situations, less-than-lethal force and/or chemical agents shall not be used without the prior approval of the Chief of Police, or his/her designee, unless exigent circumstances prevent the request from being made and the delay would likely risk injury to citizens or police personnel (e.g., rocks, bottles, or other projectiles are being thrown and immediate crowd dispersal is necessary).

- (a) In the event immediate use is necessary, notification to the Chief of Police, or his/her designee, should be made as soon as possible after the deployment.
- (b) In the event a use of force as described in Section 23 of this Order occurs during an unusual occurrence as described in General Order U-4, the officer shall prepare a supplemental report as soon as practical following the incident.
- (c) Each officer shall include in the report, to the extent possible, specific information regarding each use of force, e.g., the reason for the use of force, location, description of the individual(s) upon whom force was used, type of force used, etc.
- (d) Officers deploying pepper spray in a crowd situation shall attempt to limit collateral exposure to non-involved parties. Where there is probable cause to arrest for a crime, officers shall prioritize where practical the arrest of individuals upon whom pepper spray has been deployed.

Use of Non-Lethal Force

~~2030~~ - When lethal force and less-than-lethal force are not authorized, officers and authorized employees may use reasonable approved non-lethal force techniques

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and weapons in the following circumstances:

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

Prohibited Uses of Force

2431 - The following uses of force are prohibited:

- (a) Carotid Restraint Hold: Council Resolution No. 52,605 - N.S., dated February 14, 1985, "Prohibiting use of 'chokehold' for law enforcement purposes in the City of Berkeley" states: "Be it resolved by the Council of the City of Berkeley as follows: That the chokehold, including but not limited to the carotid restraint and the bar-arm hold, is hereby banned from use for law enforcement purposes in the City of Berkeley."
 - (1) The term bar-arm refers to a variety of techniques. As defined in the City Council Resolution, "bar-arm hold" refers to *any* use of the forearm to exert pressure against the front of the neck. However, other types of arm hold techniques (e.g., those that involve control of the arm, wrist or elbow) remain authorized.
- (b) On Sept. 12, 2017, the Berkeley City Council re-affirmed and further amended the Council's policy regarding the use of pepper spray as such use relates to crowd control, expression of First Amendment speech, and addressing acts of violence by specific individuals within a crowd.
 - (1) Officers shall not use pepper spray as a crowd control technique to disperse or move a crowd. Oleoresin Capsicum (pepper spray) shall not be directed against a person or persons who are engaged in legal speech or other expression that is protected by the First Amendment, nor upon those committing unlawful acts by non-violent or passive resistant means, (e.g. sitting or lying down to block a street or doorway).
- (c) Deployment of less-than-lethal munitions from a shotgun is prohibited.

Provision of Medical Attention

2232 - When an officer or employee uses force that results in injury, or when a subject complains that an injury has been inflicted, the officer or employee shall ensure that the subject receives appropriate medical care. (See also General Order

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A-17).

Unauthorized Use of Force / Intervention and Reporting

~~2333~~ - When an officer or employee witnesses any other officer or employee of this Department, or of any other law enforcement agency, use force that he or she believes is unauthorized, he or she shall do the following:

- (a) If the witness employee is a sworn officer, he or she shall immediately take reasonable action to attempt to mitigate such use of force. This may include verbal intervention or, if appropriate, physical intervention.
 - (1) A sworn officer's failure to act may potentially expose him/her to criminal charges and/or civil liability.
- (b) Any officer or employee who observes a potentially unauthorized use of force shall make an oral report to an on-duty sergeant or a command officer at the first opportunity.

USE OF FORCE REPORTING, INVESTIGATION, DOCUMENTATION AND REVIEW

Use of Force / Reporting Requirements

- 34 - Personnel shall notify his/her supervisor immediately or as soon as practical, of any use of force, allegation of a use of force, or an allegation of unreasonable force.
- 35 - All uses of force must be documented in a police report and reviewed by an on-duty sergeant or command officer who was not directly involved in the incident. The following categories and parameters will explain levels of force and the respective reporting, investigation, documentation, and review requirements. Incidents will be categorized as Level 1, Level 2, or Level 3. Data on each level of use of force shall be entered into the Use of Force Report and the BPD's database.

Use of Force / Level 1

36 - Level 1 Incident Parameters:

- (a) No suspect injury or complaint of injury due to interaction with officer.
- (b) No allegation of misconduct against officer, regarding force.
- (c) Officer body camera was activated in a timely manner, per policy and recorded the use of force.

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(d) Officer used lesser levels of force.¹

37 - An uninvolved supervisor will respond to the scene and conduct a Use of Force Investigation and Report.

Use of Force / Level 2

38 - Level 2 Incident Parameters:

(a) Would have otherwise been classified as a Level 1, except one of more of the following apply:

(1) Suspect injury or complaint of injury due to interaction with officer.

(2) Allegation of misconduct against officer, regarding force.

(3) Officer body camera was not activated during use of force.

(b) The use of force is Level 2 if the officer used more severe force.²

39 - An uninvolved supervisor will respond to the scene and conduct a Use of Force Investigation and Report. Use of Force involving OC will be documented and reviewed additionally in a Use of Pepper Spray Report.

Use of Force / Level 3

40 - Level 3 Incident Parameters:

(a) Use of firearm, officer involved shooting

¹ For example, any of the following force options were used:

(1) Control holds/pressure point application

(2) Leverage

(3) Grab

(4) Bodyweight

(5) Physical technique or tactic applied to a vulnerable area, excluding strikes (e.g., hair grab, pressure to mastoid or jaw line; and shoulder muscle grab)

(6) Vehicle pursuit with no collision

(7) Firearm drawn/deployed but not fired, suspect contacted

² For example, any of the following force options were used:

(1) Takedowns, lifts and leg sweeps

(2) Chemical Agents/Munitions (e.g., Oleoresin Capsicum, CS)

(3) Impact weapon strikes (e.g., baton)

(4) Use of body or body parts

(5) Intentional pointing of a firearm at another person

(6) Use of any other non-lethal or less-than-lethal weapon

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(b) Any intentional firearm discharge at a person, regardless of injury

(c) Any unintentional firearms discharge

(d) Any intentional impact weapon strike to the head

(e) Any use of force investigation that is elevated to a Level 3 approved by a Watch Commander

(f) Any force likely to cause death or serious bodily injury

41 - An uninvolved supervisor will respond to the scene. The incident will be investigated, documented, and reviewed in adherence to General Order P-12 (See also General Order C-16).

2442 - Any officer or employee who uses force shall, as soon as practical, make an oral report to an on-duty sergeant or command officer in the following four situations:

- (a) When an officer discharges a firearm (intentional or unintentional) while on duty, except during a supervised training session.
- (b) When an officer discharges a firearm while off-duty pursuant to his or her authority as a law enforcement officer.
- (c) When an officer or employee uses force that results in death or injury, or when a subject complains that an injury has been inflicted. (See also General Order C-16)
- (d) When an officer or employee uses a non-lethal *weapon* (e.g., Oleoresin Capsicum or baton) on a person, whether or not an injury is sustained

2543 - The officer or employee must also complete a police or incident report in any of the above four situations.

2644 - Whenever an officer or employee uses Oleoresin Capsicum (pepper spray), he or she must also complete a "Use of Pepper Spray Report" form. (See Training and Information Bulletin #216 for detailed instructions in completing this form).

Use of Force / Supervisor Responsibilities

45 - A supervisor or commander involved in a use of force incident shall not investigate the incident or review for approval the Use of Force Report.

2746 - A sergeant shall immediately be assigned and shall respond to the scene in the following four situations:

- (a) When an officer discharges a firearm (intentional or unintentional) while on

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duty, except during a supervised training session.

- (b) When an officer discharges a firearm while off-duty pursuant to his or her authority as a law enforcement officer.
- (c) When an officer or employee uses force (including, but not limited to, a non-lethal weapon) that results in death or injury, or when a subject complains that an injury has been inflicted. (See also General Order C-16)
- (d) When an officer or employee reports a use of force by another officer or employee of the Department, or of any other law enforcement agency, that he or she believes is unauthorized.

~~2847~~ - A supervisor shall complete a Use of Force Report in any of the above four situations.

- (a) A supervisor shall complete a Use of Force Report whenever an officer or employee uses a non-lethal weapon on a person, even if no injury results.
- (b) The supervisor shall attach copies of all police reports relating to the incident to the Use of Force Report. (See Use of Force Report form at the end of this General Order)

~~48~~ - The supervisor who completes the Use of Force Report shall route the Use of Force Report (with attached police reports) and/or Use of Pepper Spray Report forms to the Division Captain through the chain of command.

Use of Force / Administrative Review

~~2949~~ - The Division Captain shall review the Use of Force Report (and when applicable, Use of Pepper Spray Report) and route the report to the Chief of Police with a recommendation of findings.

- (a) The Chief of Police may convene a Review Board (as outlined in General Order R-3) instead of utilizing Division Captain Review.

~~3050~~ - The Chief of Police will make a finding that the use of force was either within policy or initiate additional administrative review/investigation as may be appropriate.

~~3451~~ - Any determination concerning the propriety of force used will be based on facts and the information available to the officer at the time the force was employed, and not upon information gained after the fact.

~~52~~ - All Use of Force Reports will be reviewed to determine whether Departmental use of force regulations, policies, or procedures were: 1) violated or followed; 2) clearly understood, effective, and relevant to the situation; and/or, 3) require

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revision or additional training.

53 - Use of Force Reports shall be made available internally in a digital format.

54 - At least annually, the office of the Chief of Police should prepare an analysis report on use of force incidents. The report should be submitted to the Chief of Police, the City Council, and the Police Review Commission. The report should not contain the names of officers, suspects or case numbers, and should include:

(a) An analysis of use of force incidents with details of the race and ethnicity of the individual impacted, location and type of force used.

(b) The identification of any trends in the use of force by members.

(c) Training needs recommendations.

(d) Equipment needs recommendations.

(e) Policy revision recommendations

55 - Officers will receive annual (at a minimum) training on the policy outlined in General Order U-2 and demonstrate their knowledge and understanding.

3256 - Use of Force Reports will be held in file for five (5) years and then purged, unless needed for additional administrative action.

SPECIAL PROCEDURES / DEATHS AND SERIOUS BODILY INJURY

3357 - In addition to the above, the Departmental response to incidents in which an officer uses force that results in death or a serious bodily injury shall be as follows:

(a) The officer shall be placed on administrative leave as outlined in Police Regulation 325: " ... If any person is seriously injured or killed as a result of an officer's actions, including the discharging of a firearm, such officer shall be placed on administrative leave for a period of time, as determined by the Chief of Police, depending upon the circumstances of the situation. The officer(s) shall not return to regular duties until he/she meets with a mental health professional."

(b) The Department shall conduct both an administrative and criminal investigation of the incident as outlined in General Order P-12 (Police-Involved Shootings and Fatal or Serious Injury Incidents); and a Review Board shall be convened as described in General Order R-3.

References: *Tennessee v. Garner* (1986) 471 U.S. 1
Graham v. Connor (1989) 490 U.S. 386

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Doerle v. Rutherford (9th Cir. 2001) 272 F.3d 1272
California Penal Code §§196, 197, 835, 835(a), 836, 836.5, and 843
General Orders A-17, C-16, C-64, F-2, P-12, P-26, R-3 and U-4
Police Regulations 202, 318, 321, 322, 323, 324, 325 and 332
Training and Information Bulletin 216
Lethal and Non-Lethal Force Manual
Uniform and Equipment Manual
City of Berkeley Council Resolution No. 52,605 – N.S. (2/14/85),
“Prohibiting use of ‘chokehold’ for law enforcement
purposes in the City of Berkeley”
National Tactical Officers Association, General Policy Statement
for Less-Than-Lethal Impact Projectiles (11/22/2002)

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EXEMPLAR

BERKELEY POLICE DEPARTMENT
USE OF FORCE REPORT

This report is to be completed by an on-duty supervisor per General Order U-2 if:
(1) Use of any force results in injury or death to a person; (2) Non-lethal weapons
(OC/baton) or less-than-lethal munitions are used on a person; ~~or~~ (3) An officer
discharges a firearm intentionally or unintentionally on duty (other than during
training), or off-duty while acting in the capacity of a police officer.; or (4) Use of any
force meeting the parameters of a Level 1, Level 2 or Level 3 use of force.

Date: _____

To: Chief of Police via Chain of Command

From: _____

Subject: USE OF FORCE REVIEW

Refer to Case Number(s): _____

Date / Time of Incident: _____

Location of Incident: _____

Nature of Incident: _____

Officer(s)/Employee(s) Involved: _____

Type of Force used: ☐ Physical ☐ Baton ☐ O.C.
☐ Firearm ☐ Less-than-lethal ☐ Other

Level of Force used: ☐ Level 1 ☐ Level 2 ☐ Level 3

Was Officer or Police Employee injured? ☐ Yes ☐ No

If yes, nature of injuries: _____

Medical treatment required: BFD Response - ☐ Yes ☐ No

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Was a citizen(s) injured during this incident? ☐ Yes ☐ No

If "yes," nature of injuries: _____

Medical treatment required: BFD Response - ☐ Yes ☐ No

Investigator(s) and Identification Technician who responded, if any:

Were photographs taken? ☐ Yes ☐ No

Summary of actions of Officer(s) involved: _____

Supervisor's Comments:

Division Captain Recommendation:

Chief of Police (*Signature*)

(*Date*)

Findings:

- ☐ Within Policy
- ☐ Referred for Administrative
Action/Investigation

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- 8 - Use of force against vulnerable populations (such as children, elderly, pregnant women, people with physical and mental disabilities, and people with limited English proficiency) can undermine public trust and should only be used if no other options appear reasonable or effective.
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 - (a) Less-than-lethal force options include, but are not limited to, a specialized launcher, or other authorized device that can discharge, fire, launch or otherwise propel single or multiple flexible or non-flexible projectiles designed to cause physiological effects consistent with blunt force impact.
- 16 - Non-Lethal Force: Any use of force other than lethal force or less-than-lethal force.

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- 17 - Officer (or) Police Officer: Any sworn peace officer.
- 18 - Authorized Employee: Any non-sworn employee who has received defensive tactics training and has been authorized by the Chief of Police to use non-lethal force.
- 19 - Employee: Any non-sworn employee of the Berkeley Police Department, including those deemed "authorized employees."
- 20 - Deploy:
 - (a) With respect to less-than-lethal munitions, removal of a launcher, projectile or other device from its storage container for the purpose of operational use.
 - (b) With respect to chemical agents and smoke, removal of a canister or delivery device from its storage container for the purpose of operational use.
- 21 - Use:
 - (a) With respect to less-than-lethal munitions, to discharge a less-than-lethal munition.
 - (b) With respect to chemical agents and smoke, to discharge the contents of a canister or delivery device.

PROCEDURES

Use of Lethal Force

- 22 - Officers shall not discharge firearms or use other lethal force in connection with police duty, except in the following circumstances:
 - (a) When the officer reasonably believes that doing so is necessary to protect the officer or others from death or serious bodily injury, and, where feasible, some warning has been given.
 - (b) To apprehend a suspected fleeing felon:
 - (1) When necessary to prevent escape, and
 - (2) When the officer has probable cause to believe that the suspected fleeing felon poses a significant threat of death or serious bodily injury to the officer or others, and
 - (3) Where feasible, some warning has been given.
 - (c) During other police duty:
 - (1) In supervised Department training sessions at an approved range,

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or other site.

- (2) To destroy an animal that represents a threat to public safety, or as a humanitarian measure where the animal is seriously injured. If possible, supervisory approval should be obtained prior to using lethal force to destroy an animal.

- 23 - Officers shall not discharge firearms or use other lethal force in connection with police duty, except in the following circumstances:

Use of Vehicles

- 24 - Officers shall not use police vehicles to ram or block other vehicles, persons, or moving objects in a manner that reasonably appears to constitute the use of lethal force, except in the following circumstances:

- (a) When the officer reasonably believes that doing so is necessary to protect the officer or others from death or serious bodily injury, and, where feasible, some warning has been given.
- (b) To apprehend a suspected fleeing felon:
 - (1) When necessary to prevent escape, and
 - (2) When the officer has probable cause to believe that the suspected fleeing felon poses a significant threat of death or serious bodily injury to the officer or others, and
 - (3) Where feasible, some warning has been given.

Deployment and Use of Less-Than-Lethal Force

- 25 - Less-than-lethal munitions shall only be deployed and used by trained officers authorized by the Chief of Police.
- 26 - Except during authorized training programs, less-than-lethal force shall be deployed only at the direction of a sergeant or command officer, or the Incident Commander in a crowd situation.
- 27 - Less-than-lethal force shall only be used in the following situations, and, where feasible, after some warning has been given:
 - (a) When an act of violence is occurring, or is about to occur;
 - (b) To overcome the resistance of a physically combative person, or to gain compliance from a non-compliant person reasonably believed to be armed;
 - (c) To deter a person who is reasonably believed to be armed and is

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threatening to harm him/herself, another person, or an officer; or,

- (d) To resolve a potentially violent incident not otherwise described above, when deemed reasonable by the authorizing sergeant or commander.
- 28 - When practical, approval for the deployment and use of less-than-lethal force will be obtained from the Patrol Division Watch Commander. If there is no Watch Commander on duty, deployment authorization will be requested from the Duty Command Officer (DCO).
- (a) Prior to deployment, efforts should be made to ensure an appropriate medical response is available.
 - (b) In the event exigent circumstances preclude prior command approval, the supervisor authorizing less-than-lethal force deployment shall notify the Watch Commander, or in his/her absence the DCO, as soon as practical.
- 29 - In crowd situations, less-than-lethal force and/or chemical agents shall not be used without the prior approval of the Chief of Police, or his/her designee, unless exigent circumstances prevent the request from being made and the delay would likely risk injury to citizens or police personnel (e.g., rocks, bottles, or other projectiles are being thrown and immediate crowd dispersal is necessary).
- (a) In the event immediate use is necessary, notification to the Chief of Police, or his/her designee, should be made as soon as possible after the deployment.
 - (b) In the event a use of force as described in Section 23 of this Order occurs during an unusual occurrence as described in General Order U-4, the officer shall prepare a supplemental report as soon as practical following the incident.
 - (c) Each officer shall include in the report, to the extent possible, specific information regarding each use of force, e.g., the reason for the use of force, location, description of the individual(s) upon whom force was used, type of force used, etc.
 - (d) Officers deploying pepper spray in a crowd situation shall attempt to limit collateral exposure to non-involved parties. Where there is probable cause to arrest for a crime, officers shall prioritize where practical the arrest of individuals upon whom pepper spray has been deployed.

Use of Non-Lethal Force

- 30 - When lethal force and less-than-lethal force are not authorized, officers and authorized employees may use reasonable approved non-lethal force techniques and weapons in the following circumstances:

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

Prohibited Uses of Force

31 - The following uses of force are prohibited:

- (a) Carotid Restraint Hold: Council Resolution No. 52,605 - N.S., dated February 14, 1985, "Prohibiting use of 'chokehold' for law enforcement purposes in the City of Berkeley" states: "Be it resolved by the Council of the City of Berkeley as follows: That the chokehold, including but not limited to the carotid restraint and the bar-arm hold, is hereby banned from use for law enforcement purposes in the City of Berkeley."
 - (1) The term bar-arm refers to a variety of techniques. As defined in the City Council Resolution, "bar-arm hold" refers to *any* use of the forearm to exert pressure against the front of the neck. However, other types of arm hold techniques (e.g., those that involve control of the arm, wrist or elbow) remain authorized.
- (b) On Sept. 12, 2017, the Berkeley City Council re-affirmed and further amended the Council's policy regarding the use of pepper spray as such use relates to crowd control, expression of First Amendment speech, and addressing acts of violence by specific individuals within a crowd.
 - (1) Officers shall not use pepper spray as a crowd control technique to disperse or move a crowd. Oleoresin Capsicum (pepper spray) shall not be directed against a person or persons who are engaged in legal speech or other expression that is protected by the First Amendment, nor upon those committing unlawful acts by non-violent or passive resistant means, (e.g. sitting or lying down to block a street or doorway).
- (c) Deployment of less-than-lethal munitions from a shotgun is prohibited.

Provision of Medical Attention

32 - When an officer or employee uses force that results in injury, or when a subject complains that an injury has been inflicted, the officer or employee shall ensure that the subject receives appropriate medical care. (See also General Order A-17).

Unauthorized Use of Force / Intervention and Reporting

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- 33 - When an officer or employee witnesses any other officer or employee of this Department, or of any other law enforcement agency, use force that he or she believes is unauthorized, he or she shall do the following:
- (a) If the witness employee is a sworn officer, he or she shall immediately take reasonable action to attempt to mitigate such use of force. This may include verbal intervention or, if appropriate, physical intervention.
 - (1) A sworn officer's failure to act may potentially expose him/her to criminal charges and/or civil liability.
 - (b) Any officer or employee who observes a potentially unauthorized use of force shall make an oral report to an on-duty sergeant or a command officer at the first opportunity.

USE OF FORCE REPORTING, INVESTIGATION, DOCUMENTATION AND REVIEW

Use of Force / Reporting Requirements

- 34 - Personnel shall notify his/her supervisor immediately or as soon as practical, of any use of force, allegation of a use of force, or an allegation of unreasonable force.
- 35 - All uses of force must be documented in a police report and reviewed by an on-duty sergeant or command officer who was not directly involved in the incident. The following categories and parameters will explain levels of force and the respective reporting, investigation, documentation, and review requirements. Incidents will be categorized as Level 1, Level 2, or Level 3. Data on each level of use of force shall be entered into the Use of Force Report and the BPD's database.

Use of Force / Level 1

- 36 - Level 1 Incident Parameters:
- (a) No suspect injury or complaint of injury due to interaction with officer.
 - (b) No allegation of misconduct against officer, regarding force.
 - (c) Officer body camera was activated in a timely manner, per policy and recorded the use of force.
 - (d) Officer used lesser levels of force.¹

¹ For example, any of the following force options were used:

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- 37 - An uninvolved supervisor will respond to the scene and conduct a Use of Force Investigation and Report.

Use of Force / Level 2

- 38 - Level 2 Incident Parameters:

- (a) Would have otherwise been classified as a Level 1, except one of more of the following apply:

- (1) Suspect injury or complaint of injury due to interaction with officer.
- (2) Allegation of misconduct against officer, regarding force.
- (3) Officer body camera was not activated during use of force.

- (b) The use of force is Level 2 if the officer used more severe force.²

- 39 - An uninvolved supervisor will respond to the scene and conduct a Use of Force Investigation and Report. Use of Force involving OC will be documented and reviewed additionally in a Use of Pepper Spray Report.

Use of Force / Level 3

- 40 - Level 3 Incident Parameters:

- (a) Use of firearm, officer involved shooting
- (b) Any intentional firearm discharge at a person, regardless of injury
- (c) Any unintentional firearms discharge

-
- (1) Control holds/pressure point application
 - (2) Leverage
 - (3) Grab
 - (4) Bodyweight
 - (5) Physical technique or tactic applied to a vulnerable area, excluding strikes (e.g., hair grab, pressure to mastoid or jaw line; and shoulder muscle grab)
 - (6) Vehicle pursuit with no collision
 - (7) Firearm drawn/deployed but not fired, suspect contacted

² For example, any of the following force options were used:

- (1) Takedowns, lifts and leg sweeps
- (2) Chemical Agents/Munitions (e.g., Oleoresin Capsicum, CS)
- (3) Impact weapon strikes (e.g., baton)
- (4) Use of body or body parts
- (5) Intentional pointing of a firearm at another person
- (6) Use of any other non-lethal or less-than-lethal weapon

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- (d) Any intentional impact weapon strike to the head
 - (e) Any use of force investigation that is elevated to a Level 3 approved by a Watch Commander
 - (f) Any force likely to cause death or serious bodily injury
- 41 - An uninvolved supervisor will respond to the scene. The incident will be investigated, documented, and reviewed in adherence to General Order P-12 (See also General Order C-16).
- 42 - Any officer or employee who uses force shall, as soon as practical, make an oral report to an on-duty sergeant or command officer in the following four situations:
- (a) When an officer discharges a firearm (intentional or unintentional) while on duty, except during a supervised training session.
 - (b) When an officer discharges a firearm while off-duty pursuant to his or her authority as a law enforcement officer.
 - (c) When an officer or employee uses force that results in death or injury, or when a subject complains that an injury has been inflicted. (See also General Order C-16)
 - (d) When an officer or employee uses a non-lethal *weapon* (e.g., Oleoresin Capsicum or baton) on a person, whether or not an injury is sustained
- 43 - The officer or employee must also complete a police or incident report in any of the above four situations.
- 44 - Whenever an officer or employee uses Oleoresin Capsicum (pepper spray), he or she must also complete a "Use of Pepper Spray Report" form. (See Training and Information Bulletin #216 for detailed instructions in completing this form).

Use of Force / Supervisor Responsibilities

- 45 - A supervisor or commander involved in a use of force incident shall not investigate the incident or review for approval the Use of Force Report.
- 46 - A sergeant shall immediately be assigned and shall respond to the scene in the following four situations:
- (a) When an officer discharges a firearm (intentional or unintentional) while on duty, except during a supervised training session.
 - (b) When an officer discharges a firearm while off-duty pursuant to his or her authority as a law enforcement officer.

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- (c) When an officer or employee uses force (including, but not limited to, a non-lethal weapon) that results in death or injury, or when a subject complains that an injury has been inflicted. (See also General Order C-16)
 - (d) When an officer or employee reports a use of force by another officer or employee of the Department, or of any other law enforcement agency, that he or she believes is unauthorized.
- 47 - A supervisor shall complete a Use of Force Report in any of the above four situations.
- (a) A supervisor shall complete a Use of Force Report whenever an officer or employee uses a non-lethal weapon on a person, even if no injury results.
 - (b) The supervisor shall attach copies of all police reports relating to the incident to the Use of Force Report. (See Use of Force Report form at the end of this General Order)
- 48 - The supervisor who completes the Use of Force Report shall route the Use of Force Report (with attached police reports) and/or Use of Pepper Spray Report forms to the Division Captain through the chain of command.

Use of Force / Administrative Review

- 49 - The Division Captain shall review the Use of Force Report (and when applicable, Use of Pepper Spray Report) and route the report to the Chief of Police with a recommendation of findings.
- (a) The Chief of Police may convene a Review Board (as outlined in General Order R-3) instead of utilizing Division Captain Review.
- 50 - The Chief of Police will make a finding that the use of force was either within policy or initiate additional administrative review/investigation as may be appropriate.
- 51 - Any determination concerning the propriety of force used will be based on facts and the information available to the officer at the time the force was employed, and not upon information gained after the fact.
- 52 - All Use of Force Reports will be reviewed to determine whether Departmental use of force regulations, policies, or procedures were: 1) violated or followed; 2) clearly understood, effective, and relevant to the situation; and/or, 3) require revision or additional training.
- 53 - Use of Force Reports shall be made available internally in a digital format.
- 54 - At least annually, the office of the Chief of Police should prepare an analysis

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report on use of force incidents. The report should be submitted to the Chief of Police, the City Council, and the Police Review Commission. The report should not contain the names of officers, suspects or case numbers, and should include:

- (a) An analysis of use of force incidents with details of the race and ethnicity of the individual impacted, location and type of force used.
 - (b) The identification of any trends in the use of force by members.
 - (c) Training needs recommendations.
 - (d) Equipment needs recommendations.
 - (e) Policy revision recommendations
- 55 - Officers will receive annual (at a minimum) training on the policy outlined in General Order U-2 and demonstrate their knowledge and understanding.
- 56 - Use of Force Reports will be held in file for five (5) years and then purged, unless needed for additional administrative action.

SPECIAL PROCEDURES / DEATHS AND SERIOUS BODILY INJURY

- 57 - In addition to the above, the Departmental response to incidents in which an officer uses force that results in death or a serious bodily injury shall be as follows:
- (a) The officer shall be placed on administrative leave as outlined in Police Regulation 325: " ... If any person is seriously injured or killed as a result of an officer's actions, including the discharging of a firearm, such officer shall be placed on administrative leave for a period of time, as determined by the Chief of Police, depending upon the circumstances of the situation. The officer(s) shall not return to regular duties until he/she meets with a mental health professional."
 - (b) The Department shall conduct both an administrative and criminal investigation of the incident as outlined in General Order P-12 (Police-Involved Shootings and Fatal or Serious Injury Incidents); and a Review Board shall be convened as described in General Order R-3.

References: *Tennessee v. Garner* (1986) 471 U.S. 1
Graham v. Connor (1989) 490 U.S. 386
Doerle v. Rutherford (9th Cir. 2001) 272 F.3d 1272
California Penal Code §§196, 197, 835, 835(a), 836, 836.5, and 843
General Orders A-17, C-16, C-64, F-2, P-12, P-26. R-3 and U-4
Police Regulations 202, 318, 321, 322, 323, 324, 325 and 332

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Training and Information Bulletin 216
Lethal and Non-Lethal Force Manual
Uniform and Equipment Manual
City of Berkeley Council Resolution No. 52,605 – N.S. (2/14/85),
“Prohibiting use of ‘chokehold’ for law enforcement
purposes in the City of Berkeley”
National Tactical Officers Association, General Policy Statement
for Less-Than-Lethal Impact Projectiles (11/22/2002)

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EXEMPLAR

**BERKELEY POLICE DEPARTMENT
USE OF FORCE REPORT**

This report is to be completed by an on-duty supervisor per General Order U-2 if: (1) Use of any force results in injury or death to a person; (2) Non-lethal weapons (OC/baton) or less-than-lethal munitions are used on a person; (3) An officer discharges a firearm intentionally or unintentionally on duty (other than during training), or off-duty while acting in the capacity of a police officer; or (4) Use of any force meeting the parameters of a Level 1, Level 2 or Level 3 use of force.

Date: _____

To: Chief of Police via Chain of Command

From: _____

Subject: USE OF FORCE REVIEW

Refer to Case Number(s): _____

Date / Time of Incident: _____

Location of Incident: _____

Nature of Incident: _____

Officer(s)/Employee(s) Involved: _____

Type of Force used: ☐ Physical ☐ Baton ☐ O.C.
 ☐ Firearm ☐ Less-than-lethal ☐ Other

Level of Force used: ☐ Level 1 ☐ Level 2 ☐ Level 3

Was Officer or Police Employee injured? ☐ Yes ☐ No

If yes, nature of injuries: _____

Medical treatment required: BFD Response - ☐ Yes ☐ No

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Was a citizen(s) injured during this incident? ☐ Yes ☐ No

If "yes," nature of injuries: _____

Medical treatment required: BFD Response - ☐ Yes ☐ No

Investigator(s) and Identification Technician who responded, if any:

Were photographs taken? ☐ Yes ☐ No

Summary of actions of Officer(s) involved: _____

Supervisor's Comments:

Division Captain Recommendation:

Chief of Police (*Signature*)

(*Date*)

Findings:

- ☐ Within Policy
- ☐ Referred for Administrative
Action/Investigation

Use of Force

300.1 PURPOSE AND SCOPE

The BART Police Department's highest priority is safeguarding the life, dignity, and liberty of all persons. Officers shall demonstrate this principle in their daily interactions with the community they are sworn to protect and serve. The Department is committed to accomplishing this mission with respect and minimal reliance on the use of force by using rapport-building communication, crisis intervention, and de-escalation tactics before resorting to force, whenever feasible. This Department policy builds upon the Supreme Court's broad principles in *Graham v. Connor* (1989) 490 U.S. 386 and is more restrictive than the constitutional standard and state law. The Law Enforcement Code of Ethics requires all sworn law enforcement officers to carry out their duties with courtesy, respect, professionalism, and to never employ unnecessary force. These are key factors in maintaining legitimacy with the community and safeguarding the public's trust.

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

Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose. Officers must strive to use the minimal amount of force necessary.

300.1.1 DEFINITIONS

Definitions related to this policy include:

Deadly force - Force reasonably anticipated and intended to create a substantial likelihood of causing death or very serious injury.

Feasible - Capable of being done or carried out to successfully achieve a legitimate law enforcement objective without increasing the risk to the officer or bystander(s).

Force - The application of physical techniques or tactics, chemical agents or weapons to another person.

Legitimate law enforcement objective - Effect a lawful arrest, detention, or search; overcome resistance or prevent escape; prevent the commission of a public offense; in defense of others or in self-defense; gain compliance with a lawful order; to prevent a person from injuring himself/herself.

Minimal amount of force necessary - The lowest level of force within the range of objectively reasonable force that is necessary to effect an arrest or achieve a lawful objective without increasing the risk to others.

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Non-deadly Force - Any application of force that is not reasonably anticipated and intended to create a substantial likelihood of death or very serious bodily injury shall be considered non-deadly force.

Personal Body Weapons - An officer's use of his/her body part, including but not limited to hand, foot, knee, elbow, shoulder, hip, arm, leg or head by means of high velocity kinetic energy transfer (impact) to gain control of a subject.

Proportionality - Considers whether a particular use of force is proportionate and appropriate to the totality of the circumstances, and requires officers to consider whether alternative lesser or non-force options are feasible and likely to be effective. Proportional force does not imply equal force; officers may use superior force, consistent with this policy.

Reasonable Belief - An objective belief determined by the facts and circumstances reasonably available to the officer at the time (on-scene and without hindsight) and viewed from the perspective of a reasonable peace officer in the same situation, guided by the principles set forth in this policy.

Reasonable Force - An objective standard of force viewed from the perspective of a reasonable officer, without the benefit of 20/20 hindsight, and based on the totality of the circumstances known to or perceived by the officer at the time.

Serious Bodily Injury - A bodily injury that creates a substantial risk of death; causes serious, permanent disfigurement; or results in long-term loss or impairment of the functioning of any bodily member or organ.

300.2 POLICY

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

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

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

Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose. Officers must strive to use the minimal amount of force necessary.

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably

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appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident.

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by the Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force. Retreating for a tactical advantage should be considered and utilized, when feasible and appropriate.

Officers shall not use force with bias, based upon: race; ethnicity or nationality; religion; sex; sexual orientation; economic status; age; cultural group; disability; or affiliation with any other similar identifiable group.

Use of force against vulnerable populations (such as, without limitation, children, elderly, pregnant women, people with physical and mental disabilities, and people with limited English proficiency) can undermine public trust and should only be used if no other options appear reasonable or effective. It is recognized that the above may not be readily apparent or known to the officer. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving.

The Department recognizes that transparency and accountability in the use of force is essential to preserving the trust of the community and to maintaining professional standards. This policy therefore requires rigorous reporting and review of all instances of the use of force.

300.2.1 DUTY TO INTERCEDE

A use of excessive force by law enforcement personnel is a matter of serious concern to the community, and even a single instance of excessive force may critically undermine public trust in the Department. Accordingly, any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when feasible, intercede to prevent the use of unreasonable force. An officer who observes another employee use force that exceeds the degree of force permitted by law shall promptly report these observations to a supervisor.

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300.2.2 DE-ESCALATION TECHNIQUES

Officers shall use de-escalation techniques whenever feasible and appropriate: to potentially reduce or eliminate the need to use force; and to prevent injuries to the subject, the public and the officer(s). Use of de-escalation techniques must allow for the fact that officers are often forced to make split-second decisions, with limited information, and in circumstances that are tense, uncertain and rapidly evolving.

- (a) Officers shall, when feasible, continually assess the dynamics of a situation, and modulate their response and actions appropriately. Officers may be justified in using force at one moment, but not justified in using force the next moment due to a change in dynamics.
- (b) De-escalation techniques may include verbal persuasion, warnings and tactical de-escalation techniques, such as: slowing down the pace of an incident; “waiting out” subjects; creating distance (and thus the reactionary gap) between the officer and the threat; and requesting additional resources (e.g., specialized units, mental health care providers, negotiators, etc.) to resolve the incident.
 - 1. Officers should recognize that they may withdraw to a position that is tactically advantageous or allows them greater distance to de-escalate a situation.
 - 2. Officers should consider a variety of options, including lesser force or no force options.
 - 3. Officers should perform their work in a manner that avoids unduly jeopardizing their own safety or the safety of others.
 - 4. Officers shall not intentionally and unnecessarily escalate and/or create a need to use force.
 - 5. Officers should attempt to understand and consider possible reasons why a subject may be noncompliant or resisting arrest. A subject may not be capable of understanding the situation because of a medical condition; mental, physical, or hearing impairment; language barrier; drug interaction; or emotional crisis, and have no criminal intent. These situations may not make the subject any less dangerous, but understanding a subject’s situation may enable officers to calm the subject and allow officers to use de-escalation techniques while maintaining public and officer safety.
 - 6. Officers should continue de-escalation techniques, when feasible and appropriate, and take as much time as reasonably necessary to resolve the incident, in effort to avoid and/or minimize the use force.
- (c) When an officer recognizes that mental illness, post-traumatic stress disorder, alcohol and/or drug addictions, or other health issues are causing an individual to behave erratically, the officer shall, when feasible and appropriate, try to de-escalate the situation using de-escalation and/or Crisis Intervention techniques.

Establishing Communication - Communication with non-compliant subjects is often most effective when officers establish rapport, use the proper voice intonation, ask questions and provide advice to defuse conflict and achieve voluntary compliance before resorting to force options.

Use of Force

Supervisors conducting a use of force investigation will indicate de-escalation as a force option in BlueTeam whenever de-escalation was attempted or used in an incident.

300.3 FACTORS TO DETERMINE THE REASONABLENESS OF FORCE

The United States Supreme Court in *Graham v. Connor* (1989) 490 U.S. 386 held that an officer's use of force must be objectively reasonable under the totality of circumstances known to the officer at the time. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than 20/20 hindsight, and without regard to the officer's underlying intent or motivation.

There are circumstances in which a force option may be legally justified under the principles set forth in *Graham v. Connor*, but the use of that force option may not be appropriate, warranted, and/or necessary.

This policy builds upon the broad principles in *Graham v. Connor* by adding additional, more restrictive factors upon which an officer's use of force shall be evaluated. These factors should be considered when determining whether to apply force (as time and circumstances permit), and in evaluating whether an officer has used reasonable force.

Factors from *Graham v. Connor*:

- (a) The severity of the crime at issue.
- (b) Whether the suspect poses an immediate threat to the safety of the officer and others.
- (c) Whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

Factors from the California Penal Code:

- (a) Any peace officer may use reasonable force to effect an arrest, to prevent escape or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance on the part of the person being arrested; nor shall an officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest, prevent escape or to overcome resistance (Penal Code § 835a).
- (b) An officer may not, under color of authority, without lawful necessity, assault or beat any person (Penal Code § 149).

Additional factors set forth by case law and by this Policy:

- (a) Immediacy and severity of the threat to officers or others.
- (b) The feasibility, efficacy, and safety of alternative lesser or non-force options, including the availability of de-escalation techniques that might reduce or eliminate the need to use force, or prevent injuries to the subject, the public and the officer(s).
- (c) Whether the force option is proportionate and appropriate to the totality of the circumstances, and whether alternative lesser or non-force options are feasible and likely to be effective. Proportional force does not imply equal force; officers may use superior force, consistent with this policy.

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- (d) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- (e) The conduct of the officer prior to the use of force. Specifically, did the officer violate policy and unnecessarily escalate the situation to a use of force.
- (f) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (g) The effects of drugs or alcohol.
- (h) Subject's mental state or capacity, including any apparent/known mental health issues.
- (i) Proximity of weapons or dangerous improvised devices.
- (j) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (k) The availability of other options and their possible effectiveness.
- (l) Seriousness of the suspected offense or reason for contact with the individual.
- (m) Training and experience of the officer.
- (n) Potential for injury to officers, suspects and others.
- (o) Whether the person appears to be resisting, attempting to evade arrest by flight or is attacking the officer.
- (p) The risk and reasonably foreseeable consequences of escape.
- (q) The apparent need for immediate control of the subject or a prompt resolution of the situation.
- (r) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- (s) Prior contacts with the subject or awareness of any propensity for violence.
- (t) Any other exigent circumstances.
- (u) Officers must strive to use the minimal amount of force necessary.

300.3.1 PAIN COMPLIANCE TECHNIQUES

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

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

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

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300.3.2 PERSONAL BODY WEAPONS

Personal body weapon strikes, punches, lifts or kicks for which the officer has received department-approved training, may be used when the officer reasonably believes that the use of such force appears necessary to further a legitimate law enforcement purpose.

Personal body weapon strikes, punches, or kicks to the rear of the head, neck or spine are prohibited. The only exception to this prohibition would be under exigent circumstances when deadly force is justified and reasonable.

300.3.3 CAROTID CONTROL HOLD

The use of the carotid restraint is prohibited. The only exception to this prohibition would be under exigent circumstances when deadly force is justified and reasonable.

300.3.4 USE OF FORCE TO SEIZE EVIDENCE

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

300.3.5 DRAWING/DEPLOYING A FIREARM

Whenever an officer draws/deploys a firearm during the performance of his/her duties to defend, detain or take any person into custody (the suspect is contacted or arrested, the officer is present and is within potential sight of the suspect), it is considered a use of force and an account of the incident must be made in a police report. The officer should include in the narrative of the report how the weapon was used in the incident, as well as the justification for such action. The documentation of how the weapon was used should include information on how the weapon was presented. The officer must notify a supervisor as soon as practical, and the supervisor will complete a Use of Force Investigation with accompanying documentation as outlined in this policy.

Whenever an officer draws/deploys a firearm during the performance of his/her duties in the presence of others, but does not use the firearm to defend, detain or take any person into custody (the suspect is not contacted or arrested), it is not considered a use of force and an account of the incident must be made in a police report.

Whenever an officer draws/deploys a firearm during the performance of his/her duties in the not presence of others, it is not considered a use of force and no documentation is required. An example of that type of incident would include, but is not limited to, the search of an empty building or car where no person is contacted during the search.

300.4 DEADLY FORCE APPLICATIONS

Use of deadly force is justified in the following circumstances:

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- (a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes would be an imminent threat of death or serious bodily injury.
- (b) An officer may use deadly force to stop a fleeing subject when the officer has probable cause to believe that the person has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the officer reasonably believes that there is an imminent risk of serious bodily injury or death to any other person if the subject is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.

Imminent does not mean immediate or instantaneous. An imminent danger may exist even if the suspect is not at that very moment pointing a weapon at someone. For example, an imminent danger may exist if an officer reasonably believes any of the following:

- (a) The person has a weapon or is attempting to access one and it is reasonable to believe the person intends to use it against the officer or another.
- (b) The person is capable of causing serious bodily injury or death without a weapon and it is reasonable to believe the person intends to do so.

Strikes, punches, or kicks to the rear of the head, neck or spine are prohibited, unless exigent circumstances exist and use of deadly force is justified.

Choke holds are also prohibited, unless exigent circumstances exist and use of deadly force is justified.

The use of deadly force against a person who presents only a danger to himself/herself is prohibited.

When feasible, officers should immediately attempt to administer or obtain medical aid for a person who has been subject to injury resulting from the use of deadly force.

300.4.1 SHOOTING AT OR FROM MOVING VEHICLES

Shots fired at or from a moving vehicle are rarely effective. It is also noted that in many circumstances, disabling the driver of a vehicle may increase the potential for harm to bystanders and/or the officer.

- Officers should move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants.
- Officers shall not intentionally and unnecessarily move into the path of an approaching vehicle to create their own exigent circumstance.
- Officers should not shoot at any part of a moving vehicle in an attempt to disable the vehicle.
- Officers shall not discharge a firearm at a moving vehicle or its occupants when there are other reasonable means available to avert the threat.
- Officers shall not discharge a firearm from a moving vehicle when there are other reasonable means available to avert the present threat.

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- Officers may only shoot at a moving vehicle under exigent circumstances, when the driver and/or occupants are targeting others with the intent to cause great bodily injury or death and there are no other reasonable means available to avert the threat.

300.4.2 WARNING SHOTS

Discharging a firearm for the purpose of a “warning shot” is prohibited.

300.5 REPORTING THE USE OF FORCE

Any use of force by a member of this department shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident. The officer should articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances.

Supplemental reports will be completed by personnel who are present when force is used by another officer. Officers have a duty to report all pertinent facts known to them.

All police reports, inclusive of any supplemental reports, involving the documentation of a use of force must be reviewed and approved by a supervisor prior to the employee going off duty.

300.5.1 NOTIFICATION TO SUPERVISORS

Supervisory notification shall be made as soon as practicable following the application of force in any of the following circumstances:

- (a) The application caused a visible injury.
- (b) The application would lead a reasonable officer to conclude that the individual may have experienced more than momentary discomfort.
- (c) The individual subjected to the force complained of injury or continuing pain.
- (d) The individual indicates intent to pursue litigation.
- (e) Any application of a control device as defined in Policies 308 and 309:
 1. Batons and other impact weapons
 2. Chemical agents (OC Spray)
 3. SIMS Projectile
 4. Conducted Electrical Weapon (any activation whether effective or not)
- (f) Any application of a restraint device other than handcuffs or the WRAP.
- (g) The individual subjected to the force was rendered unconscious.
- (h) An individual was struck or kicked.
- (i) An officer draws/deploys a firearm during the performance of his/her duties to defend, detain or take any person into custody (the suspect is contacted or arrested, the officer is within potential sight of the suspect).
- (j) An individual alleges any of the above has occurred.

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300.5.2 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

The Records Manager or the authorized designee shall ensure that data required by the Department of Justice (DOJ) regarding all officer-involved shootings and incidents involving use of force resulting in serious bodily injury is collected and forwarded to the DOJ as required by Government Code § 12525.2.

300.5.3 EMPLOYEES WHO USE FORCE WHILE ON A SPECIAL ASSIGNMENT

When a BART Police employee has a use of force as defined in this policy, the use of force must be reported to a BART Police supervisor and investigated in accordance with this policy.

When two or more BART Police officers are temporarily assigned to assist an outside agency or multi-agency task force in the performance of law enforcement activities, a BART police supervisor should also be present.

300.6 MEDICAL CONSIDERATION FOLLOWING A USE OF FORCE

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

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

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

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

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300.7 SUPERVISOR RESPONSIBILITY

An uninvolved supervisor should respond to the scene of a reported use of force. The supervisor is expected to do the following:

- (a) Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- (b) Ensure that any injured parties are examined and treated.
- (c) When possible, separately obtain a recorded interview with the subject upon whom force was applied. This interview should not be conducted in the presence of officers who were involved in using force. If this interview is conducted without the person having voluntarily waived his/ her Miranda rights, the following shall apply:
 - 1. The content of the interview should not be summarized or included in any related criminal charges.
 - 2. The recording should be saved and attached in the BlueTeam entry for the use of force investigation.
 - 3. The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.
- (d) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.
- (e) Identify any witnesses to the use of force. Interview and record witness statements for inclusion in the use of force investigation.
- (f) Review the portion(s) of the Axon Flex video pertaining to the use of force and/or allegation of misconduct.
- (g) Review and approve all related reports.

In the event that an uninvolved supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit. The investigation will be documented in a Use of Force Investigation checklist and narrative as warranted.

When practical, supervisors who use force or witness the use of force by another officer in a given situation should not obtain statements from other officers as part of a report on the use of force, as such is the responsibility of an uninvolved supervisor. Furthermore, involved supervisors and officers shall not attempt to influence other officers' or civilian witnesses' accounts of what occurred during the incident or otherwise compromise the integrity of the use of force investigation.

Use of Force Investigation Reports will be forwarded and reviewed through the chain of command. Each reviewer in the process will make a determination as to whether the use of force was justifiable or non-justifiable.

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300.7.1 USE OF FORCE INVESTIGATION, DOCUMENTATION, AND REVIEW

Use of force must be documented in a police report and reviewed by a supervisor who was not directly involved in the incident.

The following categories and parameters will explain levels of force and the respective reporting, investigation, documentation, and review requirements. Incidents will be categorized as Level 1, Level 2, Level 3, or Level 4.

Level 1: Not a Reportable Use of Force:

Level 1 Incident Parameters:

- (a) Subject allowed him/herself to be searched, escorted, and/or handcuffed. The suspect offered no resistance, and the officer did not use force to overcome resistance. The officer did not use force in the absence of resistance.
- (b) No suspect injury or complaint of injury due to interaction with officer.
- (c) No allegation of misconduct against officer, regarding force.
- (d) Officer body camera was activated in a timely manner, per policy.
- (e) Officer used any of following:
 - 1. Professional presence and/or verbalization
 - 2. TASER/LLIMs Deployed (no activation)
 - 3. Drawn/deployed firearm, but no suspect contacted or arrested

Level 1 Incidents should be documented by an officer in an appropriate police report, citation, Field Interview, and/or CADS entry. Supervisors will review police report narratives for approval.

Level 2: Use of Force

Level 2 Incident Parameters:

- (a) No suspect injury or complaint of injury due to interaction with officer.
- (b) No allegation of misconduct against officer, regarding force.
- (c) Officer body camera was activated in a timely manner, per policy.
- (d) Officer used any of the following force options:
 - (a) Control holds/pressure point application
 - (b) Leverage
 - (c) Grab
 - (d) Bodyweight
 - (e) Takedown that is non-dynamic (no forceful impact)
 - (f) Vehicle pursuit with no collision

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- (g) Firearm drawn/deployed but not fired, suspect contacted

An uninvolved supervisor will respond to the scene and conduct a Use of Force Investigation, including taking statements from the suspect and witnesses, and taking photos of the involved parties. If the incident fits the parameters for a Level 2 incident, the supervisor will enter all applicable data into BlueTeam and attach a completed Use of Force Investigation Checklist.

Supervisors do not need to take witness statements from fire and medical personnel under the following circumstance: an officer assists medical personnel to restrain and/or secure a subject to a gurney for medical transport in a non-criminal detention (i.e. 5150 or 5170 detention), and all of the following conditions are met:

- (a) The officer only used force options limited to the following: grab, hold, leverage, and/or bodyweight.
- (b) No subject injury or complaint of injury due to interaction with officer.
- (c) No allegation of misconduct against officer, regarding force.
- (d) Officer body camera recorded the use of force.
- (e) The unit number for the fire and medical personnel is obtained.

Level 3: Use of Force

Level 3 Incident Parameters:

- (a) Would have otherwise been classified as a Level 2, except one of more of the following apply:
 - 1. Suspect injury or complaint of injury due to interaction with officer.
 - 2. Allegation of misconduct against officer, regarding force.
 - 3. Officer body camera was not activated during use of force.
- (b) The use of force is Level 3 if the officer used any of the following force options:
 - 1. Dynamic/forcible takedown
 - 2. TASER Activation/LLIMS Activation
 - 3. Chemical Agents/Munitions
 - 4. Impact Weapon Strikes Personal
 - 5. Body Weapons
 - 6. Police canine deployment resulting in injury

An uninvolved supervisor will respond to the scene and conduct a Use of Force Investigation, including taking statements from the suspect and witnesses. If the incident fits the parameters for a Level 3 incident, the supervisor will enter all applicable data into BlueTeam and attach a completed Use of Force Investigation Checklist. The supervisor will also complete a Use of Force

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Investigation Report narrative for review through the Use of Force Review process. Use of Force involving police canines will be documented and reviewed additionally per Policy 318.

Level 4: Use of Deadly Force

Level 4 Incident Parameters:

- (a) Use of firearm, officer involved shooting
- (b) Or any force likely to cause death or serious bodily injury

An uninvolved supervisor will respond to the scene. The incident will be investigated, documented, and reviewed in adherence to Policy 310.

300.7.2 WATCH COMMANDER RESPONSIBILITY

A watch commander will review the Use of Force Investigation Report to ensure compliance with this policy and that any training issues are addressed.

Nothing in the policy precludes the watch commander from requiring that a supervisor complete a Use of Force Investigation Report for any incident involving force.

300.8 TRAINING

Officers will receive annual training on this policy (at a minimum) and demonstrate their knowledge and understanding.

300.9 USE OF FORCE ANALYSIS

At least annually, the Operations Bureau Deputy Chief should prepare an analysis report on use of force incidents. The report should be submitted to the Chief of Police, the Office of the Independent Police Auditor, and the BART Police Citizen Review Board. The report should not contain the names of officers, suspects or case numbers, and should include:

- (a) The identification of any trends in the use of force by members.
- (b) Training needs recommendations.
- (c) Equipment needs recommendations.
- (d) Policy revision recommendations.

Use of Force Review Boards

302.1 PURPOSE AND SCOPE

The purpose of this policy is to establish a process to review the use of force by employees of this department.

302.2 POLICY

The Department is charged with the important responsibility of objectively evaluating the use of force. Any use of force by a member of this department which is subject to a Supervisor's Use of Force Report as required by Policy Manual §300.4 will be subject to review by the Use of Force Review Board.

The board will also investigate and review the circumstances surrounding every intentional or unintentional discharge of a firearm, whether the employee is on or off duty, excluding range training or recreational use.

The board will convene as often as deemed necessary by the chairperson or as directed by the Chief of Police.

302.2.1 COMPOSITION OF THE BOARD

The Use of Force Review Board shall be comprised of the following persons:

- A chairperson from a command-level rank, selected by the Chief of Police.
- One sergeant and one peer member (from the involved employee's bargaining unit) who are current P.O.S.T. certified defensive tactics, baton, or TASER instructors or certified firearms instructors, selected by the chairperson.

The Use of Force Review Board may call other employees of the Department in an advisory capacity as deemed necessary by the chairperson. In every case involving serious injury to a person or significant liability to the District, the board may convene an advisory panel composed of subject matter experts, from within and/or outside the Department, to assist the board in its review of the incident. A representative of the District's General Counsel may join the advisory panel at the discretion of the Chief of Police.

302.2.2 RESPONSIBILITIES OF THE BOARD

The Use of Force Review Board is empowered to conduct an administrative investigation into the circumstances of an incident. The board members may request further investigation, call persons to present information, and may request that the involved employee appear before the board. The involved employee may be represented by legal counsel and/or other representation if called to appear before the board.

Absent an express waiver from the employee, no more than two members of the board may ask questions of the involved employee (Government Code §3303).

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Use of Force Review Boards

The review shall be based on those facts which were reasonably believed by the employee at the time of the incident, applying legal requirement, department policy and procedures, and approved training to those facts. Facts later discovered but unknown to the employee at the time, can neither justify nor call into question an employee's decision regarding use of force.

If it appears that the actions of the employee may result in criminal charges or disciplinary action by the Department, the board will conduct the interviews in accordance with department disciplinary procedures. The board does not have the authority to recommend discipline. The board shall make a finding and such finding will be limited to one of the following:

- (a) The employee's actions were within department policy and procedures.
- (b) The employee's actions were in violation of department policy and procedures.

A finding will represent the consensus of the board. After the board has concluded, the board chairperson will submit the board's findings via Blue Team to the Operations Bureau Deputy Chief of Police. After review by the Operations Bureau Deputy Chief of Police, the completed report findings will be forwarded to the Chief of Police for review and appropriate action.

At the conclusion of the review process, the completed Supervisor's Use of Force Report will be filed with the Internal Affairs Section.

Once the board has reached its specific finding, the Training Sergeant may convene a separate training committee to address specific training needs and to make recommendations for this department without specific reference to the facts of the incident considered by the board.

OFFICE OF CHIEF OF POLICE
OAKLAND POLICE DEPARTMENT

MEMORANDUM

TO: All Personnel

DATE: 16 Dec 13

SUBJECT: Revision of Departmental General Order K-3,
USE OF FORCE (Rev. 01 Aug 07)

The purpose of the revision to this order is to update Departmental policy and procedures regarding Use of Force.

Special Order 9051 (20 Oct 10) has been incorporated in to the policy revision and is hereby cancelled.

Special Order 8970 (10 Dec 08) is still in effect regarding DGO K-4 and DGO K-4.1. The provisions specific to DGO K-3 in SO 8970 have been incorporated in to the policy revision and are hereby cancelled.

The Evaluation Coordinator for this order shall be the BFO Commander, who, without further notice, shall forward the required report to the Chief of Police on or by 16 Jun 14. The Evaluation Coordinator shall receive, review and document the acceptance or rejection of all comments and/or recommendations received prior to submitting his/her six-month evaluation report.

The Evaluation Coordinator shall forward a copy of the six-month evaluation report, along with the comments/recommendations received, without further notice, to the Bureau of Risk Management, who shall maintain the appropriate Departmental General Order archive folder.

Personnel shall acknowledge receipt, review, and understanding of this directive in accordance with the provisions of DGO A-1, DEPARTMENTAL PUBLICATIONS.

By order of



Sean Whent
Interim Chief of Police

Date Signed: 12-16-13



DEPARTMENTAL
GENERAL
ORDER

K-3

Index as:

Use of Force Policy

Effective Date
16 Dec 13

Evaluation Coordinator:
BFO Commander

Evaluation Due Date:
16 Jun 14

Automatic Revision Cycle:
3 Years

USE OF FORCE

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ORDER

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Evaluation Coordinator:
BFO Commander

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Index as:

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16 Jun 14

Use of Force Policy

Automatic Revision Cycle:
3 Years

USE OF FORCE

The purpose of this order is to set forth Departmental policy and procedures for the use of force by members.

I. POLICY STATEMENT

- A. The Oakland Police Department values the protection and sanctity of human life. The Department is committed to accomplishing the police mission with respect and minimal reliance on the use of physical force.
- B. This policy provides guidelines and procedures for using force in order to protect the safety of both themselves and the public in accomplishing the police mission
- C. Members are allowed to **use a reasonable amount of force** based on a totality of the circumstances. Members are required to **de-escalate** the force when the member reasonably believes a lesser level or no further force is appropriate. Members shall **intervene and prevent or stop** the use of unreasonable force by other members.
- D. Members are prohibited from the use of unreasonable force and using force for interrogation or punishment.
- E. Although the use of force is primarily intended for sworn officers, various non-sworn employee job classifications include Departmental training in specific force options normally reserved for sworn officers. Employees are held to the same standard as members for the application of these authorized force options. All employees shall maintain their right to self-defense by any objectively reasonable means.
- F. A member or employee who uses force or directs a use of force shall be considered as "Involved Personnel."

II. FORCE CONSIDERATIONS

A. Reasonable Force

Reasonable force is that amount of force that is objectively reasonable to affect a lawful police purpose and protect the safety of members or others based upon the totality of the circumstances.

1. Force must be analyzed under the Fourth Amendment's objective reasonableness test.¹ The application of this test requires an analysis of the totality of circumstances, including these factors to determine if the seizure is reasonable:
 - a. The severity of the crime at issue;
 - b. Whether the suspect poses an immediate threat to the safety of law enforcement officers or others; and
 - c. Whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

The determination of reasonableness is not based on the 20/20 vision of hindsight.

2. Factors when determining if force is reasonable include, but are not limited to:
 - a. Physical differences (e.g., age, size, relative strength, skill level, injuries, exhaustion, number of members/employees verses subjects);
 - b. Influence of drugs or alcohol on the subject;
 - c. Proximity of weapons to the subject;
 - d. Training and experience level of the member or employee; and
 - e. Other exigent circumstances.

B. Immediate Threat

An Immediate Threat is considered to exist if a suspect has demonstrated actions that would lead one to reasonably believe that the suspect will continue to pose a threat of death or serious bodily injury if not apprehended without delay.

¹ Graham v. Connor, 490 U.S. 386 (1989).

A person is an immediate threat if the person is reasonably perceived by a member or employee to have the present intent, means, opportunity and ability to complete the threat, regardless of whether the threatened action has been initiated.

1. Intent: The subject's apparent desire, which can be indicated by words, body language or actions.
2. Means: The instrument, mechanical or physical, that may be used to cause injury.
3. Opportunity: The time and/or place which allows the subject to use the means to cause injury.
4. Ability: The subject has the capability to carry out the action or threat.

C. Use of Force

Any physical or mechanical intervention used by a member or employee to defend, control, overpower, restrain or overcome the resistance of an individual

D. Less-Lethal Force

Any use of force, other than lethal force, which by design and application is less likely to cause serious bodily injury or death. However, the possibility of an unintended lethal outcome, although very rare, exists.

Less-Lethal Force options include, but are not limited to; those specified in Part III, FORCE OPTIONS THAT DO NOT INCLUDE FIREARMS.

E. Lethal Force

Lethal force is any force that creates a substantial risk of causing death or serious bodily injury. A member may use lethal force to protect themselves or others when the member objectively and reasonably believes that his/her life, or the life of another, is in immediate danger of death or serious bodily injury, based upon the totality of the facts known to the member at the time.

Lethal Force includes, but is not limited to:

1. Discharge of a firearm with lethal ammunition;
 - a. Lethal ammunition is ammunition that, by design and application, is intended to cause serious bodily injury or death.

2. Carotid restraint; and
3. Intentional impact weapon strike to the head.

F. Serious Bodily Injury

A serious impairment of physical condition, including but not limited to:

1. Loss of consciousness;
2. Concussion;
3. Bone fracture;
4. Protracted loss, impairment, serious disfigurement, or function of any bodily member or organ;
5. Wound requiring extensive suturing; and
6. Serious disfigurement

III. FORCE OPTIONS THAT DO NOT INCLUDE FIREARMS

A. Verbal Persuasion

Verbal commands are the minimum means of halting an offense, gaining compliance or overcoming resistance. A member, announcing his or her identity as a peace officer, presence and intentions, may result in the peaceful resolution of the situation. Verbal commands shall be courteous and clearly relay the police objective.

To the extent possible and without ever compromising safety, members are required to use verbal commands to accomplish the police objective before resorting to physical force. Members shall consider the possibility of any language barriers, noise, other distractions, or disabilities which may impair or frustrate the member's effort to courteously and clearly communicate with the person.

B. Use of Physical Force or Defensive Tactics and Techniques

At times it may be necessary for a member to use force or defensive tactics and techniques to accomplish the police objective, such as taking a subject into custody, preventing the commission of a crime or in response to a suspect's resistance.

The defensive tactics and techniques that may be used include, but are not limited to: hand/palm/elbow strikes, kicks, take-downs, leg sweeps, arm-bar takedown and control holds, such as escort (elbow), bent wrist, twist lock and arm-bar hammerlock.

Absent exigent circumstances, all defensive, arrest and control techniques shall be compliant with Oakland Police Department policy and training. Refer to TB III-I.1, WEAPONLESS DEFENSE.

C. Use of Canines

The use of Police Canines is considered an intermediate force level that may inflict serious injury.

The primary purpose of Patrol Canine deployments is to search for and locate criminal suspects. Canine handlers typically deploy their canines to alert (by barking) when they have found the suspect. Canine handlers may also deploy their canines as a use of force (by biting). Refer to DGO K-9, DEPARTMENT CANINE PROGRAM.

D. Batons and Impact Weapons (other than intentional strikes to the head)

The use of an impact weapon is an intermediate use of force.² The following are considered impact weapons:

1. Long baton;
2. Short baton;
3. Crowd control baton;
4. Asp®;
5. Specialty impact munitions (12-gauge Drag Stabilized Flexible Baton munitions, 37/40mm foam munitions, hand deployed SIM); and
6. Any other object used as an impact weapon other than vehicle.

The use of an impromptu impact weapon or any weapon of necessity is justified when reasonable alternatives have been exhausted, are unavailable or are impractical.

Absent exigent circumstances, members shall only utilize Oakland Police Department authorized impact weapons and munitions.

² Young v. LA County, 655 F.3d 1156 (9th Cir. 2011)

Use shall be compliant with Oakland Police Department policies and training. Refer to TB III-H.2, HAND-HELD IMPACT WEAPONS and TB III-H, SPECIALTY IMPACT WEAPONS

E. Electronic Control Weapon (ECW)

The ECW is an intermediate use of force.³ ECW's provide a force option that may be used to control dangerous and violent subjects. The goal of every ECW deployment is a safe restraint of the subject using the minimum amount of electrical stimulation that is reasonable to obtain control. When used properly, members can stay beyond the reach and immediate striking distance of a subject who may attack them, thereby reducing the risk of injury to the member and the subject.

Using the ECW may greatly reduce the need for other types of physical force by members, which could otherwise result in serious injuries or death to the member and/or offender. Absent exigent circumstances, members shall only utilize Oakland Police Department authorized ECW's. Use shall be compliant with Oakland Police Department policies and training. Refer to TB III-H.1, USE OF AN ELECTRONIC CONTROL WEAPON.

F. Chemical Agents and Oleoresin Capsicum (OC)

The use of OC and Chemical Agents are an intermediate use of force.⁴ Refer to TB V-F.2, CHEMICAL AGENTS and DGO C-8, OLEORESIN CAPSICUM

IV. USE OF FIREARMS AND OTHER LETHAL FORCE

A. Drawing, Exhibiting and Pointing Firearms

1. The intentional pointing of a firearm at another person is a use of force.⁵
2. The drawing, exhibiting and intentionally pointing of a firearm at another person is threatening and intimidating and when unwarranted may cast a negative impression on members. A member may intentionally point a firearm only when the member has reasonable cause to believe it may be reasonable for his/her safety or for the safety of others.
3. The pointing of a firearm at a person is a seizure and requires legal justification. No member shall draw and point a firearm at or in the direction of a person unless there is a reasonable perception of a substantial risk that the situation may escalate to the point where lethal

³ Bryan v. MacPherson, 630 F. 3d 805 (9th Cir. 2010)

⁴ Young v. LA County, 655 F.3d 1156 (9th Cir. 2011)

⁵ Robinson v. Solano County, 278 F. 3d 1007 (9th Cir. 2002)

force would be permitted. When it is determined that the use of lethal force is not necessary, as soon as practicable, firearms shall be secured or holstered.

B. Firearms Discharge

The act of discharging a firearm loaded with lethal ammunition. Firearm discharges are classified as follows:

1. Lethal – An intentional firearm discharge at a person, regardless of injury.
2. Discharge at an Animal – A firearm discharge for the purpose of dispatching an injured or vicious animal.
3. Unintentional – A firearm discharge that occurred as a result of an unintentional trigger pull or other unexpected external cause.

The discharge of firearms as a warning is prohibited at any time on or off-duty.

C. Other Firearm Discharges

No use of force investigation is required for any of the following:

1. An intentional discharge for purposes related to training, demonstration, practice, certification or testing while at an authorized range facility, unless the discharge results in injury or death;
2. A discharge while engaged in a lawful and policy-compliant recreational activity, such as hunting or target practice;
3. A discharge by Criminalistics Division personnel for the purpose of scientific examination; and
4. A discharge at an object (e.g., street light, alarm box, door lock or vehicle tire) to accomplish a tactical police purpose that does not result in injury.

D. Discharging a Firearm at a Person

The discharge of a firearm at a person constitutes lethal force and is authorized only when there is reasonable cause to believe there is an immediate threat of death or serious bodily harm.⁶

A member is authorized to discharge his or her firearm only in the following circumstances:

⁶ Tennessee v. Garner, 471 U.S. 1 (1985)

1. In self-defense when the member has reasonable cause to believe that he or she is in immediate danger of death or serious bodily injury.
2. In defense of another person when the member has reasonable cause to believe that the person is in immediate danger of death or serious bodily injury.
3. To apprehend or arrest a person when the following three conditions are met:
 - a. The member has reasonable cause to believe that the person is involved in the commission of a violent felony that includes the use or threatened use of deadly force; and
 - b. The member has reasonable cause to believe that the person poses an immediate threat of death or serious bodily injury to the member or a third person if not immediately apprehended; and
 - c. Other reasonably known and available means of apprehending the person have failed, are inadequate or are immediately unavailable.

E. Moving Vehicles

The use of lethal force against the occupant of a motor vehicle is only authorized when it is reasonably necessary to:

1. Defend the member or another person against the vehicle occupant's immediate threat of death or serious bodily injury, by means other than the vehicle; or
2. Defend the member or another person against the vehicle operator's use of the vehicle to cause death or serious bodily injury and the member or other person has no reasonable avenue of protection or escape.
 - a. Members are prohibited from intentionally positioning themselves in a location vulnerable to vehicular attack;
 - b. Whenever possible, members shall move out of the way of the vehicle, instead of discharging his or her firearm at the operator;
 - c. Members shall not discharge a firearm at the operator of the vehicle when the vehicle has passed and is attempting to escape.

3. Members shall consider whether the threat to the member or other persons (including all occupants of the vehicle) is increased by incapacitating the operator with lethal force, considering that if the operator is incapacitated, the vehicle may still be a threat to anyone in the vehicle's path. This threat shall be weighed against the threat posed by the suspect continuing in control of the vehicle.
4. Members shall also consider what risk the use of lethal force would pose to other vehicle occupants when weighed against the threat.
5. Absent exigent circumstances, the discharge of firearms from a moving vehicle is prohibited.

F. Other Lethal Force

Any force that poses a substantial risk of causing death or serious bodily injury is considered lethal force. This includes the use of the carotid restraint, an intentional strike to the head with an impact weapon or an impromptu impact weapon. Lethal force, regardless of the weapon used, is justified only in life-threatening situations where a member has reasonable cause to believe that a person poses an immediate threat of death or serious bodily harm to the member or to another person.

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

V. OTHER REQUIREMENTS

A. Use and Care of Equipment, Control Devices and Firearms

1. While on-duty members shall carry only firearms, safety equipment and control devices that are approved in an official Departmental Order and on which they have successfully completed training. For care of safety equipment, refer to DGO C-4, SAFETY EQUIPMENT.
2. Members shall handle and manipulate a firearm in accordance with Department approved firearms training.

B. Administrative Leave

Members involved in a lethal force incident shall be placed on paid administrative leave for not less than three days, unless otherwise directed by the Chief of Police. The Incident Commander may recommend other personnel be placed on paid administrative leave to the Chief of Police. The assignment to administrative leave shall not be interpreted to imply or indicate that a member acted improperly.

While on administrative leave, members shall remain available at all times for official Departmental business, including interviews and statements regarding the incident.

C. Counseling Services

Members involved in a force incident that results in a person being seriously injured or killed shall attend employee assistance and counseling services provided by the City before his/her return to normal duties. Supervisors shall verify attendance only and document completion in a SNF entry. Command officers shall ensure involved members are advised of the services available and shall direct their attendance. As needed, members and employees who witness such incidents may also be referred to counseling services.

D. Providing First Aid or Medical Treatment

To the extent possible and without ever compromising safety, members shall ensure that they, when necessary or upon complaint of injury, provide medical first aid and/or emergency medical treatment as soon as practical congruent with their available equipment, resources and first aid training and certification.

In addition, if necessary, professional medical assistance shall be summoned as soon as practical. Refer to TB III-K, FIRST AID.

1. First Aid

First aid includes, but is not limited to, the mere cleaning of a scrape or cut, applying a bandage, flushing of the eyes with water or providing an ice pack. First aid shall be administered by OPD personnel when practical and safe to do so. First aid may be administered by a medical professional including the following: physicians, physician assistants, nurses (RN and LVN), paramedics, emergency medical technicians (EMT) and Fire Department Personnel.

2. Emergency Medical Treatment

Any treatment beyond first aid, including Cardio-Pulmonary Resuscitation (CPR) and rescue breathing, shall be administered by OPD personnel when practical and safe to do so. Emergency medical treatment may be administered by a medical professional including the following: physicians, physician assistants, nurses (RN and LVN), paramedics, emergency medical technicians (EMT) and Fire Department Personnel.

3. Hospital Admittance

Admittance to a hospital for the treatment of injuries as a result of any use of force. For the purposes of this order, evaluation or treatment by a medical professional not beyond first aid, as a result of any use of force, shall not be considered hospital admittance.

VI. USE OF SPECIALTY IMPACT MUNITIONS (SIM) DURING CROWD CONTROL

The Department places additional restrictions on the use of SIM during incidents involving Crowd Control and Crowd Management as specified in TB III-G, CROWD CONTROL AND CROWD MANAGEMENT and TB III-H, SPECIALTY IMPACT MUNITIONS.

A. Skip Fired Specialty Impact Less-Lethal Munitions (Wooden Dowels and Stinger Grenades) **are prohibited**.

1. Any and all less-lethal specialty impact weapons designed to be skip fired or otherwise deployed in a non-directional non-target specific manner, including but not limited to the Multiple Wood Baton Shell (264W) manufactured by Armor Holdings, Inc. shall not be used at all by OPD during demonstrations or crowd events.
2. The use of the Stinger Grenade containing rubber pellets designed to be deployed in a non-directional non-target specific manner is also **prohibited** for all crowd control use.

B. Uses of Direct Fired Specialty Impact Less-Lethal Munitions (SIM)

Direct Fired SIM are less-lethal specialty impact weapons that are designed to be direct fired at a specific target, including but not limited to Drag Stabilized Flexible Batons (DSFB), often referred to as "bean bags", and **shall not be used** for crowd management, crowd control or crowd dispersal during demonstrations or crowd events. Direct Fired SIM may never be used indiscriminately against a crowd or group of persons even if some members of the crowd or group are violent or disruptive.

1. Direct Fired SIM may be used against a specific individual who is engaging in conduct that poses an immediate threat of loss of life or serious bodily injury to him or herself, members or the general public, or who is engaging in substantial destruction of property which creates an immediate risk to the lives or safety of other persons.

In such instances, Direct Fired SIM shall be used only when other means of arrest are unsafe and when the individual can be targeted without endangering other crowd members or bystanders.

2. The use of Direct Fired SIM shall cease when the violent or destructive actions cease. These weapons shall not be used for the purpose of apprehension or to otherwise prevent escape unless escape would present a substantial risk of continued immediate threat to loss of life or serious bodily injury.
3. Members shall only deploy Direct Fired SIM during a demonstration or crowd event under the direction of a supervisor.
4. When circumstances permit, the supervisor on the incident scene shall make an attempt to accomplish the policing goal without the use of Direct Fired SIM as described above, and, if practical, an audible warning shall be given to the subject before deployment of the weapon.
5. Any person struck by a round shall be transported to a hospital for observation and any necessary treatment. Ambulance service, if required, shall be ordered per Department General Order I-4, AMBULANCE SERVICE. First aid, when necessary, shall be administered per Training Bulletin III-K, FIRST AID.
6. No member shall use Direct Fired SIM without formal training and certification.
7. Direct Fired SIM shall not be used against a person who is under restraint.
8. Members shall not discharge a Direct Fired SIM at a person's head, neck, throat, face, left armpit, spine, kidneys, or groin unless deadly force would be justified.

By Order of



Sean Whent
Interim Chief of Police

Date Signed: 12-16-13

REVISION RECORD

The page numbering format has been revised to facilitate updating and tracking revisions to publications contained in this Handbook.

When a minor revision is made to a publication, the 'Revision Number' will be indicated on the Special Order and shall be accompanied by the updated page(s). The 'Revision Date' and 'Reference Page Number(s)' shall be recorded in the appropriate box on the same line as the indicated 'Revision Number'. Ensure that all pages that are provided are replaced since reformatting may occur to accommodate revision(s)

When it is necessary to make major policy or content revision, the publication shall be rewritten in its entirety. The 'Revision Number' and 'Revision Date' shall be indicated on the new order. The 'Revision Date' shall be recorded in the appropriate box on the same line as the indicated 'Revision Number'. The term 'NEW' shall be recorded in the 'Reference Page Number(s)' box to indicate the promulgation of a new order.

Revision Number	Revision Date	Reference Page Number(s)	Revision Number	Revision Date	Reference Page Number(s)
1	1 Aug 07	NEW	16		
2			17		
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DEPARTMENTAL
GENERAL
ORDER

Effective Date
1 Aug 07

K-4

Index as:

Reporting and Investigating the
Use of Force

REPORTING AND INVESTIGATING THE USE OF FORCE

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Index as:

Reporting and Investigating the
Use of Force

REPORTING AND INVESTIGATING THE USE OF FORCE

The purpose of this order is to set forth Departmental policy and procedures for reporting, investigating, reviewing, and managing use of force incidents involving Departmental personnel.

I. POLICY

- A. Commanders, investigators and supervisors shall complete a Department approved training course for the Departmental use of force policy (DGO K-3) and reporting and investigating use of force incidents (DGO K-4) prior to conducting any use of force investigation. The training course shall include provisions of the Public Safety Officers' Procedural Bill of Rights (POBR), Departmental General Order (DGO) M-3, RECEIVING AND PROCESSING COMPLAINTS AGAINST DEPARTMENT PERSONNEL OR PROCEDURES and DGO M-4.1, CRIMINAL INVESTIGATIONS INVOLVING ACTIVE LAW ENFORCEMENT, OR A MEMBER OR EMPLOYEE OF THE DEPARTMENT.
- B. Personnel shall notify his/her supervisor immediately or as soon as practical, of any use of force, allegation of a use of force, or an allegation of unreasonable force.
 - 1. When notified of a Level 1, 2, or 3 use of force, the supervisor or commander shall respond to the scene and conduct the appropriate force investigation.
 - 2. When notified of an allegation of a use of force and the member/employee denies using force, the supervisor or commander shall respond to the scene and conduct a preliminary investigation into the use of force allegation.
 - 3. When a subject who has incurred an injury requiring more than basic first-aid **and** the injury did not occur as a result of a member's use of force **and** there is no allegation of force by the subject; or

4. When there is a discharge at an object (e.g., street light, alarm box, door lock or vehicle tire) by a member to accomplish a tactical police purpose that does not result in injury.
- C. If any force investigation indicates misconduct, the supervisor or commander shall conduct, at a minimum, a Level 2 force investigation and additionally initiate an internal investigation in accordance with the provisions of DGO M-3. Document the date the IAD was notified in the Use of Force Report (TF-967).
- D. If any force investigation indicates criminal misconduct, the supervisor or commander shall conduct, at a minimum, a Level 2 force investigation and additionally make the proper notifications in accordance with the provisions of DGO M-4.1. Document the date the CID was notified in the Use of Force Report.
- E. Personnel shall request medical service without delay when a subject has visible injuries or the subject has a complaint of injury.
- F. Supervisors and commanders shall be held accountable for the timely, accurate, and thorough documentation of all use of force incidents.
- G. Reports shall not contain “boilerplate” or “pat” language (e.g., “furtive movement” or “fighting stance,” etc.) without descriptive or explanatory details of the action.”
- H. Supervisors and commanders have the discretion to elevate any level of force investigation in order to conduct a more thorough investigation of the incident. The Watch Commander shall approve elevating a force investigation to a Level 1.
- I. A supervisor or commander involved in a use of force shall not investigate the incident or review for approval the Use of Force Report.
 1. In the event personnel working a tour of duty in the Patrol Division, of the rank of sergeant or above, are involved in a Level 2 or 3 use of force incident, the Watch Commander shall assign an investigator to conduct the investigation.

2. In the event personnel working a tour of duty in any division other than Patrol, of the rank of sergeant or above is involved in a Level 2 or 3 use of force incident, the unit commander shall assign an investigator to conduct the investigation with the approval of the division commander and, if unavailable, the Watch Commander¹.
 3. The Watch Commander may approve a supervisor or commander to investigate, a Level 2 or 3 use of force with their own self-reported Level 4 use of force when they occur in the same incident.
- J. In the event multiple members use the same level of force in a single incident, the reporting member shall prepare only one Use of Force Report listing all involved personnel.
- In the event multiple members use different levels of force in a single incident, the reporting member shall prepare only one Use of Force Report listing all involved personnel. An investigation shall be conducted at the highest level when multiple force options are used.
- K. Supervisors and commanders shall identify Department or individual training and tactical issues and make recommendations for corrective action, when appropriate and document the recommendations in the Use of Force Report.
- L. Supervisors and commanders shall ensure the provisions of POBR are properly applied.
- M. Personnel may delay compliance with the provisions of this order if the scene is unstable, there is community unrest, or other conditions make immediate compliance impracticable. The protection of Department personnel and the public, and the maintenance of public safety shall remain the priority. The approving supervisor or commander shall ensure the reason for the delay is documented in the Use of Force Report. Such compliance delays are subject to review by the appropriate review board.
- N. Injured or killed animals shall be handled and/or properly disposed of in accordance with the provisions of DGO A-5, ANIMAL CONTROL PROCEDURES.

¹ When a member is assigned to investigate a use of force incident involving another member of equal rank and an arrest is made requiring approval, the provisions of DGO M-18, ARREST APPROVAL shall be followed.



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II. FORCE LEVELS

Force options enumerated in DGO K-3 are grouped in the following force levels for reporting and investigating purposes only.

A. Level 1

1. Any use of force resulting in death;
2. Any intentional firearm discharge at a person, regardless of injury;
3. Any force which creates a substantial risk of causing death;
4. Serious bodily injuries, to include:
 - a. Any use of force resulting in the loss of consciousness; and
 - b. Protracted loss, impairment, serious disfigurement, or function of any bodily member or organ (includes paralysis).
5. Any unintentional firearms discharge:
 - a. If a person is injured as a result of the discharge; or
 - b. As directed by the BOI Deputy Chief.
6. Any intentional impact weapon strike to the head.
7. Any use of force investigation that is elevated to a Level 1 approved by a Watch Commander.

B. Level 2

1. Any strike to the head (except for an intentional strike with an impact weapon);
2. Carotid restraint is applied that does not result in the loss of consciousness;
3. Use of impact weapons, including specialty impact munitions or any other object, to strike a subject and **contact is made**, regardless of injury.
4. Any unintentional firearms discharge that does not result in injury;

5. A police canine bites the clothing or the skin of a subject, or otherwise injures a subject.
6. Any use of force which results in injuries to the subject requiring emergency medical treatment (beyond first-aid) or hospital admittance.

Note: For the purposes of this order, an evaluation by a medical professional to assess a complaint of injury is not emergency medical treatment.

C. Level 3

1. Oleoresin Capsicum (OC/Pepper Spray) or other chemical agent is applied to a person;
2. The use of a Taser® involving any of the following circumstances;
 - a. When one or more probes impacts or penetrates the subject's clothing or skin;
 - b. When the push stun arc touches the subject's clothing or skin;
or
 - c. A Taser® is fired at a person, but misses.
3. Any impact weapon, including specialty impact munitions, or any other instrument is used in an attempt to strike another person but **no contact is made**; or
4. The baton is used for a non-striking purpose (e.g., prying limbs, moving or controlling a person);
5. A Weaponless Defense Technique other than control holds, excluding strikes to the head. Examples include;
 - a. Hand/palm/elbow strikes;
 - b. Kicks;
 - c. Leg sweeps; and
 - d. Takedowns.
6. An on-duty firearm discharge at an animal other than to dispatch an injured animal.

D. Level 4

1. A firearm is intentionally pointed at a person;
2. A Weaponless Defense Technique is applied to a Vulnerable Area, excluding strikes (e.g., Hair grab, pressure to mastoid or jaw line; and shoulder muscle grab).
3. An on-duty firearm discharge to dispatch an injured animal; or
4. A Weaponless Defense Technique Control Hold is applied:
 - a. Escort (elbow);
 - b. Twist lock;
 - c. Arm-bar; or
 - d. Bent-wrist.

A Weaponless Defense Technique Control Hold applied for the purpose of handcuffing or escorts that do not result in injury or a complaint of injury are **NOT** reportable uses of force.



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III. LEVEL 1 FORCE OR IN-CUSTODY DEATH INCIDENTS

These incidents require concurrent investigations conducted by the Homicide Section and the Internal Affairs Division.

A. Involved personnel and personnel witnessing the use of force responsibilities:

1. Notify and brief their supervisor immediately, or as soon as practical. If the immediate supervisor is unavailable, another field supervisor or commander shall be notified.
2. Every member or employee who uses or is a witness to a Level 1 use of force shall not discuss the incident with others and limit any discussion of the incident to information required:
 - a. For a Public Safety Statement;
 - b. To assist in the investigations; or
 - c. To lead to the apprehension of the suspect.

B. Uninvolved personnel who did not witness the use of force shall perform the following, as directed by a supervisor or commander:

1. Conduct a reasonable canvas in an effort to identify and obtain statements from witnesses in the proximity of the use of force incident.
2. Witnesses to a use of force shall be identified to the extent that it is reasonable and listed in a Supplemental Report (536-937) or Victim/Witness Report (536-935). Statements shall be taken, when practical, and included in the Use of Force or In-Custody Death Report packet. The following criteria shall be used when listing witnesses:

a. Outside Agency Personnel

Outside agency personnel at the scene of a use of force incident, whether they witnessed the use of force or not, shall be identified as follows:

- 1) Name;
- 2) Rank/Title;
- 3) Serial number; and
- 4) Agency affiliation.

b. Private Person Witnesses

Private persons at the scene of a use of force incident, whether they witnessed the use of force or not, shall be identified, when possible, as follows:

- 1) Name;
 - 2) Sex, Race, DOB;
 - 3) Contact number(s); and
 - 4) Home address.
3. Document, in the appropriate report, why witness information was not obtained in situations where it was unsafe or impractical to obtain, (e.g., hostile crowd, public safety concerns, insufficient police resources), when the witness refused to remain at the scene, or is uncooperative.
4. Members shall not detain or delay a witness who refuses to remain at the scene; however the witness' physical description, license plate, comments, or other identifiers shall be obtained when available and documented in the appropriate report.
5. Members shall summon a supervisor to the scene in the event a witness refuses to give a statement or provide identification information.
6. Offense/Supplemental Reports shall be prepared independently without discussing the details of the incident with other personnel on scene. Group reporting is prohibited.
7. Personnel on scene at the time of the use of force incident, but not involved in or a witness to the use of force, shall be separately interviewed by the investigating supervisor, prior to clearing from the incident. Any relevant information revealed in the interview shall be included in the member or employee's Supplemental Report. Group interviewing is prohibited.

C. Supervisor Responsibilities

1. Respond to the location of the incident unless community unrest or other conditions make such response impracticable. In such instances, an alternate safe location shall be arranged.

2. Scene security:
 - a. Ensure a Crime Scene Security Log is maintained to record the time and identifying information of all persons entering and exiting the scene, to include:
 - 1) Department personnel;
 - 2) Medical personnel;
 - 3) Fire Department unit number and personnel; and
 - 4) Other persons.
 - b. Ensure the Crime Scene Security Log is delivered to the Homicide Section investigator for inclusion in the investigative case file.
3. Manage the scene, until relieved by the Incident Commander.
4. Ensure the Watch Commander has been notified and briefed of the incident.
5. Manage the scene, until relieved by the Incident Commander.
6. Attempt to obtain and document a Public Safety Statement, to include:
 - a. A verbal account from involved personnel to help determine the general circumstances of the incident;;
 - b. Assess the need for resources and notifications;
 - c. Help set the perimeter;
 - d. Locate injured persons;
 - e. Determine the nature of the evidence to seek;
 - f. Identify the number of suspects involved;
 - g. Identify the number of suspects outstanding; and
 - h. The number and direction of shots fired, if any.

The supervisor shall not ask the involved personnel to provide a step-by-step narrative of the Level 1 (lethal force) incident or to provide a motive for their actions.

7. Coordinate the apprehension of the suspect, if still outstanding.
8. Coordinate the preliminary investigation with the IAD and Homicide investigators, to include but not limited to:
 - a. Identifying involved and witness personnel;
 - b. Designating a reporting officer;
 - c. Ensuring the preservation of evidence;
 - d. Identifying other witnesses in accordance with the provisions of Part III, B; and
 - e. Assisting investigators to ensure statements are taken.
9. Respond to the location of a witness who has declined to give a statement or has refused to give witness identification information when requested by a member or employee. The outcome shall be documented in the member's Supplemental Report after the supervisor has talked to the witness.
10. Separate and prohibit communication between involved personnel and witnesses.
11. Ensure involved personnel limit any discussion of the incident to information necessary:
 - a. For a Public Safety Statement;
 - b. Required to assist in the investigations; or
 - c. Leading to the apprehension of the suspect.
12. Ensure personnel complete a Supplemental Report who were on scene at the time of the incident (not including involved or witness personnel) or were assigned to assist at the scene.

Offense/Supplemental Reports shall be prepared independently without discussing the details of the incident with other personnel on scene. Group reporting and interviewing is prohibited.
13. Document the reason in a Supplemental Report when personnel are directed not to complete a required report.

14. Contact and provide the IAD investigator with the complaint information if notified of an allegation of unreasonable force.

D. Follow-up Investigators Responsibilities

1. Homicide Section

The Homicide Section shall conduct a follow-up investigation and prepare and forward a Follow-up Investigation Report (336-201) to the IAD for review in accordance with the provisions of Homicide Section Policy and Procedure 01, LEVEL 1/IN-CUSTODY DEATH INVESTIGATIONS **within 45 calendar days**, unless extended by the BOI Deputy Chief.

2. District Attorney's (DA) Office Standby Team

- a. The DA's Office will respond with their on-call shooting team to all fatal officer-involved shootings and other incidents as they deem necessary.
- b. In the event of an officer-involved shooting in which a person is struck, and when a conflict of interest exists, the Bureau of Investigation Deputy Chief shall confer with the DA's Office to determine the most appropriate agency or investigative body to conduct the investigation.

3. Internal Affairs Division

The IAD shall conduct a concurrent but independent use of force investigation and prepare a Use of Force/In-Custody Death Report in accordance with the provisions of RWM Insert U-1 and IAD Policy and Procedure 05-04 **within 60 calendar days**, unless extended by the COP.

E. The Watch Commander or Designee Responsibilities

1. Respond to the scene and take command of the incident.
2. Monitor the incident to ensure good scene management and ensure the assigned supervisor coordinates and assists with a thorough and proper preliminary investigation.

3. Ensure the following notifications are made as soon as possible unless conditions at the scene make such notification impractical:
 - a. The Homicide Section Commander and Homicide Call-Out Team;
 - b. Internal Affairs Division Investigative Section Commander and IAD Call-Out Team;
 - c. Chief of Staff (OCOP);
 - d. Chief of Police (COP);
 - e. Alameda County District Attorney's Office Standby Team for force incidents resulting in death or injury likely to result in death;
 - f. Office of the City Attorney (OCA);
 - g. Office of Inspector General (OIG);
 - h. City Administrator;
 - i. Bureau of Field Operations (BFO) and Bureau of Investigations (BOI) Deputy Chiefs;
 - j. Division commander of the involved member or employee.



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IV. LEVEL 2 FORCE INCIDENTS

A use of force investigation conducted by a supervisor or commander.

Responsibilities

A. Involved or witness personnel to the use of force shall:

1. Notify and brief their supervisor immediately or as soon as practical. If the immediate supervisor is unavailable, another field supervisor or commander shall be notified.
2. Complete and submit for review the appropriate Offense/ Supplemental Report **prior to the end of tour of duty**, unless extended by the Watch Commander. The member or employee who uses force shall include the following minimum information regarding the use of force incident in their Offense or Supplemental Report:
 - a. The original reason for police presence on the scene;
 - b. The circumstances that resulted in the use of force; and
 - c. A detailed description of the force used.
3. Ensure the subject is transported to a medical facility for medical evaluation if a carotid restraint is applied. Document a refusal for medical treatment.

B. Uninvolved personnel who did not witness the use of force shall perform the following, when directed by a supervisor or commander:

1. Conduct a reasonable canvas in an effort to identify and obtain statements from other witnesses in the proximity of the use of force incident, commensurate with the availability of resources and the conditions of the event.
2. Witnesses to a use of force shall be identified to the extent that it is reasonable and listed in a Supplemental Report (536-937) or Victim/Witness Report (536-935). Statements shall be taken from outside agency personnel or private person witnesses, when practical. The following criteria shall be used when listing witnesses:

a. Outside Agency Personnel

Outside agency personnel at the scene of a use of force incident, whether they witnessed the use of force or not, shall be identified as follows:

- 1) Name;
- 2) Rank/Title;
- 3) Serial number; and
- 4) Department affiliation.

b. Private Person Witnesses

Private persons at the scene of a use of force incident whether they witnessed the use of force or not, shall be identified, when possible, as follows:

- 1) Name;
- 2) Sex, Race, DOB;
- 3) Contact number(s); and
- 4) Home address.

3. Document in the appropriate report why witness information was not obtained in situations where it was unsafe or impractical to obtain, (e.g., hostile crowd, insufficient police resources), the witness refused to remain at the scene, or is uncooperative.
4. Members shall not detain or delay a witness who refuses to remain at the scene; however the witness' physical description, license plate, comments, or other identifiers shall be obtained when available and documented in the appropriate report.
5. Members shall summon a supervisor to the scene in the event a witness refuses to give a statement or provide identification information.
6. Complete a Supplemental Report without discussing the details of the incident with other personnel on scene. Group reporting is prohibited.

7. Personnel on scene at the time of the use of force incident, but not involved in or a witness to the use of force, shall be separately interviewed by the investigating supervisor, prior to clearing from the incident. Any relevant information revealed in the interview shall be included in the member or employee's Supplemental Report.

C. Supervisor Responsibilities

1. Respond to the location of the incident unless community unrest or other conditions make such response impracticable. In such instances, an alternate safe location shall be arranged;

In the event the Watch Commander is involved in the use of force incident, he/she shall contact his/her immediate superior officer. The superior officer has the discretion to respond to the scene to conduct the investigation or assign another investigator.

2. Secure and manage the scene.
3. Coordinate the apprehension of the suspect, if still outstanding.
4. Ensure the subject is transported to a medical facility for medical evaluation when a carotid restraint is applied.
5. Contact the Communications Division before the end of tour of duty and advise the Communications Division Shift Supervisor to enter the use of force incident into the Daily IAD Incident Log.
6. When the situation has been stabilized and it can be accomplished safely:
 - a. Advise the Watch Commander or commander of the operation of the incident;
 - b. Ensure involved personnel and witnesses, outside agency personnel, and private person witnesses are identified in accordance with the provisions of RWM Insert U-1.
 - c. Ensure involved personnel and witnesses have been separated and advised that communication regarding the incident is prohibited.

7. Conduct an investigation in a timely manner to include, but not limited to, the following:
 - a. A separate, personal interview with involved and witness personnel including, if necessary, a written or recorded statement.
 - b. Personnel on scene at the time of the use of force incident, but not involved in or a witness to the use of force, shall be separately interviewed by the investigating supervisor, prior to clearing from the incident. Any relevant information revealed in the interview shall be included in the member or employee's Supplemental Report. Group interviewing is prohibited.
 - c. A personal interview with the subject(s) upon whom the use of force was used to include a written or recorded statement, when possible.
 - d. Contact medical personnel, when practical, who evaluated and/or provided treatment to the subject for available information on the subject's injuries and condition.
 - e. Ensure photographs are taken of:
 - 1) The physical condition of the subject and involved personnel, to record the presence or lack of injuries;
 - 2) The location of the use of force incident; and
 - 3) Other relevant evidence.

Document the reason why photographs were not taken.
 - f. Ensure digital photographs or film are submitted and processed utilizing one of the following procedures:
 - 1) Digital – Copy digital files to a compact disk, handle and submit as evidence, and list as evidence in the Use of Force Report; or

- 2) Film – Submit film for processing utilizing a Photo Evidence Card (536-317). Complete the appropriate boxes on the card. Additionally, ensure the following information is on the card:
 - a) **Comments** box – Indicate “Use of Force” & RD No. & “Put on CD”;
 - b) **Send To** box – “To IAD Administrative Supervisor.”
8. Respond to the location of a witness who has declined to give a statement or has refused to give witness identification information when requested by a member or employee. The outcome shall be documented in the member’s Supplemental Report after the supervisor has talked to the witness.
9. Ensure personnel who were on scene at the time of the incident or were assigned to assist at the scene complete the appropriate report.
10. Offense/Supplemental Reports shall be prepared independently without discussing the details of the incident with other personnel on scene. Group reporting is prohibited.
11. When a supervisor, commander or investigator directs personnel not to complete a required report, the reason shall be documented in the Use of Force Report.
12. Conduct a thorough review of all documents to be included in the Use of Force Report packet to ensure completeness, accuracy, and quality.
13. Ensure the appropriate Offense or Supplemental Report contains the following minimum information regarding the use of force incident:
 - a. The original reason for police presence on the scene;
 - b. The circumstances that resulted in the use of force; and
 - c. A detailed description of the force used.
14. Incomplete or inadequate reports shall be returned for additional details or clarification.

15. Prepare a Use of Force Report (TF-967) in accordance with the provisions of RWM Insert U-1, USE OF FORCE REPORT, unless otherwise directed by a commander or investigator.
16. Ensure the Use of Force Report packet contains:
 - a. The **original** Use of Force Report to include a Chronological Activity Log and Use of Force Checklist;;
 - b. A **copy** of the appropriate report (e.g., Offense Report or field contact card); and
 - c. **Copies** of ancillary documents, if necessary (e.g., statements (if any), Supplemental Reports, Technician Reports, Detail, CAD purge, available medical information obtained, and photographs, if available).
17. Email only the Use of Force Report face sheet (page 1) to the following, **prior to the end of tour of duty**:
 - a. opdiad@oaklandnet.com;
 - b. bfoadmin@oaklandnet.com;
 - c. Involved member or employee's Division Commander; and
 - d. Involved member or employee's Bureau Deputy Chief/Director.
18. Ensure the **original** Offense Report **and** ancillary documents are deposited in the Report Writing Receptacle in an In-Custody or Case Envelope.
19. Retain an electronic **copy** of the Use of Force Report until documented in the member/employee's annual performance appraisal.
20. Complete and forward the Use of Force Report packet, **within seven (7) calendar days**, through the appropriate chain-of-review². The due date may be extended with the approval of the reviewing Division Commander and shall be documented in the Chronological Activity Log.

² For the purpose of this order, the appropriate chain-of-review refers to the chain-of-command under which the involved member was working during that tour of duty when the force incident occurred.

- D. Watch Commander or Commander of the Operation Incident Scene Responsibilities
1. Respond to the scene and take Incident Command when advised the incident involves significant Department resources or is likely to generate unusual public interest.
 2. Monitor and ensure the use of force investigation is conducted in a thorough, methodical, and efficient manner.



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V. LEVEL 3 FORCE INCIDENTS

A review of a Level 3 force incident conducted by a supervisor or commander to assess the appropriate reporting level.

A. Involved or witness personnel to the use of force shall:

1. Notify and brief their supervisor immediately or as soon as practical. If the immediate supervisor is unavailable, another field supervisor or commander shall be notified.
2. Every member or employee who uses or witnesses a level of force requiring a Level 3 investigation shall independently complete the appropriate Offense or Supplemental Report;

The member or employee who uses force shall include the following minimum information regarding the use of force incident in their Offense or Supplemental Report:

- a. The original reason for police presence on the scene;
 - b. The circumstances that resulted in the use of force; and
 - c. A detailed description of the force used.
3. Personnel who are assigned to assist at the scene shall complete a Supplemental Report if directed by a supervisor, commander or investigator.

B. Supervisor/Commander Responsibilities

Respond to the location of the incident unless community unrest or other conditions make such response impracticable. In such instances, an alternate safe location shall be arranged; and

1. Secure the scene, if necessary;
2. Coordinate the apprehension of the suspect, if still outstanding;
3. Discuss the general circumstances of the incident with the involved personnel and witnesses to assess the appropriate reporting level, the need for resources, and to assess whether injuries, if present, are consistent with the force applied;

4. Conduct a personal interview with the subject(s) upon whom the use of force was used to include a written or recorded statement, when possible.
5. The responding on-scene supervisor or commander may authorize a Level 3 use of force incidents to be reported as a Level 4 when there is no injury to the subject requiring emergency medical treatment (beyond first-aid) or hospital admittance, allegation of misconduct, **and** no indication the use of force was out of policy. Affirmative approval shall be made by signing the approval box on the Use of Force Report - Part 3a. The following Level 3 use of force incidents may be considered:
 - a. A Taser® is fired at a person, but misses;
 - b. Oleoresin Capsicum (OC/Pepper Spray) or other chemical agent applied to a person;
 - c. Any impact weapon, including specialty impact munitions, or any other instrument is used in an attempt to strike another person but **no contact is made**;
 - d. A baton used for a non-striking purpose (e.g., prying limbs, moving or controlling a person); or
 - e. A Weaponless Defense Technique other than control holds, excluding strikes to the head, to include:
 - 1) Hand/palm/elbow strikes;
 - 2) Kicks;
 - 3) Leg sweeps; and
 - 4) Takedowns.

In the event the Watch Commander is involved in a Level 3 use of force incident enumerated above in Part V, B, 5, a-e, he/she shall contact his/her immediate superior officer to determine the appropriate level of reporting. If a Level 3 investigation is determined, the superior officer has the discretion to respond to the scene to conduct the investigation or assign another investigator.

6. Level 3 reporting shall include documentation of the following:
 - a. The absence of injuries to the subject;
 - b. A description of the injury not requiring emergency medical treatment or hospital admittance; or
 - c. Any injury to OPD personnel and any medical care or treatment provided.
7. Assess any complaint of injury and consider it as a factor toward elevating the Level 3 force to a Level 2 force investigation.
8. Ensure photographs are taken of the subject and involved member/employee to record the presence or absence of injuries, the location of the incident, and other relevant evidence. Document the reason why photographs were not taken.
9. Ensure digital photographs or film are submitted and processed utilizing one of the following procedures:
 - a. Digital – Copy digital files to a compact disk, handle and submit as evidence, and list as evidence in the Use of Force Report; or
 - b. Film – Submit film for processing utilizing a Photo Evidence Card (536-317). Complete the appropriate boxes on the card. Additionally, ensure the following information is on the card:
 - 1) **Comments** box – Indicate “Use of Force” & RD No. & “Put on CD”;
 - 2) **Send To** box – “To IAD Administrative Supervisor.”
10. Interview available witnesses at the scene.

NOTE: Written/recorded statements are not required for a Level 3 force incident.
11. Contact Communications Division and advise the Communications Supervisor, or in his/her absence, the on-duty Police Communications Supervisor, to enter the use of force into the Daily IAD Incident Log.

12. Ensure personnel complete a Supplemental Report who were witnesses to a Level 3 force incident or were assigned to assist at the scene.
13. When a supervisor, commander or investigator directs personnel not to complete a required report, the reason shall be documented in the Use of Force Report.
14. Conduct a thorough review of all documents to be included in the Use of Force Report packet to ensure completeness, accuracy, and quality.
15. Ensure the appropriate Offense or Supplemental Report contains the following minimum information regarding the use of force incident:
 - a. The original reason for police presence on the scene;
 - b. The circumstances that resulted in the use of force;
 - c. A detailed description of the force used; and
 - d. Document the number of bursts, duration of each burst, the approximate distance from the subject, and the location of spray contact, when OC is used.
16. Incomplete or inadequate reports shall be returned for additional details or clarification.
17. Prepare a Use of Force Report (TF-967) in accordance with the provisions of RWM Insert U-1, USE OF FORCE REPORT, unless otherwise directed by a commander or investigator.
18. Ensure the Use of Force Report packet contains:
 - a. The **original** Use of Force Report to include a Chronological Activity Log and Use of Force Checklist;
 - b. A **copy** of the appropriate report (e.g., Offense Report or field contact card); and
 - c. **Copies** of ancillary documents, if necessary (e.g., statements (if any), Supplemental Reports, Technician Reports, Detail, CAD purge, available medical information obtained, and photographs, if available).

19. Email only the face sheet of the Use of Force Report to the following, **prior to the end of tour of duty**:
 - a. opdiad@oaklandnet.com;
 - b. bfoadmin@oaklandnet.com;
 - c. Involved member or employee's Division Commander; and
 - d. Involved member or employee's Bureau Deputy Chief/Director.
20. Ensure the **original** Offense Report **and** ancillary documents are deposited in the Report Writing Receptacle in an In-Custody or Case Envelope.
21. If notified of an allegation of unreasonable force, the supervisor shall conduct a preliminary investigation.
 - a. If there is corroborating evidence that unreasonable use of force occurred, the supervisor shall conduct a **Level 2** force investigation and initiate an internal investigation.
 - b. If there is no corroborating evidence that unreasonable use of force occurred, the supervisor shall document the results of the preliminary complaint investigation in the narrative of the Use of Force Report.
22. Retain an electronic **copy** of the Use of Force Report until documented in the member/employee's annual performance appraisal.
23. Complete and forward the Use of Force Report packet, **within seven (7) calendar days**, through the appropriate chain-of-review³. The due date may be extended with the approval of the reviewing Division Commander and shall be documented in the Chronological Activity Log.

³ For the purpose of this order, the appropriate chain-of-review refers to the chain-of-command under which the involved member was working during that tour of duty when the force incident occurred.



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VI. LEVEL 4 FORCE INCIDENTS

A self-reported use of force.

A. Involved Personnel Responsibilities

1. Notify and brief their supervisor immediately or as soon as practical. If the immediate supervisor is unavailable, another field supervisor or commander shall be notified.
2. Complete a Use of Force Report (TF-967) in accordance with the provisions of RWM Insert U-1, USE OF FORCE REPORT or when authorized by a supervisor or commander.

A narrative shall be included in the Use of Force Report if no other required Offense or Supplemental Report is completed.

3. The member or employee who uses force shall include the following minimum information regarding the use of force incident in their Offense, Supplemental, or Use of Force Report:
 - a. The original reason for police presence on the scene;
 - b. The circumstances that resulted in the use of force; and
 - c. A detailed description of the force used.
4. Place the **original** Use of Force Report and, if applicable, the appropriate Offense Report and ancillary documents in an In-Custody/Case Envelope and deliver to his/her immediate supervisor or, if unavailable, to an on-duty supervisor for review **prior to the end of tour of duty**.

B. Supervisor/Commander Responsibilities

1. When contacted by involved personnel, supervisors shall review the general circumstances of the incident with the involved personnel as necessary, and ensure the facts are consistent with the reporting level. Supervisors are not required to respond to the incident.

2. Prior to reducing a Level 3 use of force incident to a Level 4, the approving supervisor shall ensure there is no injury to the subject requiring emergency medical treatment (beyond first-aid) or hospital admittance, allegation of misconduct, **and** there is no indication the use of force was out of policy. Affirmative approval shall be made by the supervisor by signing the appropriate box on the Use of Force Report - Part 3a.
3. If notified of an allegation of unreasonable force, the supervisor shall conduct a preliminary investigation.
 - a. If there is corroborating evidence that unreasonable use of force occurred, the supervisor shall conduct a **Level 2** force investigation and initiate an internal investigation.
 - b. If there is no corroborating evidence that unreasonable use of force occurred, the supervisor shall document the results of the preliminary complaint investigation in a Risk Management Memorandum if no Use of Force Report is completed.
4. **Level 4** incidents do not require witness identification.



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VII. LEVEL 1 FORCE INCIDENTS INVOLVING AN OUTSIDE AGENCY

- A. A Level 1 force incident occurring outside the City of Oakland
 - 1. Upon notification, the Watch Commander shall:
 - a. Send an on-duty supervisor to the jurisdiction in which the incident occurred unless the distance makes it impractical. The supervisor shall remain with the member(s) during the investigation by the outside agency;
 - b. Notify the BOI Deputy Chief who shall determine if Homicide investigators are to be called-out; and
 - c. Notify the IAD Commander who shall determine if IAD investigators are to be called-out.
 - 2. The law enforcement agency which has jurisdiction, in which the incident occurred, shall have incident command and primary criminal investigation responsibility. The Homicide Section shall only assume primary criminal investigation responsibility upon the request of the outside agency.
 - 3. Homicide Section investigators shall request to attend the interview of OPD personnel, unless the distance involved makes this impractical.
 - 4. IAD investigators shall request to monitor the interview of OPD personnel, unless the distance involved makes this impractical.
- B. A Level 1 force incident involving outside agency personnel within the City of Oakland
 - 1. The Homicide Section shall conduct the criminal investigation for the following incidents:
 - a. Any use of force resulting in death;
 - b. Any intentional firearm discharge at a person regardless of injury;
 - c. Any force which creates a substantial risk of causing death;

- d. Any unintentional firearms discharge if a person is injured as a result of the discharge; or
 - e. Any use of force incident referred by a Watch Commander.
2. The outside agency may assist at the discretion of the BOI Deputy Chief.



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VIII. COMMAND REVIEW AND ENDORSEMENT

A. All reviewers shall:

1. Review the Use of Force Report packet and evaluate the Use of Force Report and ancillary documents for completeness, accuracy, and quality and ensure reports do not contain “Boilerplate” or “Pat” language without descriptive or explanatory details of the action. Return any reports that are incomplete or inadequate and ensure corrections are made;
2. Order further investigation or additional investigative resources when necessary;
3. Evaluate and document whether the use of force was in compliance with Departmental policy and comment on any training and tactical issues, when appropriate; and
4. Document extension approvals by the reviewing Division Commander on the Use of Force Chronological Activity Log. The Division Commander shall ensure the IAD and BFO Administrative Unit are notified of any approved extensions.
5. Complete, endorse, and sign a Use of Force Report Signature Page (TF-967c) and forward the Use of Force Report packet within four (4) calendar days.

B. Level 1 Force Review Responsibilities

1. The Homicide Section Commander shall:
 - a. Ensure a follow-up investigation is conducted and the assigned Homicide investigator prepares a Follow-up Investigation Report (336-201) in accordance with the provisions of Homicide Section Policy and Procedure 01, LEVEL 1/IN-CUSTODY DEATH INVESTIGATIONS.
 - b. Review and forward the approved Follow-up Investigation Report to the IAD **within 45 calendar days of the incident**, unless extended by the BOI Deputy Chief in accordance with the provisions of Homicide Section Policy and Procedure 01.

2. The IAD Commander shall:
 - a. Ensure IAD investigators have conducted a concurrent use of force investigation and prepared a Use of Force or In-Custody Death Report in accordance with the provisions of RWM Insert U-1 and IAD Policy and Procedure 05-04 **within 60 calendar days of the incident**, unless extended by the Chief of Police.
 - b. Review and forward the approved Use of Force or In-Custody Death Report packet to the BOS Deputy Chief and Chief of Staff, **within 15 calendar days from receipt**, unless extended by the COP in accordance with the provisions of IAD Policy and Procedure 05-04.
 - c. Provide an oral report to the COP within 24 hours of the incident.
3. Chief of Staff (COS)
 - a. Enter data from the Use of Force/In-Custody Death Report face sheet into a log upon receipt;
 - b. Track the Use of Force/In-Custody Death Report due date to ensure the timeliness of the investigation, and ensure the BOS Deputy Chief has received the Use of Force Report packet and information necessary to conduct the EFRB. Contact the IAD Commander and ascertain the delay if not received **within 76 calendar days of the incident** and notify the COP of the delay.

C. Level 2 and 3 Force Review Responsibilities

1. Reviewing Commanders shall:
 - a. Review and forward all approved Use of Force Report packets through the Division Commander to BFO Administration Unit.

NOTE: BFO Administration Unit shall receive and track **ALL** Use of Force Report packets, regardless of originating unit.

- b. If a training issue arises from a Level 3 incident, the Division Commander shall ensure training is conducted and a Training Memorandum is completed and forwarded to the Training Division for input into the Training Management System (TMS).

AND/OR

- c. Training is requested from the Training Division, through a Training Memorandum, when it cannot be accomplished at the division level. Training Division personnel shall input completed training in the TMS.
- d. If a Department-related service recommendation (e.g., policy revision, equipment evaluation, new Department publication) arises from a Level 3 incident, the Division Commander shall prepare and forward a recommendation memorandum through the chain-of-command to the Chief of Police.

2. BFO Administrative Unit shall:

- a. Notify the appropriate commander if the Use of Force Report packet has not been received **within 16 calendar days of the incident**.
- b. Review the Use of Force Report;
- c. If the Use of Force Report is returned for additional follow-up or clarification, the due date may be extended, as needed, by the BFO Administrative Supervisor and documented in the Chronological Activity Log.
- d. Forward completed Use of Force Report packet to the IAD, **within four (4) calendar days of receipt of a completed packet**.

D. Level 4 Force Review Responsibilities

1. Reviewing supervisor:

- a. Conduct a thorough review of all documents to ensure completeness, accuracy, and quality.

- b. Ensure the appropriate Offense, Supplemental, or Use of Force Report contains the following minimum information regarding the use of force incident:
 - 1) The original reason for police presence on the scene;
 - 2) The circumstances that resulted in the use of force; and
 - 3) A detailed description of the force used.
 - c. Incomplete or inadequate reports shall be returned for additional details or clarification.
 - d. Ensure the Use of Force Report has an Incident number. Advise the Communications Division Shift Supervisor to enter the use of force into the Daily IAD Incident Log.
 - e. Ensure the **original** Offense Report **and** ancillary documents are deposited in the Report Writing Receptacle in an In-Custody or Case Envelope.
 - f. Upon approval, sign the appropriate Level 4 Reviewer box on the Use of Force Report; and
 - g. Ensure the Use of Force Report packet contains:
 - 1) The **original** Use of Force Report (No Chronological Activity Log or Use of Force Checklist is required);
 - 2) A **copy** of the appropriate report (e.g., Offense/Supplemental Report or field contact card); and
 - 3) **Copies** of statements (if any).
 - h. Forward the **original** Use of Force Report packet to the first-level commander for review, **prior to the end of tour of duty**.
2. The first-level commander shall:
- a. Review the **original** Use of Force Report packet. If the Use of Force Report is returned for additional follow-up or clarification, the due date may be extended, as needed, and documented in the Chronological Activity Log.

- b. Upon approval, sign the appropriate Level 4 Reviewer box on the Use of Force Report; and
- c. Forward approved Use of Force packet to the BFO Administrative Unit **within four (4) calendar days of approval.**

In the event the Watch Commander prepares a Level 4 Use of Force Report, he/she shall forward the report to the BFO Administrative Unit.

E. IAD

Upon receipt of a Level 2-4 Use of Force Report, IAD shall assign a Use of Force Tracking Number to and enter the Use of Force Report information into the appropriate database, and scan the file into electronic format. IAD shall retain a hardcopy and an electronic file of the Use of Force Report packet.

Additionally, IAD shall forward the entire electronic file of Level 2 Use of Force Report packets, via email or appropriate media, to the Training Division Commander and the Chief of Staff **within four (4) calendar days of receipt.**



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IX. RISK MANAGEMENT

The purpose of documenting risk management issues is to ensure a proper preliminary investigation is conducted and notification of the incident is made to the IAD (for units outside of the IAD) when any of the incidents enumerated in Part I, B, 2-4 occur.

The supervisor shall:

- A. Respond to the scene;
- B. Ensure the involved member documents the circumstances of the incident in the appropriate report;
- C. Obtain an Incident Number from the Communications Division;
- D. Conduct a preliminary investigation;
 - 1. If the preliminary investigation reveals corroborating evidence that the use of force occurred, the supervisor or commander shall conduct a Level 2 force investigation⁴, initiate an internal investigation in accordance with the provisions of DGO M-3, and notify the Watch Commander;
 - 2. The Watch Commander shall contact the IAD to determine if a call-out is warranted;
 - 3. If the preliminary investigation reveals no corroborating evidence that the alleged use of force occurred, the supervisor or commander shall document the results of the preliminary complaint investigation in the narrative of the Use of Force Narrative Report (Level 2-4) or a Risk Management Memorandum if no Use of Force Report is completed.
- E. Risk management documentation shall include:
 - 1. A summary of the incident;
 - 2. Written or recorded statement(s) from the complainant, injured person, and witnesses, if practical;

⁴ The IAD shall include risk management documentation in a Level 1/In-Custody Death Report.

3. Indicate complainant was:
 - a. Advised of their right to file a complaint with CPRB;
 - b. Provided with a Complaint Packet (TF-3208); and
 - c. Provided with the Incident Number.
 4. Photographs;
 5. Documentation of evidence collected or reason why evidence was not collected.
 6. Offense or Supplemental Report(s) from involved personnel; and
 7. Other pertinent documents (if available).
- F. Contact the Communications Division Shift Supervisor, at the conclusion of the preliminary investigation, and provide the following information:
1. Complainant's name (for verification);
 2. Time contact made with complainant;
 3. Name of Watch Commander/Unit Commander notified; and
 4. Disposition of complaint.
- G. If a Level 2-4 Use of Force Report is being prepared, check the "Risk Management Advisement" box on the Use of Force face sheet
- For Level 4 force incidents only:
1. The officer who used the force shall prepare a Use of Force Report.
 2. The notified supervisor shall prepare a Use of Force Narrative Report to include the required elements enumerated in Part IX, A-F.
 3. Include in the Use of Force Report packet.

- H. When no Use of Force Report is required, the notified supervisor shall prepare a Risk Management Memorandum to include the required elements enumerated in Part IX, A-F.
- I. Forward the Use of Force Report packet or the Risk Management Memorandum with documentation, through the appropriate chain-of-review to the IAD.

By order of

Wayne G. Tucker
Chief of Police

Date Signed: _____



Office of the City Manager

December 21, 2017

To: Honorable Mayor and Members of the City Council

From: *Dee* Dee Williams-Ridley, City Manager

Subject: Update; Use of Force Policy Development

This memorandum provides an update on the progress of the Berkeley Police Department's work on the revision of General Order U-2, Use of Force, as requested by Council on October 31, 2017.

The working group has drafted new and revised language to U-2, including:

- Formal language regarding the value of human life and dignity, without prejudice to anyone;
- Formal language regarding using de-escalation tactics and techniques which seek to minimize the need to use force and increase the likelihood of voluntary compliance;
- Re-draft definition of force;
- Expand the threshold of reporting force, including sub-categories of physical force;
- Consider approaches to categorization of force levels; using plain language to increase transparency;
- Posting of use of force statistics on the City's Open Data Portal.

Additionally, staff is drafting a model report to serve as a template for an annual use of force report.

External factors which could affect implementation of the completed policy include: necessary review from the City Attorney's office, and the need to meet and confer with the Berkeley Police Association. Once finalized, the policy will be provided to the Police Review Commission.

We look forward to completing work on this item. In the meantime, it may be helpful to note that the Department's overall use of force use appears quite small, proportional to the number of incidents to which the Department responds. The Chief has commented on this in the past, and provided the following information for your information.

Use of Force data against calls for service data: In the past three years, 2015,-2017, approximately 105 of the 223,878 incidents BPD responded to resulted in a Use of Force report. In other words, .047% (*forty-seven thousandths of a percent*) of the incidents BPD responded to resulted in a documented Use of Force report. The majority of force used is physical force.

Use of Force Complaints data against calls for service data: In the same period, approximately 34 of the 223,878 incidents BPD responded to resulted in a Use of Force complaint: about one out of every 6,500, or .015%, *fifteen-thousandths of a percent*.

If you have any questions, please let me know.

cc: Jovan Grogan, Deputy City Manager
Ann Marie Hogan, City Auditor
Mark Numainville, City Clerk
Matthai Chakko, Assistant to the City Manager / Public Information Officer

Use of Force

300.1 PURPOSE AND SCOPE

Best Practice

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

300.1.1 DEFINITIONS

Federal

Definitions related to this policy include:

Deadly force - Any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm (Penal Code § 835a).

Commented [GA1]: 835a

Commented [OJ2]: Changes based on Lexipol update related to the new use of force law

Force - The application of physical techniques or tactics, chemical agents or weapons to another person. It is not a use of force when a person allows him/herself to be searched, escorted, handcuffed or restrained.

Commented [GA3]: New

Less-Than-Lethal Force - Any use of force which, due to possible physiological effects of application, presents less potential for causing death or serious injury than conventional lethal force options. Less-than-lethal force options include, but are not limited to, a specialized launcher, or other authorized device that can discharge, fire, launch or otherwise propel single or multiple flexible or non-flexible projectiles designed to cause physiological effects consistent with blunt force impact.

Commented [GA4]: Combines existing U-2 language

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

Commented [GA5]: U-2

Compliant - Cooperative and/or response to lawful commands.

Commented [GA6]: New

Passive Resistance - Noncompliance to lawful authority without physical resistance or mechanical enhancement.

Commented [GA7]: New

Active Resistance - Use of physical effort or mechanical resistance in achieving and/or maintaining noncompliance.

Commented [GA8]: New

Control Techniques - Control holds, Personal Impact Weapons, and Take Downs.

Commented [GA9]: New

Personal Body Weapons - An officer's use of his/her body part, including but not limited to hand, foot, knee, elbow, shoulder, hip, arm, leg or head by means of kinetic energy transfer (impact) to gain control of a subject.

Commented [GA10]: New

DRAFT FOR PRC REVIEW

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

Commented [GA11]: New

Concealment - Anything which conceals a person from view.

Commented [GA12]: New

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

Commented [GA13]: New

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

Commented [GA14]: New

Ramming - The use of a vehicle to intentionally hit another vehicle

Commented [GA15]: New

Serious Bodily Injury - A bodily injury that creates a substantial risk of death, causes serious, permanent disfigurement or results in a prolonged loss or impairment of the functioning of any bodily member or organ.

Commented [GA16]: New

Officer (or) Police Officer - Any sworn peace officer.

Commented [GA17]: Existing language

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

Commented [GA18]: Existing language

Employee - Any non-sworn employee of the Berkeley Police Department, including those deemed "authorized employees."

Commented [GA19]: Existing language

300.2 POLICY

Best Practice

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

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

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

300.2.1 DUTY TO INTERCEDE

Federal

Any officer present and observing another officer using force that is clearly beyond that which is

objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force. An officer who observes another employee or member of another department use force that exceeds the degree of force permitted by law shall promptly report these observations to a supervisor.

Commented [GA20]: Added from existing BPD U-2

300.3 USE OF FORCE

Federal

Officers shall use only that amount of force that is objectively reasonable given the facts and totality of the circumstances known or perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose. Officers shall use only the force that is objectively reasonable to effectively bring an incident under control, while protecting the safety of the officer and others. (Penal Code § 835a)

Commented [GA21]: Changes based on Lexipol/new use of force law

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident, rather than with the 20 / 20 vision of hindsight. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving. This policy takes into consideration that there are a range of reasonable responses to each situation. (Graham v. Connor 490 U.S. 386 (1989))

Commented [GA22]: Added citation

The decision to use force "requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." (Graham v. Connor 490 U.S. 386 (1989))

Commented [GA23]: Added citation

In deciding what type of reasonable force to use, officers and employees must use sound judgment and their training to assess the degree of threat in a given situation, and to determine what departmentally authorized force technique or weapons will bring the situation under control in a reasonable manner.

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by the Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

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

300.3.1 USE OF FORCE TO EFFECT AN ARREST

State

Any peace officer may use reasonable force to effect an arrest, to prevent escape or to overcome

resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance on the part of the person being arrested; nor shall an officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest, prevent escape or to overcome resistance (Penal Code § 835a).

300.3.2 USE OF FORCE TO SEIZE EVIDENCE

In general, officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. In the instance when force is used an officer shall not intentionally use any technique that restricts blood flow to the head, restricts respiration or which creates a reasonable likelihood that blood flow to the head or respiration would be restricted. Officers are encouraged to use techniques and methods taught by the department for the specific purpose of collecting evidence.

300.3.3 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

Federal

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

- (a) The apparent immediacy and severity of the threat to officers or others (Penal Code § 835a).
- (b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- (c) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (d) The conduct of the involved officer (Penal Code § 835a).
- (e) The effects of drugs or alcohol.
- (f) The individual's apparent mental state or capacity (Penal Code § 835a).
- (g) The individual's apparent ability to understand and comply with officer commands (Penal Code § 835a).
- (h) Proximity of weapons or dangerous improvised devices.
- (i) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (j) The availability of other reasonable and feasible options and their possible effectiveness (Penal Code § 835a).
- (k) Seriousness of the suspected offense or reason for contact with the individual.
- (l) Training and experience of the officer.
- (m) Potential for injury to officers, suspects, and others.
- (n) Whether the person appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.

Commented [GA24]: Items in below listed with the PC 835a citation are new to the law.

-
- (o) The risk and reasonably foreseeable consequences of escape.
 - (p) The apparent need for immediate control of the subject or a prompt resolution of the situation.
 - (q) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
 - (r) Prior contacts with the subject or awareness of any propensity for violence.
 - (s) Any other exigent circumstances.

Commented [OJ25]: Lexipol updated this list based on changes in the law. The main changes are d) and g). Added "apparent" to sections a) and f) and included language referencing Penal Code section 835a, to certain sections.

Commented [GA26]: New language-BPD Unique

300.3.4 DE-ESCALATION TACTICS

De-escalation tactics and techniques are actions which may be used by officers which seek to minimize the need to use force during an incident. Such tactics and techniques may increase the likelihood of voluntary compliance when employed and should be used when it is safe to do so, without compromising law enforcement objectives and priorities. De-escalation tactics emphasize slowing an incident down to allow time, distance and flexibility for the situation to resolve. The application of these tactics is intended to increase the potential for resolution with a minimal reliance on the use of force, or without using force at all.

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

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

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

- (a) Make a tactical approach to the scene.
- (b) Maintain a safe distance.
- (c) Use available cover or concealment and identify escape routes.
- (d) Stage Berkeley Fire Department.
- (e) Control vehicle and pedestrian traffic.
- (f) Establish communication, preferably with one officer.
- (g) Create an emergency plan and a deliberate plan with contingencies.
- (h) The officer's physical actions may also de-escalate a potentially volatile/violent situation; e.g., exhibiting relaxed body language.

When time and circumstances reasonably permit, officers should consider whether a subject's

lack of compliance is a deliberate attempt to resist or is the result of an inability to comply based on factors such as:

- (a) Medical conditions
- (b) Mental impairment
- (c) Developmental disability
- (d) Physical Disability
- (e) Physical limitation
- (f) Language barrier
- (g) Drug interaction
- (h) Behavioral crisis

300.3.5 PAIN COMPLIANCE TECHNIQUES

Best Practice

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

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

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

300.3.6 USE OF NON-LETHAL FORCE

When lethal force and less-than-lethal force are not authorized, officers and authorized employees may use reasonable approved non-lethal force techniques and weapons in the following circumstances:

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

300.3.7 CAROTID CONTROL HOLD PROHIBITION

The use of a Carotid Restraint Hold is prohibited. Carotid Restraint Hold: Council Resolution No. 52,605 - N.S., February 14, 1985, "Prohibiting use of 'chokehold' for law enforcement purposes in

Commented [GA27]: Longstanding Berkeley City Council Resolution

the City of Berkeley” states: “Be it resolved by the Council of the City of Berkeley as follows: That the chokehold, including but not limited to the carotid restraint and the bar-arm hold, is hereby banned from use for law enforcement purposes in the City of Berkeley.”

The term bar-arm refers to a variety of techniques. As defined in the City Council Resolution, “bar-arm hold” refers to *any* use of the forearm to exert pressure against the front of the neck. However, other types of arm hold techniques (e.g., those that involve control of the arm, wrist or elbow) remain authorized.

300.4 DEADLY FORCE APPLICATIONS

Federal

If an objectively reasonable officer would consider it safe and feasible to do so under the totality of the circumstances, officers should evaluate the use of other reasonably available resources and techniques when determining whether to use deadly force. The use of deadly force is only justified in the following circumstances (Penal Code § 835a):

- (a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes is an imminent threat of death or serious bodily injury to the officer or another person.
- (b) An officer may use deadly force to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.

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

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

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

300.4.1 DIRECTED FIRE

Officers may use controlled gunfire that is directed at the suspect, reducing the suspect’s ability to

Commented [OJ28]: Our policy used Lexipol language verbatim. This is the updated version from Lexipol that incorporates the new law that goes into effect in 2020. The most significant change is the second to last paragraph prohibiting the use of deadly force against someone who is only a danger to him or herself.

Commented [GA29]: BPD Language

return fire while a group or individual movement is conducted.

Officers may employ this tactic when dealing with a suspect who poses an immediate and ongoing lethal threat and only under circumstances where the use of deadly force is legally justified. Target acquisition and communication are key elements in the successful use of this tactic. Officers remain accountable for every round fired under these circumstances.

300.4.2 SHOOTING AT OR FROM MOVING VEHICLES

Best Practice

Firearms should not be discharged at a stationary or moving vehicle, the occupants of a vehicle, or the tires of a vehicle unless a person in the vehicle is imminently threatening an officer or another person present with deadly force. The moving vehicle alone does not presumptively constitute a threat that justifies the use of deadly force.

Officers shall not move into, remain, or otherwise position themselves in the path of a vehicle in an effort to detain or apprehend the occupants. Any officer in the path of a moving vehicle shall immediately attempt to move to a position of safety rather than discharging a firearm at the vehicle or any of the occupants.

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

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

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

300.5 USE OF VEHICLES

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

Commented [GA30]: BPD Language

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

When properly utilized, the VCT can give officers time, distance, and cover in order to safely and effectively resolve a situation.

300.6 REPORTING REQUIREMENTS

Best Practice

Any use of force described in 300.6.2 shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident. The officer should articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances. Whenever an officer or employee uses Oleoresin Capsicum (pepper spray) he or she must also complete a "Use of Pepper Spray Report"

A use of force report is not required when a person is handcuffed, searched, or subject to a control hold and there is no injury or complaint of injury.

300.6.1 INTENTIONALLY POINTING A FIREARM AT AN INDIVIDUAL

Whenever an officer intentionally points a firearm at an individual they shall document the occurrence on a Blue Team report. Officers shall articulate the facts that lead them to point a firearm at an individual and advise a supervisor prior to the end of shift so they can review the report documenting the incident.

Commented [GA31]: BPD Language

Officers are not required to document drawing or deploying a firearm if they do not intentionally point it at a subject.

Commented [OJ32]: Requires us to be live on Blue Team.

300.6.2 NOTIFICATION TO SUPERVISORS

Best Practice

Supervisory notification shall be made as soon as practicable following the application of force in any of the following circumstances:

- (a) The application caused a visible injury.
- (b) The application would lead a reasonable officer to conclude that the individual may have experienced more than momentary discomfort.
- (c) The individual subjected to the force complained of injury or continuing pain as a result of the use of force.
- (d) Any application of less than lethal munitions or pepper spray.
- (e) The individual was struck by a baton
- (f) The individual subjected to the force was rendered unconscious.
- (g) The individual was struck with a personal body weapon or was subjected to a take-down.
- (h) An individual alleges any of the above has occurred.

300.6.3 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

State

Statistical data regarding all officer-involved shootings and incidents involving use of force resulting in serious bodily injury is to be reported to the California Department of Justice as required by Government Code § 12525.2. See the Records Management policy.

300.7 MEDICAL CONSIDERATION

Best Practice

When an officer or employee uses force that results in injury, or when a subject complains that an injury has been inflicted, the officer or employee shall ensure that the subject receives appropriate medical care.

The on-scene supervisor or, if the on-scene supervisor is not available, the primary handling officer shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force.

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

300.8 SUPERVISOR RESPONSIBILITY

Best Practice

When a supervisor is able to respond to an incident in which there has been a reported application of force as defined in 300.6.2 and the scene is secure, the supervisor is expected to:

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

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

Commented [OJ33]: All cases are investigated the same way regardless of intent to sue. IAB works with City Attorney's Office when there is civil litigation.

300.9 WATCH COMMANDER RESPONSIBILITY

Best Practice

The Watch Commander shall review each use of force by any personnel within his/her command to ensure compliance with this policy and to address any training issues.

300.10 USE OF FORCE ADMINISTRATIVE REVIEW

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

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

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

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

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

300.11 TRAINING

Best Practice

Officers will receive periodic training on this policy and demonstrate their knowledge and understanding.

300.12 USE OF FORCE ADMINISTRATIVE REVIEW

Best Practice

The Professional Standards Division Captain or his or her designee shall prepare an analysis report on use of force incidents to be included as part of the Police Department's Annual Crime Report to Council. The report shall not contain the names of officers, suspects or case numbers, and should include:

- (a) An analysis of use of force incidents with demographic details of the individual impacted and type of force used
- (b) The identification of any trends in the use of force by members.
- (c) Training needs recommendations.
- (d) Equipment needs recommendations.
- (e) Policy revisions

Commented [OJ34]: Changed language so the information is included as part of the Crime Report.