



Draft

HUMAN RELATIONS COMMISSION

Thursday, July 22, 2020

6:00 PM

SPECIAL MEETING

*****BY VIRTUAL TELECONFERENCE ONLY*****

Commissioners Present: Chair Smith, Commissioners Lee, Regehr, Savage, Stinger

Absent: None

Council Liaison: Council Member Tanaka, Council Member Kou

Staff: Minka van der Zwaag, Mary Constantino

Chair Smith: I want to welcome everybody to this special session of the Human Relations Commission of the city of Palo Alto. Tonight, we are endeavoring to continue our work on 8 Can't Wait and dealing with police reform. For those of you that are joining for the first time, this is the continuation of a process that was begun with a referral from the City Council, where they asked us to look at the 8 Can't Wait and the history and current condition of black and brown people in the city of Palo Alto. We have divided our work plan into two specific parts. We are dealing with police reform and 8 Can't Wait specifically now. At this point, we have done the following to execute this project. We have had public comment; we had expert opinion; we have had organization of plan. The goal of tonight's meeting is to come out of here with eight recommendations, one on each point of 8 Can't Wait. Also, that each commissioner will add in their personal additional findings for the City Council. The reality is, is that these commissioners have done an outstanding job. They've already, in the last 30 days, committed to almost 12-15 hours of meetings. They've listened to dozens of people on the public comment, and they have spent hours and hours in personal research. Tonight, the way this meeting will be structured, we will start off with... Sorry. Pulling up my agenda. We will start with the roll call, given by staff.

I. ROLL CALL

II. AGENDA CHANGES, REQUESTS, DELETIONS

Chair Smith: Do we have any agenda changes, requests, or deletions? Okay, thank you.

III. ORAL COMMUNICATIONS

Chair Smith: We are grateful tonight, given the gravity and importance of the work, we have been joined every step of the way by Council Woman Lydia Kou, Councilmen Greg Tanaka. We are grateful that they are working hard during their summer vacation because this issue is

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important. We also have our city manager, who has been on every single one of these calls, City Manager Ed Shikada, and we are joined today by Police Chief Robert Jonsen, and Assistant Chief Andrew Binder. What we're going to do now is open up for oral communications. We are going to bundle both oral communications tonight, so if you have anything to say on 8 Can't Wait or police reform, we are going to ask you to make those statements now.

Ms. van der Zwaag: Chair Smith?

Chair Smith: Yes, ma'am?

Ms. van der Zwaag: Can we please do oral communications first for items that are not on the agenda, or see if anyone wants to speak to that, before going to agenda item number one, sir?

Chair Smith: Okay, thank you, ma'am. Everybody, if you have something to say that does not have to do with police reform or 8 Can't Wait, please raise your hand now. All right. We have one hand raised, and I see nobody on the phone tonight. We will ask that, we will give Jamie Hindery two minutes to make his comments, please.

Ms. van der Zwaag: Jamie, do you have an item that is not on the agenda tonight, or do you want to speak to number one?

Jamie Hindery: I would like to speak to an item not on the agenda.

Ms. van der Zwaag: Go ahead, please. Thank you, Jamie.

Mr. Hindery: I would like... Thank you, Commission, for having these discussions, and doing the due diligence. Thank you, Chair Smith, for the background. I just want to speak, it's related to police reform, but not 8 Can't Wait. I do think that the Commission should also make a recommendation to postpone any further police union contract negotiations until the HRC can come up with a new hiring and promotion policy to send to the Council. That's all. Thank you.

Chair Smith: Thank you, Jamie. Right now, I will ask anyone that has public comments specifically around 8 Can't Wait, which is item number 1 for us, to... Well, let me go through how we're going to do the business tonight, then I'll open up public comment. We are going to split our work into three parts. Number one, we are going to have Assistant Chief Andrew Binder present on 8 Can't Wait. At that point, the commissioners and our council liaison, we will go one point at a time. If staff could put the sheet on the screen, please. We will go each item, 8 Can't Wait. We will do round robin-style questioning. We have both the assistant chief and the police chief here, and we will be able to ask questions on ban chokeholds and strangleholds. After we do one round, we will then see if there's a motion to be had, or further discussion needs to be had at that point. We will vote on each of our recommendations. So, whatever we vote as the motions will be what will be written directly in our report. Staff, if we can go to the very bottom of the sheet. Given the depth of work that is done and the complexity of this issue, I will ask each commissioner – and we'll give them five minutes each – to make what they think are the appropriate additional findings not related to 8 Can't Wait. For example, the young man Jamie just made a suggestion, if somebody wants to add that into it, because we want to send...

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Because what I believe is that we represent a diversity of opinions, and a diversity of our community, and a diversity of different perspectives, and I believe coming up with one homogenous statement will do the work we've done disservice. So, each commissioner is given five minutes to dictate to staff exactly what they want to say for the City Council. I would say this, and I would make this recommendation to commissioners. Please make it bullet points, because we all know it's easier to digest if you make your point in bullet point. This finding, this is an additional finding that I believe the Council should take a look at. This is an additional finding the Council should take a look at so that it's easy and clear for them. And then, finally, we will have a discussion about how we will introduce our findings, and how we will do an overview. The goal at the end of this moment, outside of some formatting issues, is to have a deliverable report to City Council representing the vote of this Commission, but also giving each commissioner a voice to express what they have found in this search. Is that all right with the entire Commission? Yes, Commissioner Lee?

Commissioner Lee: Can I ask for clarification? So, at the end, I understand that each commissioner will provide their input, but are we, as a Commission, going to actually be voting on...? Let's say the Chair presents Option A and all of us love it. Can we have the opportunity to actually vote and say us, as the HRC, agree with the Chair on Option A? In addition to listing what individuals want, can we actually vote on each item?

Chair Smith: What...? This is what I will do. If several commissioners bring up the same item, I will bring it forward for a vote to get agreement as a Commission. If there's something that somebody hears from other commissioners at the end that they would like to bring as a vote, I will bring it there. But I would like for each commissioner to have a clean slate to make their statement know, and then, at the end, if there is some point of general consensus, and somebody wants to bring up and say, "Do we want to vote on this as a commission?" I'm more than willing to hold the vote then.

Commissioner Lee: That's great. That's perfect. Thank you.

Chair Smith: Do the...? So, again, what we're trying to do tonight is unprecedented. We are crafting the report in front of the public so that the public will know exactly what our statements are, and how we say it. So, what leaves this meeting tonight is what the City Council will receive. All right. We have 22 people in attendance tonight. We have two people that have their hand up. Is there anybody else that would like to make a comment? Please raise your hand. Thank you. Is there anybody else? Thank you. Is there anyone else? Thank you. Is there anybody else? All right. Given the amount of people that we have, I'm willing to say each person has three minutes, three minutes to make their public comments. At this point, after Hamilton Hitchings speaks, we will close the public comment from new people. So, if you want to speak, please raise your hand.

Ms. van der Zwaag: Thank you, Chair. I will call on the speakers. Mary, if you could get the clock up on the screen, please.

Mary Constantino: Yes, I'm changing it.

Chair Smith: I'm sorry, Mary. I keep switching it up on you tonight. You know, one of the things is, our staff liaison, Mary, is so flexible with me, I'm so grateful for her.

Ms. van der Zwaag: We'll just give it a minute. Thank you for your patience, everyone. Okay. Mary, are you ready to get started?

Ms. Constantino: Yes.

Ms. van der Zwaag: Okay. The first speaker is Eric, to be followed by Hamilton Hitchings, to be followed by Jamie Hindery. Eric, you have three minutes. Go ahead, please.

[Connecting with Eric.]

Eric: Sorry about that.

Ms. van der Zwaag: Can hear you right now. Go ahead, please.

Eric: Okay, great. I believe that sensible and sound laws should do no more harm than the problems it seeks to fix. 8 Can't Wait, it looks good on paper, and it sounds quite noble, because currently there is a vendetta against law enforcement based on false narratives and half-truths. I'll keep it short. If you're not a career criminal, or at least breaking the law on a regular basis, you really have no worry about police randomly harassing you. I've known many law enforcement members, and I've worked with some of them before. They don't have a reason to randomly harass anyone based on how they look, or their age, or religious beliefs. A law-abiding citizen has virtually zero chance of being apprehended by the police for a random reason, let alone killed. A majority of police killings involve violent confrontations with violent criminals intending to harm towards others, and most police killings, as brutal as they sound, are justified, unfortunately. 8 Can't Wait will simply embolden the hardened criminals to prey on innocent citizens. I mean, obviously, Palo Alto is a very low crime rate, but recently I've heard many people complain about bike thefts, and they've been reporting this to police with very little response. So, there's not much they can do when people try to steal their stuff. This is just a very small snippet of the symptom of less police funding. 8 Can't Wait will simply make it harder for the police to apprehend criminals, especially violent ones who are armed, and who certainly don't play by the rule book. Crime in New York and Chicago has risen up by 150 percent or more compared to last year, and the so-called police reforms and defunding, which is really early Christmas for criminals, if these men have religious beliefs. I believe that law-abiding citizens can only be harmed by these reforms. Our money should be used for better purposes. If anything, defund the military. The USA spends \$700 billion on military every year, more than the next top 10 nations. It seems like the welfare and livelihood of taxpayers is less than so-called oil companies, big corporations, and the geo-political interests of American oil-rich gulf states. Thank you.

Ms. van der Zwaag: Thank you, Eric. The next speaker is Hamilton Hitchings. Hamilton, you have three minutes. Go ahead, please.

Hamilton Hitchings: The Chair, I would request five minutes, because that was what was given last time. I did not speak last time, and I had no way of guessing how much time I would be given this time. But I will proceed. My name is Hamilton Hitchings. I have lived in Palo Alto for over 25 years and always found the Palo Alto police helpful, and still feel they continue to remain an essential part of keeping our community safe. In the past, I have been very disturbed by some of the high-profile events of excessive force by the PAPD. Recently, it has broken my heart to hear the minority citizens and families who have been repeatedly harassed by local police based on the color of their skin. We require Palo Alto to be a safe, welcoming and fair place for all residents and visitors, regardless of race or socio-economic status. Palo Alto City government and police must improve their approach to law enforcement, not only to their policies and practices, but also remove officers who have shown repeated behavior of using excessive force. Please adopt all 8 Can't Wait measures while trying to understand if minor caveats are warranted to protect the lives of the officers and at-risk civilians when no other alternative is available. I've already written you about why no-knock warrants are inherently dangerous, and how Anna Eshoo has sponsored a bill in congress that the majority of democratic representatives have already voted to support. There are ample opportunities to reduce armed police response to 911 calls. Chief Jonsen had just implemented reinstatement of a dedicated community policing officer – before budget cuts were implemented – where unarmed, un-sworn community police officers would respond to traffic accidents, investigations, filing police reports, and other low-level calls. Please recommend to the community that the community policing program be restored, even if it is funded by reducing armed patrolling officers. The psychiatric emergency response team – PERT – is where a licensed medical clinician is paired with a police officer to respond to 911 crisis calls. This program was approved after the recent PAPD deadly shooting of a mental health patient on Christmas Eve. However, due to funding and personnel issues, the program's implementation has stalled. Please recommend this program move forward, along with similar programs like Eugene, Oregon's CAHOOTS program. We need to reduce criminalization of mental health, and similarly, police are usually not the most effective responders for homeless issues. In addition, while having unarmed officers conduct traffic stops might reduce shootings, it does not in itself address racial bias, and determining who to stop, and creates risk to officers if the driver is armed or drunk. In addition, we have cut our traffic officers. Instead, I suggest automatic traffic cameras, which can mail tickets for speeding and running stop signs. In addition, I recommend license plate readers in police vehicles to check if a plate belongs to a stolen vehicle, or if there is an outstanding warrant, to help direct police stops in an unbiased manner. In both the cases, promptly erasing the data not involved in the stop, arrest or citation, is critical to protecting privacy. While privacy can be, rightly be controversial, these automated methods are already in use by many police departments and would dramatically reduce discretionary police stops based on bias. Transparency is critical and requiring all police footage to be released within 45 days per California law when a complaint is filed, unless it truly interferes with an investigation, would be a big step forward. Currently, the PAPD policy assumes that releasing a video always interferes with an ongoing investigation. However, I do not believe that is an accurate interpretation of the law, and it hampers both accountability and justice. Immediate and [inaudible] for officer discipline with binding arbitration allows officers to avoid serious discipline for misconduct, combined with expunging of their record, significantly hampers accountability. I have listed a set of recommendations you could make that go beyond 8 Can't Wait that would significantly reduce armed response,

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unnecessary criminalization, especially for mental illness, reduce biased police traffic stops, while increasing transparency and accountability.

Chair Smith: Thank you so much, Hamilton.

Mr. Hitchings: Thank you so much.

Chair Smith: You're very welcome.

Ms. van der Zwaag: Thank you. The next speaker is Jamie Hindery, to be followed by Raven Malone, and then Kat Snyder. Go ahead, Jamie.

Jamie Hindery: Thank you. I know this isn't typical, but I have to respond to the comments from the caller two before me, Eric. I have close friends who are not criminals and have been violently assaulted by police. I'm not talking about a friend, one time; I'm talking about several friends, multiple times. So, you're just wrong there. There are plenty, plenty, plenty of instances of non-violent offenders and non-criminals being assaulted by police officers, not only in our city, but all across the country. The George Floyd killing. He paid with a \$20 supposedly counterfeit bill, and he was murdered. He was not a violent threat to anyone. Eric, you are wrong. On 8 Can't Wait, I think there should be no caveats when you accept all of the points of 8 Can't Wait. 8 Can't Wait already takes into account that officer safety, in that it's asking for a warning before shooting. It's not asking the officer to never shoot. There don't need to be caveats for 8 Can't Wait. If we start putting caveats on such a simple policy, that's going to hamstring all of our future efforts to create a more just and equitable police force in Palo Alto. I do agree with Eric on the insistence that any officer with repeated – or even one – excessive force lawsuit or complaint against them, should be immediately and permanently removed from the force. This should apply to previous members of the force as well, such as Officer Wayne Benitez, who is still receiving six figures from the City in his pension. So, I think that that... And that's something, like I mentioned before, that needs to be negotiated in the police union contract. The police union contract is set to run out early next year, I believe, and they are in the process of negotiating the next one. If we wait, then we are going to lose our opportunity for another three years to make major reforms in the police department. If the HRC does not forcefully insist to the Council to delay all police union contract negotiations until we have reviewed our hiring and promotion policies, then we are not going to be able to act on the reforms that the community will want. That is the most important thing that we need to do. 8 Can't Wait is simple. It should be passed with no caveats, and the police union contract, needs to be our priority. Thank you.

Ms. van der Zwaag: Thank you, Jamie. The next speaker is Raven Malone, to be followed by Kat Snyder, to be followed by Mohit Mookim. Go ahead, Raven.

Raven Malone: Hi. Thank you for the opportunity to speak at this meeting. I'm extremely happy that this decision on community safety is being made after public comment. However, there are stories and voices that are still unheard now. I agree with everything that the caller, Jamie, before me, said. We do have excessive force problems in the PAPD, and we have clauses that protect them in our union contract. So, there are people in the community with perspectives that should be the foundation of our policies. I urge the HRC to make recommendation to Council to

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proactively create awareness, ensure that there are ways for stories to be collected by those who are unable to make the forum, and to agendize discussion on policy changes that we can make in Palo Alto. I just want us to ensure that every person in our community feels safe, I want to feel safe, and I want our Council to show us that this matters to them. I yield the rest of my time.

Ms. van der Zwaag: Thank you, Raven. The next speaker is Kat Snyder. Kat, you have three minutes. Go ahead, please.

Kat Snyder: Thank you. I noticed that, last time, you all mentioned that these issues span more than just the police department, but our culture more generally, and we ought to work together as a community to see how we as Palo Altans can change that. I just wanted to give one specific example. In our own back yard, we have Palantir Technologies. They have offices downtown, and they sell predictive policing technology to cities around the US. Studies of predictive policing show that not only is it not especially effective, but that it is extremely biased against poor communities of color. Los Angeles finally banned the use of Palantir's predictive policing technology in 2019, as did New Orleans in 2018, once city officials found out it was secretly being used there. Palantir's predictive policing tech has also been used in New York City and Salt Lake City, and likely a number of other police departments so far only known to Palantir. We in Palo Alto celebrate Palantir by name in our city budget, under the introductory section titled "Palo Alto at a Glance." Perhaps we should reconsider celebrating them in our budget documents. We also allow Palantir to help sponsor the black and white ball this year, even after myself and other concerned cities penned a letter to Palo Alto Recreation Foundation, asking them to drop Palantir as a sponsor, due to their role in rounding up Mississippi workers and putting them in ICE detention. Maybe we should reconsider accepting Palantir as a sponsor of Palo Alto cultural events. If now is the time to take stock of Palo Alto's role in biased policing, then now is the time to reconsider our relationship with Palantir communicates to our residents, and to others around the country, about Palo Alto's values around biased policing and ICE detention. Thank you.

Ms. van der Zwaag: Thank you, Kat. I'm sorry, I'm having a technical issue, so hold on just a second. The next speaker is Mohit Mookim. You have three minutes. Go ahead, please.

Mohit Mookim: Hello. This is Mohit. I'm calling in to say that while 8 Can't Wait should be adopted by Palo Alto police department, I don't think it goes far enough, and I would recommend you all to look at the 8 to Abolition platform, in which they, the platform explains how we need to actually defund and divert resources away from the police, and to services that actually improve communities and communities of color. The Human Relations Commission is tasked with the important duty of taking into account the needs of the public, and make sure they are treated fairly. Palo Alto police has shown itself to be an active perpetrator of inequity and injustice. They've faced countless civil rights complaints and suits, from unleashing a police dog on a black child, to brutally beating and making homophobic remarks to a Palo Alto resident. As I said, reforms like 8 Can't Wait will not stop the excessive force and insidious racism of the Palo Alto police department. Things like body cameras, bans on certain practices, additional training, distribute more of our tax dollars to the police and away from community programs. The fact is that Palo Alto is segregated. If we look at the recent census, we find that less than 2 percent of the population is black, and less than 6 percent Latinx. We can trace this literally to

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redlining and racist real estate practices, and it's safe to say that black and Latinx people have never been a salient or thriving part of the Palo Alto community. Instead, black and Latinx people come into Palo Alto as minimum wage workers, holding down service and domestic jobs such as waiters, nannies or gardeners. You might ask why this is important. It's because the police disproportionately criminalize black and brown bodies in Palo Alto. The fact is, the police uphold white supremacy, and while that may sound a little jarring to you, we can see this in the ways the police force has emerged directly from slave patrols. I don't think I have to make the case anymore that the police is a racist institution. This is why we are here in this moment, and why thousands around the world have taken to protesting policing in the last few weeks. I call on you to take action and demand that City Council amend their budget. The expenditures spent on police could instead be diverted to meeting the critical needs of fellow residents that are crucial to increasing quality of life measures such as increase in affordable housing, healthcare services, childcare services, and education. Our policy in spending need to be life-affirming and truly provide safety, not merely for the rich and white, but for everyone. I yield the rest of my time. Thank you.

Ms. van der Zwaag: Thank you, Mohit. The next speaker is Winter Dellenbach. Winter, go ahead, please.

Winter Dellenbach: In reviewing tonight's agenda packet, I was surprised and disappointed to see that no more Palo Alto police department policies have been updated from when I looked at it earlier to 8 Can't Wait standards, which are indeed, by the way, just a beginning, not an end. But there is, instead, unnecessary defensiveness against change, when I looked at the packet in tonight's agenda, from the PAPD. I noticed that some state laws are cited under PAPD policies that seem to be an attempt to justify not changing policies. Oftentimes, nowhere in the actual policy in the policy manual are most of these state laws actually cited. I hope that you will not be intimidated by many of these state laws, because you notice that many other cities in California, in fact, have embraced many, if not all, of the 8 Can't Wait policies. I urge you again to look at San Francisco, which incorporates all of the 8 Can't Wait policies. One policy I want to speak of in particular is the use of force continuum. Our police department, in its packet, dismisses it outright, saying it's out of date, and our police don't even teach it anymore. Just because you don't have it doesn't mean, justify not having it. In California, some of the police departments that I took a look at – Irvine, San Francisco, Glendale, Riverside, San Diego, San Jose, Anaheim, Redwood City – they all have a use of force continuum. I didn't look any further. A continuum, by the way, is a continuous – I looked it up – and extent, a series, like from freezing to boiling. San Francisco PD has a minimal reliance on use of force, levels of threat, and levels of force. So, you work from one place to another in supports, and we should have it. Finally, in the packet, it says, it talks about this going possibly to the union, your recommendations to the union, have them look it over, and consult with them. And then, to the city attorney before it even gets to the City Council. My strong recommendation is that when you have your recommendations made, that you have them go to the City Council. I don't see that the police union should be, should short stop your recommendations before they go to the City Council. Thank you.

Ms. van der Zwaag: Thank you, Winter. Our last speaker is Mary Jane Marcus.

[Connecting with Mary Jane Marcus.]

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Mary Jane Marcus: I'm glad that you're taking time for this. First of all, I just feel... I'm Greek American who hasn't suffered, you know, at the hands of police like our black and brown neighbors, and I think they should really take the lead on the solutions, and what is needed, and we need to listen to their voices. I think what I heard at the session two weeks ago was that 8 Can't Wait is really not going to improve things, and actually, you know, people from Stanford – and most people, except maybe one – all agreed it wasn't really going to help that much. It's an opportunity cost if we spend energy on trying to finesse all the details of these. So, I guess, based on what the Stanford professors were talking about, I was reminded that, I think a hundred years ago, we were invited to join PG&E. We consulted with Stanford about whether it was a good idea, and they recommended not. I think, not just them, but the life experience with their research, I think is really important to heed. I just urge you to tell the City Council that you do not want them to spend their on this, on 8 Can't Wait, and that they need to take more profound changes, you know, 75 percent cut in police budget, look at how we build a safe and inclusive community here for everyone, a thriving place, you know, addressing a lot of the structural racism and problems we've had in our history. I just urge you to get the City Council to move away from this quick fix so that they can ignore it, and take more radical steps to really make Palo Alto a place where everyone is, is not just welcome kind of inferior from the police, but actually can live here, and is included in our community. Thank you.

Ms. van der Zwaag: Thank you, Mary Jane. Chair Smith, there are no more raised hands.

Chair Smith: One of the things I take extremely seriously is the sanctity of the work that our commission does, and Winter made a comment that I really think I do need to make a public response to. The deliberation of this Commission will go straight to City Council. I guarantee you, we will put stuff out, that there are people who will disagree, and they will have a response. I don't care about their response. I care that the deliberation that is done by this body is delivered directly to the City Council as their agenda was given to us. So, to Winter, I just want to really state that, to the public, that what you see tonight is what the Council is getting. There won't be a filter, change, whatever. The report that is given in August to Council will be what you see here tonight. Thank you.

IV. BUSINESS

1. "8 Can't Wait" Polices – Action

Chair Smith: Right now, we have Assistant Chief Andrew Binder. He is going to give a presentation on the position of the Palo Alto PD on 8 Can't Wait. Once he is completed with that presentation, we're going to dive into some deep digging. So, to structure our conversation points, we will start by asking questions in a round robin style on each specific point. So, we will start with the first proposal from 8 Can't Wait, we will do a second proposal from 8 Can't Wait, we will do a third. And each commissioner and council member will be allowed to ask questions on that specific point. We want to be very deliberative and clear, and at the end of each point, there will be a motion moved forward to what the Commission needs to do as far as our recommendation to the council. For those watching, we need votes from the Commission members for a motion to pass. So, Assistant Chief Binder, can you please go ahead with your presentation?

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[Connecting with Asst. Chief Binder.]

Asst. Chief Binder: First of all, Chair Smith, HRC committee, and council members, thank you for this opportunity to make this presentation here tonight. As an overview, let's first talk about what this presentation is going to cover. My primary goal for tonight will be to discuss how Palo Alto's policy and the law measure up with 8 Can't Wait. But, before we get into that comparison, I want to briefly discuss Campaign Zero and their 2016 academic study and its influence on 8 Can't Wait. Lastly, after the presentation, as Chair Smith has discussed already, we'll open up for a question and answer session for the committee, to give you all an opportunity to ask questions and/or seek clarifications on this topic, or anything I've shared tonight. Just as I mentioned, let's briefly discuss Campaign Zero and its influence on 8 Can't Wait. On September 20, 2016, an academic study by Samuel Sinyangwe was released, that was titled *Examining the Role of Use of Force Policies in Ending Police Violence*. This study analyzed use of force policies in 91 of America's 100 largest cities and their police departments, and it sought to examine the relationship between use of force policies and police involved killings among the nation's largest city police departments. Now, as part of their analysis, this study identified eight main policies establishing restrictions on police use of force. How does 8 Can't Wait, Campaign Zero, and police reform interconnect? First, let me just add some additional context for this study. The jurisdictions for the 91 departments that participated by providing their use of force policies were located across the United States, and their associated populations varied from approximately 208,000 to over 8 million. So, as you can see, this sample size was very diverse. I think this study is important and should be considered for a few reasons. Number one, 8 Can't Wait has incorporated the findings from this academic study and Campaign Zero as part of their campaign for police reform. Number two, the eight main policies identified by Samuel Sinyangwe in Campaign Zero provide additional verbiage in their noted policies – one of the callers referred to them as “nuances” – that allow for some additional latitude and enforce policies not mentioned as part of the 8 Can't Wait campaign platform. Now, let's discuss how department policy and the law measure up with 8 Can't Wait. The first recommendation that you see here from 8 Can't Wait is to ban chokeholds and strangleholds. As you can see, the use of the carotid control is not authorized by department policy. Also, of note or for consideration, when the carotid restraint was authorized, back when we were training on it, defensive tactic instructors specifically taught not to use techniques that would be consistent or considered a chokehold or a stranglehold. So, basically techniques that could restrict breathing or place pressure on the back of a person's neck. Lastly, as you see here, the department revised this policy on June 9, 2020. Next, 8 Can't Wait requires de-escalation. Our department policy requires that officers should consider conflict resolution and de-escalation techniques as time and circumstances reasonably permit, for all types of calls for service. That includes self-initiated activity, any type of call for service, not just force incidents. Now, as you can see, Senate Bill 230 will require police departments to have policies in place no later than January 1st, 2020 [sic], that will require that officers utilize de-escalation techniques as alternatives to force when feasible. Just for some consideration and context, SB 230's verbiage is consistent with Campaign Zero's policy on force, which requires officers to de-escalate situations when possible. Now, I do believe there is an opportunity here for the police department to strengthen and make clear its expectations for officers utilizing de-escalation techniques prior to the laws-imposed deadline. And, as part of our internal examination of our policy, the department has already engaged its

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employee associations about revising this policy language. The third point of 8 Can't Wait requires officers to warn before shooting. As you can see, our department policy and assembly bill 392 are very similar, and both require officers to warn that deadly force may be used when feasible. Our policy and AB 392 are also consistent with Campaign Zero's policy verbiage on this subject, which also requires officers to give a verbal warning when possible. So, you may be asking, why would our policy and the law allow for the caveat of "where feasible" in requiring officers to warn that deadly force may be used? Well, keep in mind that use of force incidents, especially those involving deadly force, can be very dynamic and unpredictable, and as stated in SB 230, no policy can anticipate every conceivable situation or exceptional circumstance which officers may face. An example that comes to mind where it might be feasible to warn that deadly force may be used would be an officer being ambushed with a firearm, or if someone points a firearm at an officer without warning and begin shooting, and that officer needs to immediately react with deadly force to save their life, or the life of another. Next, 8 Can't Wait requires officers to exhaust all alternatives before shooting. Our department policy requires that officers should evaluate other reasonably available resources and techniques when determining to use deadly force. As you can see, the California Penal Code requires officers to use available resources and techniques if it's reasonably safe and feasible to do so. Let me just share a few points for consideration. As I just mentioned, because the use of force incidents are so dynamic and unpredictable and can rapidly unfold, requiring officers to exhaust all alternatives before shooting, is neither safe nor feasible. An example of this might be an active shooter scenario at a school or public event that needs immediate police intervention to save lives. Requiring an officer to exhaust all alternatives before shooting the active shooter would be innocent lives at risk and is not practical in light of particular circumstances. And then, just one more point of consideration. This law, the law in this case, which is Penal Code 835, it does supersede department policies, and officers are required to abide by that. With that said, I do believe that this is another area where department policy can be improved to be consistent with the California Penal Code. The fifth point of 8 Can't Wait requires a duty to intervene. Our department policy and Senate Bill 230 require that an officer intercede to prevent the use of unreasonable force and report their observations to a supervisor. As you can see here on the screen, this policy was revised by the department on June 17, 2020. Next, 8 Can't Wait bans shooting at moving vehicles. Before I get into this, I'd like to first point out that our department policies also recognizes that shooting at moving vehicles is rarely effective, and that officers should move out of the path of approaching vehicles instead of discharging their firearm at them. But, as you can see, our policy does allow for officers to discharge their firearm at moving vehicles under two very specific circumstances. The first circumstance is that there are no other reasonable means available to avert the threat of the vehicle being used as a deadly weapon. The second circumstance is if deadly force other than the vehicle is being directed at the officers or others. Let me give you an example of each of these circumstances where our policy would allow for an officer to discharge their weapon at a moving vehicle. If you've been following the news, one of the unfortunate occurrences I've been reading about lately – and far too often over the last few weeks – is vehicles driving into crowds of demonstrators that are exercising their first amendment right to free speech. Just recently, on the 4th of July, a vehicle in Seattle drove into a group of demonstrators and killed one person and seriously injured another. Our policy, as stated, would allow an officer to shoot at this vehicle in this scenario, to stop it in defense of the lives of those who are in the crowd. The second example I'd like to give involves an incident in

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Oakland in late May of this year, in which a security guard was killed, and his partner was wounded from gunfire that came from a moving vehicle. In this incident, the gunman opened the sliding side door of the van and fired shots from a vehicle. Our policy would allow an officer to shoot at this vehicle in defense of the officers or another person's life. And then, lastly, I just want to add one more thing on this topic. Based on our records and our institution knowledge that we have here in the police department, a department member has not shot at a moving vehicle in at least 25 years. The seventh point of 8 Can't Wait requires a use of force continuum. Our department requires officers to use only that amount of force necessary, based on the totality of the circumstances known to the officer. Our policy also restricts when an officer can use a taser or deadly force. Additionally, you'll see that Senate Bill 230 restricts officers to using only a level of force that is proportional to the seriousness of the offense. So, instead of a force continuum, our department policy uses a force options model that is based on the California Penal Code and the case law set forth by the United States Supreme Court in the case of *Graham v. Conner*. In regard to the use of the force continuum, as mentioned during a previous call, this is an outdated model that hasn't been taught in Palo Alto in over a decade. The use of force continuum does not provide for an entire set of circumstances or options based on the uniqueness of any given situation. I just want to remind you what SB 230 says; that no policy can anticipate every conceivable situation or exceptional circumstance which an officer can face. With that, our policy allows for our officers to interpret situation and use a force option that is reasonably necessary and proportional based on the seriousness of the offense. Lastly, 8 Can't Wait requires comprehensive reporting. You'll see that our department policy requires that any use of force be reported, to include any time an officer points a taser or a firearm at a person. This is consistent with Senate Bill 230 and Campaign Zero's policy on requiring comprehensive reporting. Chair Smith, this concludes my presentation. At this point, I'd like to turn it back over to you and open it up for further discussions and questions. If you could just bear with me, I'm going to take down my slide presentation as you do that.

Chair Smith: I'm muted, sorry. Staff, can we put up the matrix we'll be working from tonight?

[Putting matrix on the screen.]

Asst. Chief Binder: Chair Smith, can you hear me okay?

Chair Smith: Yes, I hear you clearly.

Asst. Chief Binder: Okay, sir, the floor is yours.

Chair Smith: Oh. Can everybody hear me? There we go. Okay. Can we go back to the top? All right. At this point, we're going to go round-robin-style. We are going to start with point #1, ban chokeholds and strangleholds. To be fair, we are going to alternate between starting at the front of the alphabet, to the back of the alphabet, so each group will have a different approach on it. I will start with the first one, which is ban chokeholds and strangleholds. We can take it off the screen now. I'm going to want to ask that, Commissioner Lee, if you have any questions for PD, and then, we'll go alphabetically, then we'll do our two council liaisons. To ask questions on this specific point on the chokeholds.

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Commissioner Lee: I appreciate our two chiefs being here. My first question regarding this particular item, in the Campaign Zero model use of policy, they explicitly prohibit a number of different items – chokeholds, strangleholds, lateral vascular neck restraints, carotid restraints, chest compressions, and other tactics that restrict oxygen or blood flow to the head or neck. I want to understand from our police department whether carotid control hold includes all of those other types of restraints, as indicated in the model use of policy that Campaign Zero has put out.

Asst. Chief Binder: I can take that question. Thanks, Commissioner Lee, that's a good question. I think the carotid is different from a chokehold or a stranglehold. We've never trained on a chokehold or a stranglehold. A carotid restraint, when applied properly, does not restrict the airflow, it does not apply pressure to the back of the neck. So, our defensive tactic instructors, when they taught, back when we did have the carotid and it was an authorized force option, they specifically taught not to place pressure on those areas, or restrict the breathing, as I mentioned earlier. That's why you don't see it in there. We don't teach on it. We never have. I just want to make one more point. I think everyone on the committee, in preparation of this, has gone through policy, and I think one of the things that is important to remember or consider about policy is no policy manual is set up to delineate every possible tool, technique, or situation that an officer can face.

Commissioner Lee: Okay, well, I appreciate that answer, sir. It sounds like there are different tactics, but the police department hasn't trained on that. So, from the police department's perspective, would there be any objection then to updating the policy to include the model language which you already do not train on? Is there any actual objection to including those at this point?

Asst. Chief Binder: I think this is going to be a reoccurring thing that you're going to hear from me and Chief Jonsen, and that is that the police department is open to looking at anything that can make our agency better. That is something that we can take under consideration, to determine if that needs to be added to our policy manual.

Commissioner Lee: Sorry, could you just clarify in terms of, like, what would you need to consider? If you're not already training folks on that, what would there need to be considered to actually...? That would be my last question. What would you need to consider? Prior to making that addition if you're not already training folks on it.

Asst. Chief Binder: Any time that we're going to revise a policy, that's something that we're going to discuss with our employee associations, see if they have an issue or if they have any comment on that. But, again, if we're talking about adding something that the department already does not do or does not train on, I mean, I can only speak for myself. I think that's a reasonable request.

Commissioner Lee: Okay. Appreciate it. Thank you. Thank you, Chair Smith.

Chair Smith: Commissioner Regehr.

Commissioner Regehr: I have no questions. I just want to say that, after listening to everyone, I think it's great that they're here, but I think that if the City Council had listened to all the presentations, our direction wouldn't have been 60 days for 8 Can't Wait. I think it would have been different. So, for myself, I think that we should just move on. That's why I don't have any questions, because I think 8 Can't Wait isn't enough, and we're rushing this through. I'll hold my questions because I think that this is just kind of being, we're being railroaded, after listening to everyone, of the 8 Can't Wait campaign. I think we should endorse it and really get back to business, what's really important. Because I think the City Council wouldn't have asked us to do this in 60 days if they'd already heard the other speakers and professionals. Thank you.

Chair Smith: Thank you. Commissioner Savage.

Commissioner Savage: Palo Alto police policy is in line with this restriction.

Chair Smith: You have to come a little bit closer.

Commissioner Savage: Palo Alto police policy is in line with this restriction. So, there's nothing more to say.

Chair Smith: All right. Commissioner Stinger.

Commissioner Stinger: Do you want just questions, or questions and comments?

Chair Smith: Questions and comments, please.

Commissioner Stinger: No questions, just thank you to the police department. I would consider this policy currently in compliance with the 8. If we make changes to the 8, I would suggest adding the wording that Commissioner Lee read from Campaign Zero. I would add that wording for emphasis, but my preference would be to keep this simple and make no changes and get it to Council quickly.

Chair Smith: Thank you. My turn. Asst. Chief Binder, one of the things that I heard you say specifically was it wasn't trained on, but, given incidents like Eric Garner, where officers in a tussle are going to chokeholds because it's a natural fight position, are we training against it, and is there any kind of punitive action against an officer for using this kind of force? Because we've seen several high-profile cases where chokeholds were used. So, I would love to see this language in the policy to be, to show people that this detrimental action, and that it's not, even in a scramble, it's not something we advocate for.

Asst. Chief Binder: Yes, thanks, Chair Smith. I think you have two questions. Let me see if I can answer them both. The first is, if I wasn't clear, when we trained on the carotid restraint, we specifically trained not to do movements that could be consistent or could be taken as a chokehold or a stranglehold, meaning we specifically trained to make sure that the officer's arm or body parts that were in contact with our subject didn't restrict breathing or airway, and didn't apply pressure to the back of the neck. And then, as I stated, the carotid restraint is a different technique that doesn't need those two things in order to make it effective. And then, in regards to

your second question, you know, an officer is responsible for the force that they use, and the law is very specific that it has to be reasonable, it has to be proportional, and it's judged from the reasonable officer standard. So, if an officer is using a technique that the department doesn't train on or is not proportional or reasonable based on the reasonable officer's standard, that officer can be liable for their actions out there, both criminally and civilly.

Chair Smith: So, if we put the verbiage in that this is not acceptable, I think it would be helpful for the entire process. Council Member Kou?

Council Member Kou: I don't have any questions right now. It's very interesting to hear your questions from the Commission. Also, thank you for the presentation, Asst. Chief.

Chair Smith: Council Member Tanaka?

Council Member Tanaka: Thank you for the presentation. First question is, is it possible for you guys to... I can't find it in my email, but is it possible for, Asst. Chief Binder, for you to send us the presentation that you just presented? Just so that we have it to flip through it as we listen. And then, second question is a bit broader than this specific item, but it seems like a lot of these policies have already been adopted. So, I'm just interested in knowing, what has the impact been in terms of law enforcement, or the community in terms of the performance of law enforcement? Or, the impact in terms of, maybe incidents with community when 8 Can't Wait has been implemented? It seems like, you know, a lot of these elements have, in some way, shape or form. So, what has full adoption in other cities that have done this before us, what has that...? Do you guys have any ideas of, like, what the results have been? Positive or negative? Is there any data on this kind of stuff?

Asst. Chief Binder: I'll answer your first question because that's an easy one. Yes, I can get you the PowerPoint.

Council Member Tanaka: If you could email it now, that would be great.

Asst. Chief Binder: You got it. And then, number two, that is a pretty broad question, so I'll do my best. I think that what you're seeing is a paradigm shift in policing. You're seeing police agencies looking at their policies, their procedures, how they serve and operate in the community through the lens of the community, instead of sometimes, in the past, the police department may have acted in a way that they think is appropriate, but I think that there is a huge wave of momentum. We know that because there's 20 legislative bills that are working their way through the California legislature right now. We know that the community is demanding that we listen to them, and that we listen to how they want to be policed, and that we listen to how they want the police department to function and operate and perform. Probably one of the most critical areas, if not the most critical area, of policing, and that's when a police officer uses force. So, I think that that's what you're seeing here, and I think that, you know, speaking on how quickly the carotid restraint was dropped from agencies' policies, I think law enforcement agencies are receptive, they are open. We have to be. We ultimately serve our communities. So, we still will maintain our opinions, and we still will be guided by case law and supreme court, court decisions, and also

those internal policies, but I do think that you're going to see how policing and how the service delivery of policing is going to change, and is changing.

Chair Smith: Thank you so much. All right. Staff, if we could put the motion up on the screen. I want to see if we can take a stab at a motion, given what we have currently received.

MOTION

Chair Smith: I would like to bring a motion to the floor. For the first piece, a motion – or recommendation – is the language of chokeholds, strangleholds, lateral vascular neck restraints, chest compression, and other tactics that restrict oxygen or blood flow to the head or neck, be added to the police policy. Can I get a...? I'll repeat it for you, Mary. Chokeholds, strangleholds, lateral vascular neck restraints, chest compression, and other tactics that restrict oxygen or blood flow to head or neck, be added to the PAPD police policy. Do I have a second on the motion?

Commissioner Regehr and Commissioner Lee: Second.

Chair Smith: Wow.

Commissioner Lee: Yes, I seconded it first, though.

Chair Smith: I should bring you all to my meetings at my other job. Okay. We will take a commission vote at this moment.

Commissioner Lee: Wait, wait, we get to speak to our second, right? I get to speak to my second.

Commissioner Regehr: Well...

Commissioner Lee: I seconded it while you were reading it, so...

Chair Smith: Wait, wait. Let us start first with the City Manager, and then we will hear from Commissioner Lee. Can you put "second" for Commissioner Lee in the box, Mary? Thank you.

Mr. Shikada: If I could ask a clarifying question. I think this is your intent, but it might be helpful just to be explicit. When you say, "added to the PAPD policy," you mean explicitly prohibited by PAPD policy? Is that accurate?

Chair Smith: Yes. Yes.

Mr. Shikada: That...

Chair Smith: One of the things that, in speaking with our chief and assistant chief, one of the things I generally want to see is the highest possible language putting in as safety restraints, and given some of the national stories that I have witnessed, and my community have witnessed over the past four or five years, with strangling, and choking, and those things, I believe it becomes very critical to ask Palo Alto, being a model city, to have that language in its policy.

Chief Jonsen: Chair...?

Chair Smith: Yes, Chief.

Chief Jonsen: Yes, just so I have clarification, not to tell you how to craft a motion. The area that you bring into the equation, which dramatically changes it, is the any application of force, chest compressions, or any tactics that restrict blood flow. Well, there's a lot of things during a fight that are going to restrict blood flow. I think the intent of 8 Can't Wait is that chokeholds ban pressure around the neck. If I fall on an individual during a fight, I'm going to restrict his oxygen flow just due to my body weight. Are you now telling me that's going to be a policy violation?

Chair Smith: No, because I think, you know, to take a step back, if anybody watches a body cam video and they see an officer fall in his struggles, they're not going to say the fall is intentional action. But very much like Eric Garner, where he was on the ground and the officer was grabbing him from the back. Although it wasn't trained by New York City, he was being choked, and we want to make sure that everybody in that space, that the other officers are watching. They know that this is something that they have to report as a chokehold because a chokehold is an issue.

Chief Jonsen: Yes, I'm just going to make it clear. I have no problem with banning the chokehold, stranglehold, or even the carotid restraint, or any technique that applies pressure to the neck. Where I'm going to have to say I would have an issue is when you start bringing in other techniques and tactics related to other parts of the body that could be perceived... Because again, when you're in a fight, there are many things that happen, some intentional, some unintentional, but you're really going to restrict an officer's ability to defend themselves if they're concerned about every part of their body potentially restricting oxygen. That is not the intent, but it happens.

Chair Smith: Yes, and I think the word "any tactics that are designed..." So, I know when you take martial arts self-defense, there are tactics that are trained that have a specific effect on the body. Like a chokehold, or an armlock, or a leglock. They have different impacts, and they're trained that way. When somebody does a tactic that is designed specifically to stop someone from breathing or restricted breathing as the start, that's an issue. I believe.

Chief Jonsen: Okay, well, I can assure, based on the way you've worded this, this will have some ramifications that... But, again, it's your motion. I just wanted to provide my input on it.

Chair Smith: Okay. Thank you so much, Chief.

Commissioner Lee: Chair Smith, may I speak to my second?

Chair Smith: Yes, well, we'll open it up for discussion from the Commission, so you can speak at this point.

Commissioner Lee: Well, point of clarification, when a motion is made, the maker and the seconder of the motion get to speak before there's discussion on it.

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Chair Smith: The Chair of the meeting can decide how to run the meeting. Thank you, sir.

Commissioner Lee: Okay, okay, well, that's not how the rules work. But, for me, this one is an easy no-brainer. It's clear that current PAPD policy does not comply with this element of 8 Can't Wait. There's no arguing around that. If you look at the PAPD policy and redline it against the model policy, there's a lot of tactics that are missing, and those are the ones that have been listed in the motion. I have been un-persuaded by the arguments presented so far about why we would not incorporate these into our policy, especially considering that we're currently not using them in practice. But the idea of a policy is to put folks on notice in the future that these are unacceptable. Certainly, they haven't happened so far, but that's the point of the policy. So, I think this one is an easy one to say yes, we need to implement improvement. I'm a little bit disappointed with the reluctance of the police department to actually comply fully with this one, and I hope in the future that there's a bit more good faith. That's why I'm supporting this motion.

Chair Smith: Can I make one comment, from commissioners, everybody that's participating? Let us just stick to the policy. I guarantee you tonight, we are going to have points of disagreement. Let's just stick to the policy and not have the other commentary on who is disappointed with who, because it will make it a lot longer night, and it will make us having constructive dialog more difficult, the longer the night goes on. Thank you. Are we ready for a vote, Commission? Yes, Commissioner Stinger?

Commissioner Stinger: I wondered if... To me, this reads that it is just restricting, it's prohibiting tactics that are restricting blood flow to the head or neck. I wonder if Chief Jonsen can give me alternative wording so that I have a comparison. What would that wording be? It would be...? Without a question.

Chief Jonsen: It's not that the wording... Again, I have no problem with any technique – or I do have a problem, so I'm clear – I do have a problem with techniques that are going to restrict blood flow to the head and the neck, that are designed to do that based on the definition of a carotid restraint, the application of pressure on the carotid arteries, or a chokehold, or a stranglehold. I'm just cautions, based on the way I'm reading this, that if somebody applies pressure to the chest, that that is going to be a policy violation. Maybe I'm misinterpreting the way this is reading.

Chair Smith: Well, it doesn't say anything about chest. It says...

Chief Jonsen: It says chest compressions.

Chair Smith: It says chest compressions, or any other tactic that would restrict oxygen or blood flow to the head or neck. I read it that, whatever restricts blood flow to the head or neck being the critical point of the policy.

Chief Jonsen: But by design, that's my concern, is I think that if I were to fall on an individual, I'm going to restrict his ability, not by design, I just happen to be applying body weight to them. So, based on this, I want to make sure that's not the intent of this policy.

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Chair Smith: The policy.... Wait. The way I read it – and this is my..., is that it has to be a specific tactic. Like, there has to be intention behind it. That’s how I read it.

Chief Jonsen: Now, I like that word, though – “intent” to restrict. Because, again, I think things can happen, where an officer falls, does not intend to restrict blood flow. I think that word “intention” goes a long way.

Commissioner Regehr: No.

Chair Smith: Who said “no?” Did somebody say something?

Commissioner Lee: Commissioner Regehr said “no.”

Chair Smith: Oh, Commissioner Regehr, can you...? I’m sorry...

Commissioner Regehr: That’s okay. I think we put a motion on the floor, and I think that we should either vote, and then, amend something. I think when someone says “intent,” I mean, if you’ve ever, doubt that the police would do this, but, “Oh, I didn’t intend to do this,” so it’s not a violation. I think that’s a problem. I think that using tactics is the correct word. That’s all I wanted to say.

Chair Smith: Thank you. Do we have any other commissioners who would like to say anything else? Okay.

Commissioner Lee: Chair Smith?

Chair Smith: Yes?

Commissioner Lee: I’ll just make this really quick. You know, the language that we have here, all of these tactics are in the model policy. I’m going to leave it at that. That’s the model policy we should be following there.

Chair Smith: Okay. Let us get to a vote. We’ll do this alphabetically. Commissioner Lee?

Commissioner Lee: Aye.

Chair Smith: Commissioner Regehr.

Commissioner Regehr: Aye.

Chair Smith: Commissioner Savage.

Commissioner Savage: Based on the Chief’s remarks, if we don’t use the word “intent...”

Commissioner Lee: Can’t hear you.

Chair Smith: I heard her.

Commissioner Savage: ... I'll have to say Nay.

Chair Smith: Okay. Commissioner Stinger.

Commissioner Stinger: Aye.

Chair Smith: Commissioner Smith, Aye.

MOTION PASSES 4-1.

Chair Smith: Okay. We will move to the second point, which is to require de-escalation. We will start at the back of the alphabet this time, so we will start with... Commissioner Stinger or Commissioner Lee, if they have any questions on require the de-escalation at this point. Commissioner Stinger, do you have any questions on the require for de-escalation?

Commissioner Stinger: I have no questions.

Chair Smith: Commissioner Savage, do you have any questions?

Commissioner Savage: Yes. Can you hear me now?

Chair Smith: I hear you.

Commissioner Savage: Okay. I do have one question. In the original recommendation, there is a phrase, "...when possible," "...require officers to de-escalate when possible." I just want to make sure that that's part of the recommendation that we approve.

Chair Smith: Okay. Thank you. Commissioner Regehr.

Commissioner Regehr: I guess I'm just a little confused about what this required de-escalation is if we're going to amend it. I'd actually like to see the exact motion that we're voting on. Because I think that, once again, just like "intent," ...

Chair Smith: We're asking if we have any questions, and then we'll craft a motion on the de-escalation.

Commissioner Regehr: I guess my question is, when you say, "require de-escalation," what is that? What is that?

Chair Smith: Okay, so, at this point, the Campaign Zero language says, "Prior to using physical non-deadly and/or deadly force, all law enforcement officers must use proper de-escalation techniques to decrease the likelihood that law enforcement officers will resort to force, and to increase the likelihood of cooperation between law enforcement officers and members of the public." The current policy in the PAPD manual, which is 300.3.1, says Officers should consider, as time and circumstances presumably permit, conflict resolution and de-escalation techniques when responding to all types of calls for service, and when engaging in self-initiated activity. So, that's our current policy, and that's the 8 Can't Wait. I think it's a good time to ask the chief or

the assistant chief, like, your questions on why our language varies from the language of 8 Can't Wait, and what your thoughts are on...?

Asst. Chief Binder: Chair Smith, I can start to answer that, and then, Chief Jonsen, if you need to jump in, go ahead. I think that – and I pointed this out in my slide show – I just want to just say, first off, I do think that the department can do a better job in firming up this language so that it's consistent with SB 230. That is coming, but it's important to get out in front of this and do it before that deadline. I think there are important caveats, though, that when feasible, officers should use de-escalation tactics. I think that that caveat of the word "feasible" is important because, you know, there could be a scenario where de-escalation tactics aren't feasible, such as an officer maybe gets attacked or assaulted from behind, and there's an immediate physical type of altercation. That's not an appropriate time, that wouldn't be a feasible time for the officer to engage in necessarily de-escalation tactics. But I do think, going back to my original point, I do feel like our policy should, instead of saying "should consider," the policy should read "shall consider, when feasible."

Chair Smith: Okay. Commissioner Regehr, do you have any questions?

Commissioner Regehr: I had a question about de-escalation in regard to intel. I mean, I guess that's my concern, is that if a police officer hears something, the intel might be different than the actual... And there's nothing about, when you say, "should consider," "shall consider," they could be getting intel about one thing and it's really... I'm concerned about that, that they're using that as... That they're getting wrong intel. That's my concern with this... I don't know how to put it.

Chair Smith: You're basically saying they are pre-judging the situation to what "feasible" is?

Commissioner Regehr: They could be. They could be. Getting the wrong intel from the community, or in their observation. I don't know how to put that in a resolution, and de-escalation is [crosstalk].

Chair Smith: Does the chief have any response to that?

Asst. Chief Binder: I'm not sure if I quite understand the question, but I'll do my best. With all due respect, I think that the purpose, one of the purposes of de-escalation is to avoid force, or the officer having to use force, so employing de-escalation techniques such as talking to the person, using a calm demeanor or calm tone, maybe trying to reason with the person – those are all things that are tactics that the officer is going to use. There may be intel that's gained to that, but it's intel or it's tactics that the officer is using so the officer can avoid having to resort to using force.

Commissioner Regehr: [Distortion, audio cutting out...] ... a person that murdered his wife, or there's an African American that is walking in my neighborhood, and I've never seen him before, and we've just had a robbery. That's the intel they... I mean, what...? I guess that's my concern about de-escalation and what the information is they are receiving.

Chief Jonsen: I'll go ahead and respond to that. You know, one of the things that we do exceptionally well here is take in information, analyze it, and still respond very professionally and appropriately. We have, on numerous occasions, responded to calls just like that. We refer to them as "swatting" sometimes, where somebody calls in, says they've taken somebody hostage, they're in a house – That can immediately end up in a life-threatening situation, and we've been able to de-escalate that by going into it with open eyes, looking at everything we have before making decisions. Again, I can't get into every single call that we take in, but they're very good about processing the information that's provided to us, and then, responding appropriately based on what they see in front of them. The second component of your concern really has to do with maybe community education on what they're calling in for. That's probably for another discussion.

Commissioner Regehr: I guess I'm concerned about that because that's not what I've heard or had people exactly tell me. I guess I would like to keep it the way we [distortion]... make a motion and...

Chair Smith: We'll get to a motion in about two seconds.

Commissioner Regehr: Yeah, because that's something I've heard from the community, or have experienced.

Chair Smith: Commissioner Lee?

Commissioner Lee: Yeah, I have two questions. The assistant chief has been mentioning, you know, SB 230 and other state laws. For SB 230, is that, in your estimation, a ceiling, or is it a floor? In terms of the standards in which our city can adopt.

Asst. Chief Binder: Well, I think, as I said before, the police department is always open to looking at anything that could make our agency better. I think part of going through this exercise tonight with you guys is to hear your recommendations, hear what we have to say about it. I do think that, like I've said, on this one specifically, I do think.... One of the policies I think that was mentioned, I can't remember who before, mentioned the San Francisco force policy. I think one of the things that they do well is they really lay out the importance of de-escalation, they break it down, they define it. I think that 230 doesn't require a policy to be written to that extent, but that is not an unreasonable endeavor for the police department to consider it to do.

Commissioner Lee: It sounds like the police department is saying that we can go above and beyond what the state requires, so that is good to know. Could I, as part of my discussion, can I share my screen, please?

Chair Smith: What are we sharing?

Commissioner Lee: I just want to pull up the comparison, the current policy versus the model policy. I have it on my screen.

Chair Smith: Can you just do it verbally? I want to keep...

Commissioner Lee: No, I would prefer we show it. Could we please show it? Please?

Chair Smith: No.

Commissioner Lee: It takes, like, two seconds. You're not going to let me show it?

Chair Smith: Nope.

Commissioner Lee: Okay.

Chair Smith: I want to keep everybody...

Commissioner Lee: Okay, so...

Chair Smith: ... everybody on par.

Commissioner Lee: Well, I mean, everyone knows how to do that. So, the current PAPD policy says, "Officers should consider, as time and circumstance reasonably permit..." That seems very loose language to me and, you know, to his credit, the Assistant Chief has said that that needs buttoning up. In the model policy, it uses stronger language, and my question is going to be whether the police department will be amendable to having stronger language. The model use of force policy says, "Prior to using physical, non-deadly and/or deadly force, all law enforcement officers must use proper de-escalation techniques to decrease the likelihood..." etc. etc. My question is this: Does the police department have any opposition to adopting the Campaign Zero model use of force policy, which requires, which uses the word "must," must use proper de-escalation techniques, as opposed to "should consider" or "shall consider," or any of the other language, currently or proposed.

Asst. Chief Binder: I believe – and Chief Jonsen can speak for himself – I believe that the caveat on there of using de-escalation "when feasible" as opposed to "must" is an important consideration, and does allow for interpretation by the officer based on the totality of the circumstances that are presented to them.

Commissioner Lee: You would include "feasible" in that. What about "necessary" instead of "feasible?" Sorry, sorry.

Asst. Chief Binder: I guess I would have to see the motion first to comment further on it.

Commissioner Lee: That's fine, that's fine. That's my comment. I'm ready to make a motion if you're ready to entertain it, Chair.

Chair Smith: No, I actually have to, we have three people left to ask questions. Chief, I want to ask a couple of critical questions earlier. What is the standards that your officers are using to determine "should" and "can?" Because the language seems absolutely very subjective. Is there a scale that is out there like San Francisco that we can apply to the language? Because the one thing that I'm in disagreement with 8 Can't Wait is I think we need to have some very clear guidance on what de-escalation is, and what that looks like. Because it's easy... People can

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misinterpret words. You could say “de-escalate,” and somebody said, “I stood there calmly,” and that's not the steps in de-escalation. So, I just want you to sort of clarify on that.

Asst. Chief Binder: Just so I can make sure I answer your question, can you just reword and give me your direct question?

Chair Smith: Okay. Two questions. What is the standard that they determine if they should de-escalate? What is the standard that officers are taught today to determine if they should de-escalate per your language? And, you talked about the, the second question is, you talked about the framework in San Francisco, that they did a really good job of laying out what de-escalation is. Can you give us some examples of that? Is that clear?

Asst. Chief Binder: Yes, thank you. To your first question, you know, the officer is going to take into account a set of facts, right? They're going to show up to a scene, or they're going to be involved in an incident as this incident unfolds, and there's going to be a set of facts that are going to potentially rapidly unfold in front of them. That officer is making, is taking in these circumstances, and then, making decisions on how to act, what to do, whether they should employ de-escalation techniques, or not. Now, the officer should, as a default, unless the circumstances are otherwise, the officer should employ, prior to using force, should employ using de-escalation techniques. Like I said, that is the demeanor in which they talk to the person, using a calming tone. It could be maybe trying to get the person to answer questions. Whatever they're trying to do to de-escalate the situation, they're basing that on, basically, the totality of the circumstances, what they're seeing, what they know to them. I'm not sure if that answers your question entirely.

Chair Smith: I have a follow-up question to that. One of the critical things is bias, and in Jennifer Eberhart's work at Stanford, it's extremely clear that even black police officers are more likely to have an adverse respect to black suspects. This is why I want to make sure that when we talk about de-escalation, there is a way that we're not leaning on somebody's bias to make the decision what de-escalation is.

Asst. Chief Binder: I think that's a great point, and, you know, in a perfect world, that would be great. Unfortunately, we're dealing with humans, regardless of the profession, and police officers are human, just like everyone else. So, our goal, number one, you know, everyone has an implicit bias, and what's important for, especially for police officers, is that we ensure that those implicit biases don't factor into our decisions about whether, how we use force, or even how we treat someone, or how we communicate with someone. Or, even as simple as whether we are going to let those biases dictate whether we stop someone or stop to talk to someone. That is an important consideration, and our goal here in the implicit bias training is not to allow those implicit biases to control the decisions and the actions of the officer.

Chair Smith: Thank you. Council Member Tanaka?

Council Member Tanaka: Well, the only question I have is similar to what I had before. Assistant Chief Binder, I didn't get the presentation – Can you send it again? – for some reason.

Asst. Chief Binder: I'm sorry, I didn't realize you wanted it right now. Let me work on that.

Mr. Shikada: On that point, it might be helpful to send it to Mary – excuse me, Mr. Chair – for the purpose of having it posted...

Chair Smith: On the screen?

Mr. Shikada: ... to the public, as well. [crosstalk] expectation.

Chair Smith: Council Member Kou? You're muted.

Council Member Kou: I was just listening to the... I think it's mostly the definition that we're going after for de-escalation because it's such a big word, and it doesn't pin down exactly what is going to be done. So, you know, just as Assistant Chief Binder had mentioned San Francisco's policy for this item, there's also Mountain View's, which seemed also pretty definitive, where they actually speak about the de-escalation techniques such as self-control. And then, they go into effective communications, scene assessment and management, and reasonable force options, to decrease the likelihood of the need to use force during an incident. Is that what you're asking for, Chair?

Chair Smith: Yes. That [crosstalk]...

Council Member Kou: [crosstalk] ... in terms of what, define what you're going to do in de-escalation. I would like to also add that perhaps add a goal. The goal of de-escalation is dah, dah, dah, you know, what did you want the goal to be, right? Just a suggestion. I was listening, then going back and forth.

Chair Smith: Okay. Thank you so much Council Member. I'll entertain motions. Yes, Commissioner Lee?

MOTION

Commissioner Lee: I move that the HRC recommend that the City Council adopt the model use of force policy with respect to de-escalation; that prior to using physical... Sorry. I'll wait for... Adopt the model use of force policy with respect to de-escalation, and in quotes, quotes before prior... Prior to using physical non-deadly and/or deadly force, all law enforcement officers must use proper de-escalation techniques. And then you can just put "... " and we can copy the model policy in there. That's the essence of my...

Chair Smith: Okay. We have a motion. Do we have a second on the motion?

Commissioner Regehr: Can I just...?

Chair Smith: Yes.

Commissioner Regehr: I would second it, but I kind of what, instead of "physical," I'd like to put "physical and verbal and mental." Not just physical.

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Chair Smith: Would you accept an amendment, Commissioner?

Commissioner Regehr: Physical and mental and verbal.

Chair Smith: Would you accept an amendment to your motion, Commissioner Lee?

Commissioner Lee: Not at this point, but if you want to make a substitute motion after you second it, that's possible.

Chair Smith: Well, she's not seconding this.

Commissioner Regehr: [crosstalk] can't second this because I really would like to put "verbal and mental."

Chair Smith: Okay, thank you. Do we have any...?

Commissioner Regehr: I don't want... But I guess my question is... okay.

Chair Smith: Well, I'll make a motion that will help you. We have a second. You accept the amendment, Steven?

Commissioner Lee: Help me understand what we're...? You're wanting them to de-escalate before they use verbal, first?

Commissioner Regehr: For example, Steven. I had a friend whose daughter was a person of color. Was in a car with her boyfriend. They were stopped by the police in Palo Alto a couple months ago. They were told to get out of the car. They weren't told anything, what was going on. They were verbally kind of like, "Oh, what are you doing in this neighborhood?" Then, they looked at her license and said, "Oh, this is your neighborhood," and then they completely...

Commissioner Lee: Gotcha. Okay.

Commissioner Regehr: That's why I want to put "verbal."

Commissioner Lee: Okay, then I'll accept it, then I'll accept it.

Commissioner Regehr: Well, I second it.

Chair Smith: Okay, so, we have a motion by Commissioner Lee, we have a second by Commissioner Regehr. We are now on open discussion. Commissioner Regehr I think is on to a very critical thing, and even Chief Binder brought it up, and Council Member Kou brought it up. I would like us to add, there be a real robust definition of de-escalation. I don't know how we write that into the motion, but I would feel comfortable if we could add that. If we can't, I'd be more than willing to bring it to vote. But I think with some sort of language that says, with a clear definition or examples or techniques of de-escalation listed in the policy. Because sometimes I believe you have to point things out to it. One of the things that I really loved about Commissioner Regehr's point is, it's a fearful thing to be stopped by a police officer for

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anybody, and tone and body language automatically sets the tone, sets the atmosphere, and that authority kind of can lean in. That is one of the, that moment of fear is so critical. But I also really want us to define “de-escalation.” I don’t know how we add that.

Commissioner Lee: I would take that as a friendly, if we can just wordsmith it. After “...,” ...

FRIENDLY AMENDMENT

Chair Smith: And I would add, new sentence, new paragraph, with a clear definition of de-escalation and de-escalation tactics for field officers, XYZ, using Mountain View and San Francisco as examples.

Commissioner Lee: Great. That’s accepted as friendly.

Commissioner Regehr: Okay. I second that.

Chair Smith: Okay. Are we ready for a vote?

Commissioner Lee: Sorry, can you say “clear definition,” or did you want “explanation?”

Chair Smith: “Clear explanation.” Because you’re explaining tactics, you’re not defining. You’re explaining what that looks like. Commissioner Savage, do you have anything?

Commissioner Savage: No, it’s fine.

Chair Smith: Okay.

[crosstalk]

Mr. Shikada: I’d like to comment, Mr. Chair, at the appropriate time, sorry.

Chair Smith: Yes, yes. Okay. Let me take Commissioner Stinger, then I’ll take the city manager, and hopefully we can get to a vote next.

Commissioner Stinger: I have a request. Would you consider a friendly amendment instead, to replace the word... or add after “must,” “...must consider when feasible?” All law enforcement officers [crosstalk] when feasible. Or must consider when feasible the use of proper de-escalation.

Commissioner Lee: Would you mind making that as a substitute motion so we can vote on that piece, to add it to the main motion? Commissioner Stinger?

Chair Smith: Okay. We have a motion. We don’t have to put a substitute motion up yet.

Commissioner Lee: Sorry. Does Commissioner Stinger want to make a substitute motion to add...? Is it “feasible” after “must?” Was that your intent, Commissioner Stinger?

Chair Smith: No, she asked for a friendly amendment, and then, you said no, and [crosstalk]...

Commissioner Lee: Well, then I suggested, if she wanted to...

[crosstalk]

Chair Smith: You've denied the friendly amendment. Commissioner Stinger, you have the option, substitute motion, or we can bring this to a vote.

Commissioner Stinger: Bring it to a vote.

Chair Smith: Thank you. Commissioner Lee?

Commissioner Lee: Aye.

Chair Smith: Commissioner Regehr?

Commissioner Regehr: Aye.

Chair Smith: Commissioner Savage?

Commissioner Savage: Aye.

Chair Smith: Commissioner Stinger?

Commissioner Stinger: Nay.

Chair Smith: Commissioner Smith, aye.

MOTION PASSES 4-1.

Chair Smith: We are at the duty to intervene policy.

Mr. Shikada: Mr. Chair, I'm sorry...

Chair Smith: Oh, sorry, I'm so sorry, City Manager.

Mr. Shikada: Not a problem, not a problem. First, just a comment. I meant to make it before you took that vote, but just as a point of, perhaps information, there was an earlier question about the memo that came from the police chief and the second paragraph that refers to how the recommendations that come out of the Commission may require consultation with other parties. This is a good example of the action you just took related to de-escalation. Basically, what the Commission did was to recommend substituting the existing language in the PAPD policy manual with language that has been proposed to Campaign Zero, or the variation thereof. I think it's fair to expect that the department and administration will take the essence of what you just did and really appreciate the very substantive discussion, while recognizing that the language itself does have a context. In the manual, you know, there's a flow, there's a sequence of

language that is used throughout the manual, and through that consultation that is referred to in the staff memo, I would expect there may be some alternative language that staff will recommend to the Council, at least will be [crosstalk]...

Chair Smith: I want to make sure we're clear that what we vote, Council will see it as a vote.

Mr. Shikada: Exactly.

Chair Smith: [crosstalk] language. Okay.

Mr. Shikada: Yes. It will absolutely see the HRC's language. It may also, as I said, have some alternative language that comes up through staff or other consultation.

Chair Smith: You're entitled to your opinion, and this is the one thing I do have to make clear. As long as what this Commission votes on is seen by Council, I'm alright with it. You know, I would be living in a fairytale if I expect us as a Commission to make these recommendations and expect staff and PD not to have a response. I just want to make sure, for the commissioners, that we are in the right space. That what they're voting on will be given to City Council.

Mr. Shikada: Absolutely. Thank you, Mr. Chair.

Chair Smith: Okay, cool. Duty to intervene. I would like to... Duty to intervene. All right. Let us start with, we have a duty to intervene policy. Mary, did you get...?

Asst. Chief Binder: Chair Smith?

Chair Smith: Yes?

Asst. Chief Binder: I'm sorry, Chair Smith? I'm following along. I have require warning before shooting as my third. I just want to make sure I'm keeping in proper sequence with...

Chair Smith: What do we have for three, Mary? Require warning before shooting. Sorry. That was my fault. I read page four, page three. Thank you. Thank you. All right. Require warning before shooting. Let us start with Commissioner Lee, with his questions. We'll work our way through the commissioners, then council members, then we'll do a motion.

Commissioner Lee: Yes. This is one of the areas where I actually had no issue. I agree with 8 Can't Wait, that this one has been completed, both relying on their representation, but also doing my own redline. So, thank you so much for the PAPD for having that one. It's something we can check off.

Chair Smith: Wow. I'm going to preach about this on Sunday. No. Commissioner Regehr.

Commissioner Regehr: I'm the same.

Chair Smith: Commissioner Savage?

Commissioner Savage: The recommendation is to give a verbal warning when possible before using deadly force. If that's what we're agreeing to, I agree as well.

Chair Smith: Okay. Commissioner Stinger?

Commissioner Stinger: Agreed.

Chair Smith: We don't have to make a motion on this one. We like where P D is with it, so let's move to the next one.

Ms. van der Zwaag: Chair Smith, there are the two council members as well.

Chair Smith: I'm sorry. I'm so sorry. Council Member Kou? She's all right. Council Member Tanaka? Very good. Okay. Thank you, everyone. Exhaust all alternatives before shooting. You know, Commissioner Lee, why don't you kick it off.

Commissioner Lee: Okay, great. This one here, looking at, I was looking at the police accountability website that was put together. I appreciate you all doing that. It seems like the PAPD's response to whether this criterion is met, it seems like the answer really points to whether we're complying with Penal Code 835. I want to sort of repeat the question I asked earlier, but specifically about 835. Is 835 of the Penal Code, is that a ceiling, or is that a floor, under which we can hold officers to?

Asst. Chief Binder: Again, I think that, you know, we are open to improving it. I think my biggest issue with our policy is that it doesn't match the basic tenets of 835 A, which is requiring that officers shall evaluate each situation in light of the particular circumstances.

Commissioner Lee: Okay. I get that you want to update to match that. Let me ask this question. Assuming that it was already matching 835, would the police department be willing to go a step further and match the language in the model use of force policy, which says, "Law enforcement officer has exhausted all reasonable alternatives to the use of deadly force, including de-escalation. Other reasonable means of apprehending the suspect, defending themselves or others." Is that something that the police department is willing to do, or would the update to 835 accomplish that entire piece on its own?

Asst. Chief Binder: I do think there needs to be a caveat in there about giving the officers, again, some appropriate, some ability to make decisions. Even San Francisco PD's policy, which sounds like some of us have gone through, even that articulates that they want you to exhaust all alternatives, but not if it's not feasible. The policy doesn't require it. I guess I would have to see what the motion is to give you further comment, or...

Commissioner Lee: That's a good question. I mean, you reference the SFPD policy, so I'm just going to read it here, and I might be supportive of adopting, recommending that we adopt the SFPD language, which says: "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.” So, would that SFPD language be sufficient enough to encapsulate sort of the things that you were mentioning, that you would like to include?

Asst. Chief Binder: I will say that, for me personally, I do think that that’s a reasonable policy, but again, I speak for myself, and as the Chief and City Manager Shikada said, there is a process to it. So, I think if that is part of the motion that the HRC committee wants to make in regards to this point, then that’s your right to do so.

Commissioner Lee: Okay. The final question is, would you consider the SFPD policy above and beyond the type of update you would make to comply with 835, something extra? Like 835-plus? Or is it just…?

Asst. Chief Binder: In all honestly, I didn’t go through it in that level of extent to be able to opine on that.

Commissioner Lee: Okay. Okay. Great. Thank you.

Chair Smith: Commissioner Regehr.

Commissioner Regehr: No, I don’t have any questions.

Chair Smith: Commissioner Savage.

Commissioner Savage: No questions.

Chair Smith: Commissioner Stinger.

Commissioner Stinger: No questions.

Chair Smith: Okay. See, this is my challenge with the language, and maybe you can help me out with this, both chiefs. I know we can’t write for every situation, but it gives us broad latitude that, as a layman or somebody on the outside, it sounds like, if I can come up with enough justification, then I can justify whatever to shoot. I know there’s training, and there’s things that are done at Academy, that you have to give them restrictions at some point, and some level of training, and can that be transparent in how we write the standard, to say, how do I train a rookie at the Academy? You are in a situation. Why are you required to shoot? You need to have these three or four things that you need to do before you pull the trigger. How do we transfer that to the regulation? Because you’re training it anyway.

Asst. Chief Binder: I think that really ties into the de-escalation point that we were just talking about, and it’s interwoven, in my opinion, and it’s a mindset on the part of the officer, and this is part of that paradigm shift that I’m talking about that needs to happen within the police department. That is, we want the officer’s mindset to be that their first option is to try to de-escalate that situation. The natural flow to that is that they would exhaust all alternatives as long as it’s reasonable or feasible before resorting to shooting or using deadly force.

Chair Smith: You know, I think part of the challenge for public is “reasonable” and “feasible” are such large gray areas. I wish there was a way for us – and I’m asking this question – from a PD perspective, what language can I point to a layperson to say, well, this person made the determination wasn’t reasonable because we had this training, which dealt with their biases, which dealt with the issue, which dealt with all of this. What is “reasonable?”

Asst. Chief Binder: In addition to the things that you mentioned, and de-escalation, our policy on use of deadly force also restricts to certain situations in which an officer can use deadly force, and that obviously has to be part of the conversation here when talking about exhausting all those alternatives to using, for using deadly force, or before shooting.

Chair Smith: I will... Council Member Kou, then Council Member Tanaka.

Council Member Kou: I think I am kind of, again, grappling with what would be exhausting the alternatives, so, what are those alternatives? Could they possible be de-escalation items before a shooting? Is that something to consider? I think, I guess I’m trying to figure out, you know... It’s just very vague and not kind of getting, what would be the alternatives? Maybe that’s something to consider.

Asst. Chief Binder: I’ll just comment on that. I agree with you, and I think that part of an escalation of force leading to a shooting or to the use of deadly force should include the process of the officer, if appropriate, working through the various tools, so to speak, or equipment that they carry with them, or have them on their belt. It could be that we carry OC spray, or we carry a taser, or... What are those options if the person is armed with the knife and we have the ability to create distance, and space, and time? We have less lethal weapons that fire less lethal projectiles, like little beanbags. Those things should definitely be utilized, and I think that’s what you’re getting to, and part of the conversation here.

Chair Smith: Council Member Tanaka?

Council Member Tanaka: Nothing on this one, thank you.

Chair Smith: I’m open to motions. Commissioner Lee.

MOTION

Commissioner Lee: I would move that the HRC recommend that the Council adopt the SFPD policy, which 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.

Chair Smith: Do we have anyone for a second? I’ll second. We have discussion.

Commissioner Regehr: I think an important... Hi. Can I...?

Chair Smith: Go ahead.

Commissioner Regehr: I think an important part of this is that exhausting all alternatives is very important because you can't change someone's heart, you can't change someone's reaction. I think "exhaust all alternatives before shooting" makes it very clear that you have to try. You know, like some parenting, you know? I mean, some parents think that the first thing is that you hit the kid. Other people say no, you talk it over. Other people say... I think that's why it's important to exhaust all alternatives before shooting. Not that I'm saying that our police officers will do it, but it kind of sets the tone.

Chair Smith: Commissioner Savage.

Commissioner Savage: No comment, no question.

Chair Smith: Okay. I just want to say, I feel like Commissioner Lee's motion strikes a good balance. I like the second part of the language where it says, "or not feasible," so it gives some balance in it. I'm ready to take it to a vote unless there is no other discussion or comment at this time. Okay.

Ms. van der Zwaag: Can I ask a question? Where it says to protect the safety of the public and/or the police officer...? Is that any kind of important distinction, or not should be there? That was only an observation I saw.

Chair Smith: It said and/or.

Commissioner Lee: Yeah, that's fine. I mean, when I copied and pasted it, it just said "and," but "and/or" is fine.

Chair Smith: Okay. Commissioner Lee.

Commissioner Lee: Aye.

Chair Smith: Commissioner Regehr?

Commissioner Regehr: Aye.

Chair Smith: Commissioner Savage?

Commissioner Savage: Aye.

Chair Smith: Commissioner Stinger?

Commissioner Stinger: Aye.

Chair Smith: Commissioner Smith, aye.

MOTION PASSES 5-0.

Chair Smith: We are on number 5, duty to intervene. We will start with Commissioner Stinger this time and work our way up the alphabet. Do you have any questions on duty to intervene?

Commissioner Stinger: I do. My question is, duty to intervene is considered met by, the Palo Alto code satisfies Campaign Zero, but to me, accountability is the key. I wonder if we can add citizen oversight, or...? What does the police department might improve the accountability?

Asst. Chief Binder: Well, I think that we do have accountability already built into the structure of the police department that is through the independent police auditor. So, if I can think of a scenario off the top of my head that might involve the duty to intervene, or a lack of a duty to intervene, if we identified a circumstance where an officer should have intervened, that would immediately be put into an administrative investigation, like an internal affairs investigation, and ultimately, once that investigation was done, that would be packaged and shipped down to the IPA for review.

Commissioner Stinger: Thank you.

Chair Smith: Commissioner Savage.

Commissioner Savage: I see this as in compliance.

Chair Smith: Thank you. Commissioner Regehr.

Commissioner Regehr: I guess I expect more than just compliance. I guess my question is, looking at this policy, would that have avoided the lawsuits and everything else that we have... and other types that we've heard from the community? I guess that's my concern, is that I want to go beyond compliance. You say internal affairs. I'm wondering how, if that's the case, how could these cases have been, have happened? The police chief or assistant police chief, my question was for you two. Either one.

Chief Jonsen: I'll respond. I guess I would ask for clarification. When you say, "they," that's pretty broad. Which cases specifically are you talking about?"

Commissioner Regehr: Well, I can't remember, and I'm really bad with names, but the Buena Vista, the trailer park, that one. The other... I think you were on the call when some people were saying last week about how they were experiencing police towards them, and that was a "they" because many people spoke about that.

Chief Jonsen: Okay, I'm not sure about that [crosstalk].

Commissioner Regehr: [crosstalk]

Chair Smith: I'll help you out, Commissioner Regehr.

Commissioner Regehr: Thank you.

Chair Smith: There's the... I can't say his name. Benitez and DeStefano? Those two cases have been mentioned a multitude of times, and I think Commissioner Regehr's question is leaning into how did our duty to intervene policy help or fail or work in that situation?

Chief Jonsen: We'll just use a Buena Vista incident, which it sounds like many of you, if not all of you, are well informed on, as well as the public. Even though I can't really comment on specifics of that case because it is still under investigation, if we were to use something similar to that in today's environment that were witnessed, and the officer had an opportunity to intervene, then that would be a policy violation. Again, it's an opportunity to intervene. The example given with Benitez that happened so quickly that some would argue the officers didn't have an opportunity to intervene. Also, with that particular case, what I can say is that we at the management level weren't even aware of that incident until it was brought to our attention, and that's something we've also started to address, and actually did interject in some of the policy revisions to make sure that when somebody sees something that they feel is inappropriate, that they must report it to a supervisor. So, I think it does have the accountability piece built into it. Hopefully that answers your question a little bit.

Commissioner Regehr: Well, in some ways, but my question, it's a little bit deeper, because I know that it's very difficult for some people to speak up around their peers. We had another incident when, you know, the police officer called another police officer the "N" word. I'm just saying that it's very difficult to say "observe" and do it because...

Chief Jonsen: Okay, when we're talking about duty to intervene, again, we're talking about, at least I believe with the 8 Can't Wait, the duty to intervene with use of force. When they see somebody using inappropriate use of force. I'm not going to get into every possible situation of personality conflict, or employee interactions. I think for this topic tonight, it's about uses of force and the duty to intervene. I think we have adjusted our policy to meet and ensure that if an officer has the ability to, they shall intervene, and also, to report that incident. So, I hear you. It's difficult to sometimes do it, but when you set the expectation and make it mandatory, people will either adhere, or they will be held accountable for that.

Commissioner Regehr: My question then, when you say the word "ability," some people don't have the ability to question another peer. What do you mean by "ability?"

Chief Jonsen: When I said "ability," the ability to intervene. Some things happen so quickly. Your example given with the trailer park, if an officer grabs somebody and slams them against the hood one time, and then moves on, an officer may not have had the ability to physical stop that. It happened so quickly. That was my point with that comment.

Chair Smith: All right.

Asst. Chief Binder: Chair Smith, can I just add one more thought to this conversation?

Chair Smith: Yes.

Asst. Chief Binder: I think it's really good, and I do appreciate the deep thoughts into this, and reflection. I think what's missing is that back when the incident happened at Buena Vista, the department did not have body cameras, and now, today, we do. I think that that is a huge component because video evidence via the body cameras is like an independent, neutral third party. There's no bias to video. We don't have the ability to alter, alter the video in any way. So, now what we have in regards to accountability is this body cam, that if we believe that there is an incident where an officer should have intervened, clearly we're going to give the officer the opportunity to give their statement or give their side of how they felt the incident unfolded. But, as administrators in management, when we look at this from an administrative perspective, we now have that body camera as, like, this third-party kind of witness to make our own judgments and dispositions. Or at least considerations. I hope that maybe helps or clears it up.

Commissioner Regehr: I'm sorry, I have one more question then. Regarding the body cams, then, is there any disciplinary action if it's not turned on?

Chief Jonsen: It's part of our policy to have your body camera turned on. So, again, if there's an incident, a use of force incident, the officer didn't have his body camera turned on, and that was found during the investigation, or even self-admission, and there was no legitimate reason why it wasn't turned on, yeah, that would be a policy violation.

Commissioner Regehr: I guess my question is, that's the duty of intervention. I mean, would "I forgot" be enough of an excuse? And whose word would you take at that point?

Chief Jonsen: Well, again, I mean, sometimes... I'd love to have every situation. We've laid it out pretty clearly in our policy our expectations when officers should have their body cameras on, and we hold them to that. But again, there are incidents, you know, they pull up and there's a fight in the street, they jump out of their car... I mean, yes. They may actually have forgot to turn it on because they're focused on what's happening on the street in front of them, and they're trying to engage in that action. So, in a perfect world, they'd always be on them. We have had great success with our body cameras since we've implemented them, and the officers have been adhering to that policy. So, again, our hope is that they always comply with the policy. Are there exceptions? There may be at time. Is it a reasonable exception? We'll have to determine that based on the situation.

Commissioner Regehr: Okay. Thank you.

Chair Smith: Okay. Can we have Commissioner Lee ask a question?

Commissioner Lee: I have two questions. The first one is – and maybe you covered it – what are the possible disciplinary actions that could be taken if an officer violates a policy?

Chief Jonsen: Okay, there's a wide range, and I don't know if we're going to go down, you know, every type of policy and violation and discipline associated with it. We're really starting to get outside the scope of the 8 Can't Wait. But again, the policy for any violation, depending on the nature, can range from counseling, to termination. Again, there are a lot of things that go into each and every one of those decisions, depending on the magnitude of the situation.

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Commissioner Lee: Well, what is the minimum that would happen for this specific policy? The duty to intervene. Is it counseling? Is that the minimum?

Chief Jonsen: Well, it could be. I mean, it could be. If it was something... I can't rule it out, but again, without seeing a case and without reviewing all the documents associated with that incident, it's really hard pressed to say what the discipline would be, or could be.

Commissioner Lee: Okay, well, I mean, I'm a lawyer, and a lot of corporations have, you know, a base minimum when certain policies are violated. So, respectfully, I push back on that. Second question. You know, the Campaign Zero, again, the model use of policy for Campaign Zero says that all law enforcement officers must intervene, as opposed to the PAPD policy, which says, "shall, when a position to do so..." Would the police department be opposed to deleting the stuff within the comma? Leave, "shall intercede to prevent..."

Chief Jonsen: Are you saying extract the wording of "when in a position to do so?"

Commissioner Lee: Yes.

Chief Jonsen: Well, again, I think... I love the way we're trying to develop a policy on thousands of different situations. I think it's, again, in a perfect world, I'd love to be able to say I'm within arm's reach of every officer that I'm interacting with. If I'm not physically in a position to intervene, it's just not going to be possible to intervene. So, again, every situation is going to be different. I think it's having a policy in place and an expectation and going from there.

Commissioner Lee: Okay. That's my only question, and I'll have a motion when we get to one.

Chair Smith: My question is more to deal with protecting officers that do report. You know, the reality is, what are the protections in place for good officers if they do report abuse or a bad officer they see? Because I think it's great to mandate this, but if they feel like there is internal or organizational or cultural pressure, how do you protect the good apples as they deal with a situation?

Chief Jonsen: Again, I'll answer this. I think setting the expectations is primary, and once those expectations are set, I think you go from there. I think the protections, we have protections in place when investigations are ongoing. It's actually part of the verbiage within the investigation, to protect officers from retaliation, and especially for the ones that are being investigated. We remind them in every investigation that retaliation in any form can be another violation of policy. So, I think the protections are built in. I think it goes deeper than that. I think it's more the cultural that really gets to the root of change. That's something that I think we are very willing to address, and I think we are.

Chair Smith: How do you address the culture? Because I feel like, you know, as much as this rule is critical, I think the culture part becomes more of it. I know that's not so much a policy question, it's more a, how does command staff bring that down to the people, and how do you get the organization to get behind it? It can take years...

Chief Jonsen: Yes, it can.

Chair Smith: ...but I just want to dive into this piece a little bit, Chief, if you don't mind.

Chief Jonsen: That's a great question. I've said it before in other forums, and I'll say it again tonight. I know I keep going back to expectations, but it is about setting expectations and holding people accountable fairly throughout the organization, no matter what rank they hold. I think once the organization sees that those are being applied fairly and across the board, no matter what rank the individual is, then it's very well accepted, and culture changes quickly. It's when you put policies in place, and they are not enforced fairly and equitably that it can cause challenges. Again, that really comes back to me, and for this group, and for the Council, is... The question that was asked earlier: What happens if someone is not held accountable? You know, we do investigations, we send them to the IPA. They give a review. The public gets to see it. If there's really a problem with the discipline that was imposed, you shouldn't be really going after the officer that was involved, you should be going after me. I'm the chief that makes that discipline, and that's where the accountability ultimately lies. So, I think that's where the Commission has some – Commission and Council, and even the City Manager, without question, always has – is, you know, if you don't like the way an organization is run, you have to look at how it's being run. So, we're doing our best to set high expectations and hold people accountable. The incident that keeps coming back to us was one that happened two weeks within my arrival here. If that were to happen here today in the same configuration, without question, I know very clearly what my discipline would be. But again, I will evaluate every incident as it comes forward.

Chair Smith: All right. Can we have Council Member Kou, and then Council Member Tanaka.

Council Member Kou: Just what you said, Chair Smith, is, it's actually very important, you know, to protect the police officer who is reporting the incident. I don't know what the motion is going to be, but I would like to see the word "shall" in there wherever possible, instead of the "should" word. That's all. Thank you. Thank you for the discussion.

Chair Smith: Thank you. Council Member Tanaka?

Council Member Tanaka: I have to agree, Chair Smith. I like the question about making sure that reporting officers are protected, so there's got to be a mechanism where people don't feel blackballed, or people close rank, and there's pressure not to report. I think it's hard to do that without the person who reports it feeling singled out. I think that's the challenge. I think that probably what Chief Jonsen wants to vote, but it's probably hard to do. I think that's the challenge. I'd love to see more thought in terms of how that can happen, because I think without that, it's hard to actually have people intervene. So, it's a good question. I'd love to see maybe if the Commission can, maybe, or if the chief... Maybe you guys could bring more, come back with some ideas and recommendations. It's a hard problem, right? Because you want people to have camaraderie, you want people to be able to work together as a team, and have each other's back, and all that stuff. Yet, you're also trying to do this, and it's hard to do both at the same time. So, I don't know there are great ideas, but I think as a Council Member, I would like to see some of that [inaudible], some of that thought, you know, because it's a bit of a puzzle. Maybe

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there's something that other cities have done, that's figured that out. We also want the police to also be able to function as a team, as a unit, cohesive unit. That's also really important. So, Chair, it's a good question. I also want to know if there are good answers to it.

Chair Smith: Okay. I'm going to take a motion from the floor. Commissioner Lee.

Commissioner Lee: I'd like to move that the Commission recommend that the policy be amended to delete "shall..." Is the screen, right? Do you folks see the screen, or...?

Commissioner Regehr: Hmm-hmm.

Chair Smith: That's Mary typing.

Commissioner Lee: Is the screen up now, or...?

Commissioner Regehr: She's typing it, Steven.

Commissioner Lee: Okay, but aren't we going to just look at it?

Commissioner Regehr: Look at...?

Commissioner Lee: I mean, she was displaying her screen before, right?

Chair Smith: Yes, she's displaying it now.

Commissioner Lee: Oh, okay. I can't see it for some reason. Replace "shall, when in a position to do so," with... replace it with "must intercede." The second piece of that would be to establish a minimal disciplinary action when this policy is violated. I think it's important that we establish a minimum punishment that is, a disciplinary action that is transparent and sets a floor under which we will handle any sort of violations of this policy.

Chair Smith: Thank you, Commissioner Lee. Do we have a second?

Commissioner Regehr: I guess I second it with discussion. I guess...

Chair Smith: We can second it, we can bring it to discussion.

Commissioner Regehr: Yes.

Chair Smith: We have a second from Commissioner Regehr. We now open discussion up. I generally... This is one of the policies that I feel is less about wording and more about culture, and less about being punitive. I feel like the folks from Campaign Zero and 8 Can't Wait already recognize that, and they felt like our language was close enough in this case. I think Council Member Tanaka said it best. I think this is something that Council and the Chief, and the City Manager, and if they bring us back into the loop, is a discussion around how do we create culture and environment within the department. Or if it's not... I don't know. If it's not there, if it's there, but how do we create a space where people feel comfortable intervening and reporting

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intervention in a safe way, and how do we build that culture as the chief has said. I don't think I can support it as written, at this moment.

Commissioner Lee: Can I make a clarification to the Commission?

Chair Smith: Yes. Yes, Commissioner Lee.

Commissioner Lee: So, Mary, it should say, delete in quotes "shall, when in a position to do so... with, and replace it with "must."

Chair Smith: Just delete the "with." All right.

Commissioner Lee: You know, I take your point very well, Chair, so I would like to add to this motion, if my seconder will. That the police department explore additional measures to cultivate a police culture that encourages... How would you end that phrase, Chair Smith? To cultivate...

Chair Smith: Cultivate safe spaces, or safe reporting mechanism.

Commissioner Lee: Safe reporting mechanisms.

Chair Smith: Yes. I still, I appreciate the amendment, but I still don't...

Commissioner Lee: That's fine.

Chair Smith: ... I don't feel like I'm [crosstalk]

Commissioner Lee: Okay.

Chair Smith: ... to be honest.

Commissioner Lee: Would my seconder agree to that addition? Commissioner Regehr?

Commissioner Regehr: I'm sorry?

Chair Smith: Would you agree to the change that Commissioner Lee just made?

Commissioner Regehr: I think the problem that I have is the minimal disciplinary action when this policy is violated. I guess that's the part that I kind of am having trouble with a little bit, because it's really punishing the person that's the up stander. That's what I'm grappling with, is how do you encourage someone without...? I mean, maybe this is it. I mean, maybe that is. Like, if you don't say something, you're going to be penalized, and what is minimal disciplinary action? I guess I have a problem with that wording and I'm trying...

Commissioner Lee: Maybe just to define a minimal disciplinary action.

Chair Smith: Yeah, I think, I think, because, you know, one of the challenges is, if somebody comes at a later date, you now tie, like, the Chief's hand to say now I have to, like, discipline

them, because he didn't tell me a week ago. It sat on his conscious and he told me two months later. Now I have to punish him because he didn't do the minimum on a... Like, I'm with Commissioner Regehr. I feel like this is one of those issues that in culture change, I just feel it difficult to define in a penalty way.

Commissioner Lee: Okay. I would be in favor of, this is my second preference here, but I'm willing to make it – To delete the second sentence. If that will get this board and this seconder.

Commissioner Regehr: Okay. I second that, then.

Commissioner Lee: Okay, thank you.

Chair Smith: Let's bring it to a vote. Commissioner Lee?

Commissioner Lee: Aye.

Chair Smith: Commissioner Regehr.

Commissioner Regehr: Aye.

Chair Smith: Commissioner Savage.

Commissioner Savage: Aye.

Chair Smith: Commissioner Stinger.

Commissioner Stinger: Nay.

Chair Smith: I'm going to go "nay" on this one.

MOTION FAILS 3-2.

Chair Smith: I just feel that this is a very complicated issue. This is one that I think needs more work. All right. I want to...

Commissioner Lee: Did that one pass, or...?

Chair Smith: No. We didn't get four.

Commissioner Lee: So, there were three, or how many votes?

Chair Smith: There were three.

Commissioner Lee: Okay, gotcha, okay.

Chair Smith: Okay. I want to continue this discussion, but we've been going for 2 1/2 hours, so I want to give everybody a five-minute break to go and do whatever you need to do. It's 8:25 right now. We'll start back at 8:30.

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[The Commission took a short break.]

Chair Smith: Okay. It is 8:30. How many commissioners do we have? One, two, three, four. Is staff with us? We have all commissioners and staff with us. Thank you. Mary, can we remove the motion that just failed and...

Commissioner Stinger: Can I...

Commissioner Lee: Wait, sorry. I think motions, even if they fail, should be part of the record.

Chair Smith: She can put it part of the record, but this is... Mary, can you cut and paste and put on a separate document? This is actually our recommendation to Council, though, so it will be, it will be in the transcript, in the transcription, but...

Commissioner Lee: But it's not going to Council, though?

Chair Smith: It's not going to Council because it failed the vote, it failed to hit the vote.

Commissioner Lee: I know, but shouldn't they know how we voted? I mean, no one looks at the record.

Chair Smith: Commissioner Lee, one of the interesting things about the democratic process is that when something fails to pass a vote, it fails. So, it's not the will of the Commission at that point. So, if it failed...

[crosstalk]

Commissioner Lee: If you don't want to be transparent about it, then okay.

Chair Smith: No. We want to be democratic about it, and in a democratic society we vote. When we vote, win or lose, we move on. Mary, we can send the transcript of the entire meeting to Council and they can read about everything that they want. Thank you. All right. I'm glad we live in America. I want to make... I'm looking for a motion on duty to intervene, police. Can somebody...? Commissioner Regehr, can you please make a motion? You're muted.

Commissioner Regehr: I guess my question, since... I think you or Commissioner Stinger: should make a motion since we made a motion and it failed. So, could you make a motion that you would like?

Chair Smith: You know, this is the thing. I don't really have a motion on this one. My gut feeling is that it matches what 8 Can't Wait has required. I will make some... Each commissioner, at the end, has their five minutes to talk about what they would like to recommend to the Council, so I will recommend, in that time, something around discussion of culture, and protecting officers, and how do we help the PD, or what can we do as a community to foster that in the PD more. But that's more of a personal recommendation. That's not like this motion.

Commissioner Regehr: Okay. Then, how about Commissioner Stinger? I mean, I guess what I'm saying is the motion that I said "yay" on, I agreed with. So, for me to make a motion...

Chair Smith: No, I mean, I'm opening it up to all commissioners. I have Commissioner Stinger with her hand up, and then I have Commissioner Lee. I will listen to Commissioner Stinger.

Commissioner Regehr: Thank you. Thank you for asking, though.

Chair Smith: Thank you.

Commissioner Stinger: My suggestion is that Campaign Zero considers met; I think the wording is adequate. I was just move on. I do think it's very important to capture the second sentence of Commissioner Lee's earlier motion and use that in the recommendations at the end.

Chair Smith: Thank you. Is that...? Would you like to make a motion that we agree with Campaign Zero's evaluation of the Palo Alto PD?

Commissioner Stinger: Yes.

Commissioner Lee: Could I ask if the commissioner would make a friendly amendment to...

Chair Smith: We gotta get, let's do a second first.

Commissioner Lee: I will second it for discussion purposes.

Chair Smith: Seconded. Thank you. Mary let's make sure that we say that right. Agree with Campaign Zero, and let's go with Commissioner Lee seconding it. We are open for discussion. Commissioner Lee, please go ahead.

Commissioner Lee: Would my colleague entertain a friendly motion to say that we recommend that the police department, within existing resources, explore ways to cultivate an environment that makes it easier for police officers to intervene?

Chair Smith: Can you say that slowly so that Mary can write it?

Commissioner Lee: That the Commission recommends that the police department, using existing resources, explore ways to cultivate an environment where police officers feel comfortable intervening.

Chair Smith: Can I say one thing on this amendment? We're making some profound assumptions about the internal state of the Palo Alto PD in that statement. I don't know if police officers feel comfortable, uncomfortable. I don't have purview to that information.

Commissioner Lee: [crosstalk] more comfortable.

Chair Smith: So, I just want us to make sure, like, when you write this, we are basically saying the Commission, that the department use existing resources to explore ways to cultivate an

environment where police officers feel comfortable intervening. That would say that the environment currently isn't comfortable, and I don't know that. So, I don't know that I would be comfortable voting on it with this amendment.

[crosstalk]

Commissioner Stinger: ...I was not going to accept the amendment. I do think you hit on something, and I would like to again, I would like to move to the final recommendations: That the police force look at training, look at other ways to cultivate an environment that allows them to make all the changes that they're trying to make, and that they will be trying to make. But specifically, for this, I would like not [crosstalk] amendment.

Chair Smith: So, Mary, we can erase everything from [crosstalk]....

Commissioner Lee: Can I make a substitute motion then?

Commissioner Stinger: Can I just do one thing?

Chair Smith: Yes.

Commissioner Stinger: I would like to agree with 8 Can't Wait.

Chair Smith: Agree with 8 Can't Wait, not Campaign Zero. Thank you for the clarification.

Commissioner Lee: But can I make a substitute motion?

Chair Smith: Let's actually get the first motion correct.

Commissioner Lee: No, no, you have to entertain a second. If there's a second for my substitute motion, then you have to take it.

[crosstalk]

Chair Smith: We just want to actually get, we actually have to clear up the steps, so when we go to type it, we don't have an issue later. Mary, can you please remove, "The Commission recommends the police department...?" Thank you very much. We now have a substitute motion, which will go underneath the second.

Commissioner Lee: Okay, well, can you just copy and paste it? Just undo, and then you can copy it, and then delete it again.

Chair Smith: Is that your substitute motion, Commissioner Lee?

Commissioner Lee: Yes.

Commissioner Regehr: It's the same.

Commissioner Lee: Yeah, it wasn't accepted as a friendly, so...

Chair Smith: Because it wasn't accepted as friendly, he does have the ability to do a substitute motion. It's his right. We now look for a second to that substitute motion. Do I have a second on the substitute motion? We do not have a second on the substitute motion. We will return to the main motion. You can erase that now, Mary. I would like to bring the main motion to a vote.
Commissioner Lee.

Commissioner Lee: No.

Chair Smith: Commissioner Regehr.

Commissioner Regehr: Aye.

Chair Smith: Commissioner Savage.

Commissioner Savage: Aye.

Chair Smith: Commissioner Stinger.

Commissioner Stinger: Aye.

Chair Smith: I will go with an aye. Thank you so much.

MOTION PASSES 4-1.

Chair Smith: Let's go to number 6, ban shooting at moving vehicles. We start questions at Commissioner Stinger. Do you have any questions on this, at this time, Commissioner Stinger?

Commissioner Stinger: I have no questions at this time.

Chair Smith: Commissioner Savage, do you have any questions on ban shooting at moving vehicles at this time.

Commissioner Savage: Well, yes, I do. I want to make sure that, you know, the phrase "unless the person poses a deadly threat" is included.

Chair Smith: Okay, thank you. Would Asst. Chief Binder or Police Chief Jonsen want to respond to that comment? Or do we want to just move to the next commentator? Okay. We are now on Commissioner Regehr.

Commissioner Regehr: For questions?

Chair Smith: Yes, ma'am.

Commissioner Regehr: I think it should be banned completely, because relatively to some, not that it's happened in Palo Alto, but sometimes police officers have been known to be shooting at

vehicles that they think are a threat, and shooting has been somewhere else. People have been killed, with police officers saying that... And I suppose that's what's my concern is. I think that ban shooting at moving vehicles says it very simply. Historically, shooting at, when other people are shooting, is a dangerous thing.

Chair Smith: Okay. Thank you. Commissioner Lee.

Commissioner Lee: Yes, so, the existing PAPD policy states that basically shots fired at moving vehicle are rarely effective. So, I guess when we're looking at whether to provide exceptions to that philosophy – and in this case, there are two exceptions, when it's the threat of the vehicle itself, and the second one being deadly force other than the vehicle – when you compare that to the 8 Can't Wait, they only provide for exception when it's deadly force other than the vehicle. So, the threat of the vehicle under 8 Can't Wait is not an acceptable exception. And then, you know, Commissioner Regehr pointed to sort of the next level on that spectrum, of not allowing exceptions to begin with, in either of those cases. So, I guess my question is, I mean, certainly there have been situations where a vehicle itself has posed a danger, and then, folks inside the vehicle pose a danger. But are there any instances or statistics that suggest that shooting at a moving vehicle would actually be effective in the two scenarios that we currently exempt from our policy? Or is it all theoretical?

Asst. Chief Binder: Well, I'll just to speak to part of that, and then, I don't see Chief Jonsen, but I know he has a story from his time down in southern California that actually addresses this specific example. Chief, are you on?

Chief Jonsen: Yes, I'm here. Go ahead, Andrew.

Asst. Chief Binder: Okay. Let me just say this. I think that for this, if the vehicle is being used as a deadly weapon, and if you remember from my PowerPoint, I gave the example of an unfortunate phenomena that we've been seeing is these vehicles driving into crowds of people. You know, the officer has to make a decision, probably a split-second decision because lives are on the line, and when that officer is shooting, they're not necessarily shooting to stop the vehicle; they're shooting to stop what's causing that vehicle to act as a deadly force weapon, and that is at the person that's in control of that vehicle. That's where this situation would come into play. I'll just kind of pass it over to the Chief for his input.

Chief Jonsen: Yes, just for the record, I am never going to condone a policy that absolutely bans it in every situation. I don't need to get into the story that I have personal experience with, but I had to tell the parents of a teenage boy, who was on his first date, who was killed by a driver whose vehicle potentially could have been disabled if the officers had shot to disable that vehicle before he drove it over the vehicle that ultimately killed the teenage boy. So, you know, people do crazy things, and I will never risk life of others when we have the ability or potential ability to stop that threat. So, I will let you write your policy, or your proposal, but there are going to be circumstances, and they may not be in Palo Alto; that would ultimately be our hope; where an officer can save a life, if necessary, by disabling that driver or that vehicle, if it's a threat to not only the officer, but to others.

Commissioner Lee: I guess my question is, has that actually happened? Has an officer been successful in neutralizing a threat, either in one instance or multiple?

Chief Jonsen: I have no doubt, I have no doubt, and I don't have the data or the incidents, but I have no doubt, in the history of this country, there have been numerous incidents where stopping that vehicle or the driver of that vehicle has minimized the loss of life.

Commissioner Lee: In both the exceptions? Or just one or the other?

Chief Jonsen: I'd be more than happy to have somebody take a look at that and find you a couple of examples, but I have no doubt they will be found.

Commissioner Lee: Okay, well, on balance, though, are there more incidents where life has been saved as opposed to...? You know, I think really what this is getting at is, you know, injuring other people inside the vehicle. So, on balance, does it help more often than it actually hurts?

Chief Jonsen: Commissioner Lee...

Commissioner Lee: I don't need specific numbers.

Chief Jonsen: Commissioner Lee, I will allow you to write what you want to write. I'm just not going to probably approve of it, nor do I have to.

Commissioner Lee: Okay, but you don't know. You don't know. I'm not asking if you would approve it. I'm asking if you know whether, on balance, it's been more effective than not.

Chief Jonsen: That's an analysis I'm sure we would have to ask some university to do on all shootings that have involved vehicles.

Chair Smith: Thank you. Appreciate it.

Commissioner Lee: Thank you.

Chair Smith: Thank you both. I have no questions. Council Member Kou?

Council Member Kou: So, when you say "disable," Assistant Chief, what does that mean? Are you shooting at the tires, or...?

Asst. Chief Binder: No, I'm saying the officer should not be trying to disable the vehicle if it's being used as a means to take lives. They should be using their deadly force to stop what's causing that vehicle, which is the driver. So, I'm not advocating for shooting out the tires.

Council Member Kou: Okay, okay, okay. I'm sorry, I misunderstood. When they're trying to stop the car, is there any way...? I guess I'm thinking about, what if there are other people in the car, especially small children? How is that assessed?

Asst. Chief Binder: Well, the officer may know or may not know. There are times, if we're talking real life, where the officer doesn't know who is in that vehicle. They just see that the vehicle is being used as a deadly weapon.

Council Member Kou: It would be a deadly weapon to the officer themselves, or into a crowd? Or...?

Asst. Chief Binder: Correct. The scenario I gave, and there could be many, but the scenario I gave was, was that you have a vehicle that drives into a crowd of people and is basically starting to run them over.

Council Member Kou: Okay.

Chair Smith: Council Member Tanaka?

Council Member Tanaka: Thanks. This one seems really tricky, so I understand the Chief's point of view and the current reason behind this. But, you know, I look forward to you guy's deliberations because I don't think this is so straightforward, unfortunately.

Chair Smith: Okay. I... Commissioner Regehr? I was going to open the floor for motions, but if you have a comment, please say. Commissioner Regehr? You had something to say? Unmute yourself again, sorry.

Commissioner Regehr: New York City I think has a policy to never shoot at moving vehicles, and they have lots of crime, and it's the largest police department in the country. Granted, they don't have as many cars as other cities, but they do have that policy. I think that it's not an outrageous thing for us to think about. I guess that's what I'm kind of feeling, like, we're now discussing with the police chief and other things, and we've been kind of told that we have to do this now. I wish we would have had more time to talk with the police chief and really do have everyone do a little bit more research on this. But New York City does have this policy.

Chair Smith: Thank you so much.

Commissioner Lee: Could I ask a question?

Chair Smith: I will call on you. Give me a second. I'll get to everybody. Commissioner Savage, please.

Commissioner Savage: I'm prepared to make a motion, if we're at that point.

Chair Smith: Commissioner Lee, are you going to make a motion, or you have a comment?

Commissioner Lee: No, just a question. Question.

Chair Smith: A question. Please ask the question, then we'll have Commissioner Savage make a motion.

Commissioner Lee: Yes. To Commissioner Regehr's point, could the police chief explain why we would do something differently than New York City. Is there something particular about Palo Alto that makes us special, that we would want an exception that New York City does not have, or...? Help me understand why, you know, one of your colleagues who is running the largest police force in the country may have a different opinion than you. Yes, that's my question. Why would we do things differently than New York City?

Chief Jonsen: For one, we're not New York City. That would probably be my first point. But again, I'm not going to get in... Just so we're very, very clear. When I spoke, I spoke as an individual. I said I personally would never approve, and that's because of my own belief and my own experience. It does not mean that I would object to a policy prohibiting it as an entity. So, again, if it's the will of this Commission and the Council that it does not want our officers shooting at vehicles, at any particular time, in any particular incident, that is your prerogative. I am just sharing, based on my experience, because I never want to be a police chief that has to tell a family member that their family member was killed because somebody drove through an intersection deliberately, with the intent to kill others. So, it's not that I'm opposed to adopting a policy of another agency, or I'm in conflict with the chief if NYPD by taking a position, but I can have my personal opinions, and that's what I shared. So, again, I would leave it up to this Commission, and ultimately the Council, to decide how they want us to serve this city.

Chair Smith: Thank you so much, Commissioner Lee, thank you so much, Chief Jonsen. Commissioner Savage, we're open for a motion.

MOTION

Commissioner Savage: All right. Let's see. The HRC recommends that shooting at moving vehicles be banned, unless the person poses a deadly threat.

Commissioner Lee: I would second that.

Chair Smith: Thank you.

Commissioner Lee: Can we have discussion, please?

Chair Smith: We are at discussion. The floor is open for discussion. Anybody have any comments as commissioners? Commissioner Lee.

Commissioner Lee: Could I get clarification from Commissioner Savage? Are you basically going with the 8 Can't Wait version, which says don't shoot at moving vehicle except when there's deadly force other than the vehicle? So, when someone inside...?

Commissioner Savage: Yes. That is correct.

Commissioner Lee: Okay. Okay, great. I'm happy to second that.

Chair Smith: Does anybody else have anything? We are at voting. Commissioner Lee?

Commissioner Lee: Aye.

Chair Smith: Commissioner Regehr.

Commissioner Regehr: Aye.

Chair Smith: Commissioner Savage.

Commissioner Savage: Aye.

Chair Smith: Commissioner Stinger.

Commissioner Stinger: Aye.

Chair Smith: Commissioner Smith, Aye.

MOTION PASSES 5-0.

Chair Smith: Okay. Just for point of clarification, I do have the panelist screen. Please use the “Raise Hand” feature there. It really helps me. It really does. Thank you. All right. We are on required use of force continuum. We will start with Commissioner Stinger, and then we’ll work our way back up the alphabet. Do you have any questions on this, Commissioner Stinger?

Commissioner Stinger: I do have a question, and that question is: In the 8 Can’t Wait, it talks about all law enforcement officers must carry on their person at all times at least one less lethal weapon. A typical officer would be carrying what lethal and non-lethal weapons?

Chair Smith: Good question.

Asst. Chief Binder: I can take that. You’ll notice an officer always wears a duty belt, a number of tools. Kind of looks like the Batman belt. On that belt for a Palo Alto officer, you should see a taser, and you should see OC spray. Both of those are less lethal. And then, all of our officers in their vehicles carry what I referred to earlier as a less lethal projectile firearm that shoots a bean bag gun. So, those are three options that we have for our officers when they go to calls for service.

Chair Smith: Asst. Chief Binder, for everybody, can you define what OC spray is, please, so they know?

Asst. Chief Binder: Yes, it’s basically pepper spray. I don’t want to try to pronounce the O and the C of it because I know I’ll massacre it, but it’s basically pepper spray that the officer would spray into the person’s face or eyes. It has a burning sensation, and then, once the situation is secure, the officers can use water to help relieve the sting of it.

Chair Smith: Thank you.

Commissioner Stinger: Thank you.

Chair Smith: Any other questions, Commissioner Stinger? Commissioner Savage.

Commissioner Savage: Okay. On the force continuum, I believe – and if I'm not correct, please chief Binder or chief Jonsen, correct me – but I believe the Palo Alto police policy is consistent with both California state law and a decision by the US Supreme Court, and also, the California Police Chief's Association. All of them consider this an outdated and ineffective model, so I am opposed to this.

Chair Smith: Thank you. Do you have a question on it? I think I would be good if the other chief can answer on the Supreme Court ruling, just so that we have some more context.

Asst. Chief Binder: Commissioner Savage is correct. The Supreme Court ruled on *Graham v. Conner*. They talked about the reasonable officer standard and what force is appropriate to use in a force incident. Ultimately, the decision that they came down with – and clearly I'm paraphrasing – is: When courts look at force being used in a force incident situation, is that force reasonable based on the totality of the circumstances and the information known to the officers at the time of using that force?

Chair Smith: Thank you, Commissioner Savage and Asst. Chief Binder. Commissioner Regehr?

Commissioner Regehr: I just want to say I just feel that, once again, I think that the 8 Can't Wait, I think we should, it's nine o'clock, I think that... Everyone has said that it's not completely finished. I mean, it's just a beginning, and I think that we should just move on, just really quickly...

Chair Smith: I agree.

Commissioner Regehr: I mean, I just feel like we need to adopt it and move on, because there's so much work that we need to do in regard to other issues that really pertain to Palo Alto.

Chair Smith: I do agree with you on a certain perspective there. Commissioner Lee.

Commissioner Lee: So, you know, I understand that the department's position is that this is outdated and ineffective. I guess my question is, with regards to the Supreme Court case and state law, do either one of those prohibit departments from establishing a force continuum? Or, again, are those simply floors upon which we can build additional above and beyond policies?

Asst. Chief Binder: I would say those are floor.

Commissioner Lee: Okay. Could you maybe just elaborate more on...? Without citing the supreme court or the state law, but why, from a practical standpoint, you feel that the use of force continuum is outdated or ineffective.

Asst. Chief Binder: I'll do my best. You know, with the use of force continuum, you're talking about having to work through a ladder, so to speak, or a continuum of force, and as we talked about earlier, we know that force incidents can be dynamic, they can be unpredictable, they can be volatile, and officers are required to make split-second decisions based on a lot of input

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coming in at one time. We know that for the officer to have to work through a series of force options to get to one that is appropriate is not always the best. That could put the officer at risk, that could put people at risk. So, what this supreme court decision and what our policy says is that we want that officer to make reasonable, we want that officer to use reasonable force, based on the totality of the circumstances, that is proportional to the circumstances that they have. I do think that, in part, we do limit, because part of Campaign Zero's takes on this use of force continuum is that they want force to be proportional and limited. So, we do do that. If you look at our firearms policy and at our taser policy, those set forth specific criteria in which an officer can use – or cannot use, would be the inference – of those force options. But, again, you need to have the right tool to take care of whatever issue is at hand, and that's what the force option model allows.

Commissioner Lee: Okay. Appreciate that. Last question is, you know, certainly there are other cities in the Bay Area who still have force continuums. Is it your contention that they are sort of behind that? That Palo Alto is ahead of other cities? Or is it just, say, philosophical difference of opinion?

Asst. Chief Binder: I think that's a really fair question, because you're right. I looked, in preparation for everything going on and tonight's discussion, I did look at San Francisco's policy. I looked at Mountain View, Los Altos, Campbell, and Santa Clara County Sheriff. So, I looked at five policies, and I specifically read through their use of force policies. The Santa Clara County Sheriff's Office is the only office that still uses a use of force continuum, but I will tell you that, if you read their policy, there is a caveat in there that allows for the officer, or that spells out that the officer does not, based on certain circumstances, does not have to follow that use of force continuum. So, essentially it gives the officer still the ability to interpret the situation and use the tool that is appropriate for the given situation, based on the totality of the circumstances.

Commissioner Lee: Do you like the other ones that you looked at, like San Francisco, and Mountain View? If you had to choose between those ones and Santa Clara County?

Asst. Chief Binder: I will tell you that... Good question. I will tell you that Mountain View, Los Altos and Campbell, they all use Lexipol, and just for some context, Lexipol is our policy manual provider. They are public safety experts that monitor changing legislation and industry trends, and then provide policy. So, Mountain View, Los Altos and Palo Alto all use Lexipol. Interesting, San Francisco, the sheriff's department, Santa Clara County Sheriff's Department, they have their own policy manual or general orders – whatever they call it. So, what I'm trying to get at is our policy is essentially consistent with Mountain View's and Los Altos', which is our regional neighboring agencies.

Commissioner Lee: Okay. I'll leave it there for now.

Chair Smith: Thank you, Commissioner Lee. So, you know, we have spent some time talking about the fact that use of force continuum is extinct, and I get it. It's a ladder, and we don't live in a lateral world. But one of the challenges with policing, one of the major pushes behind police reform, is how do we manage the biases of officers, particularly if we're giving them situational

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judgment to say, how do you handle these situations? Particularly use of force. One of the complaints that the African American black community have, is that when you start using judgment-based standards, it's been proven statistically more that those that are black that interact with the police tend to end up with more force used on them. So, how do we in Palo Alto deal with that bridge or that gap? Because it's real in policing. If the use of force continuum is not the thing, how do we deal with that which is a reality that we see currently?

Asst. Chief Binder: I think that's a really good point that you're making, and my answer may not be completely satisfactory, but I would say a couple things. Number one is, it's accountability. You know, this police department takes use of force incidents very seriously. We conduct an administrative police review, or administrative review, of any force incidents where the person is injured, has a complaint of pain, or the supervisor determines it's appropriate. So, we are going to look at these force incidents and we're going to make a determination. Was the officer's force reasonable? Was it proportional? Was it proportional based on the totality of the circumstances? Was it appropriate? We're going to scrutinize that. And then, remember, we have a very robust audio/video system, so we're going to have that third-party witness, so to speak, to also draw our opinions on about making a determination, and holding that officer accountable for the force that they use. The last thing I would add is that, remember, when an officer uses force or is involved in a force incident where they use force, that officer is going to need to document that force in a police report. That is a document that has the officer's written word about what happened, and that's going to be used also as part of the investigation, where they're looking into that force.

Chair Smith: You know, one... Not that this would ever happen in Palo Alto, but one of the significant challenges is that my community doesn't believe police reports because of incidents, like in Louisville, when they went into Breonna Taylor's house, and they had their shooting and everything. The police report was blank of what happened at the incident. So, I think the question becomes, as we look at reform, how do we start making sure that the tools we have, or new tools that are in place, that are questioning the judgment, particularly around black men, black women, black suspects, black individuals walking in the city.

Asst. Chief Binder: Again, I think it's about accountability, I think it's about the use of the camera systems, and then, I think it's about taking a deep look into the officer's force and their justification, the proportionality and the reasonableness of that force.

Chair Smith: The follow-up question to that become: How are we keeping track of the use of force that officers are using? Is there a record that the department is following through on? Because one of the things – and this is my last question – one of the things that we have noticed as a community is, oftentimes when we get the tragic incidents, it's repeat offenders, and people who have done that. So, we give them reasonable judgment, but then, if we see a pattern, how is that judged? I know this is going a little bit further than 8 Can't Wait, but it's just a question I have.

Asst. Chief Binder: I think it's a reasonable question, and I will tell you that the department has a database – IPRO – that's set up, where we do input and track all of our administrative investigations, to include use of force incidents. So, if we need to, we can refer to that database to determine if we have an officer that uses more force than another, an officer who hasn't used

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force, determine how many incidents of force an officer has been involved in – We do have that ability.

Chair Smith: Is that publicly accessible, or is that not publicly accessible?

Asst. Chief Binder: That's a good question. Honestly, I don't know the answer off the top of my head. That would probably be for a follow up, unless Chief Jonsen knows the answer.

Chief Jonsen: I think that's something, I mean, those records, those tracking systems, the data bases, I would have to defer to the city attorney, but I'm pretty sure they're probably not readily accessible. But it is something that I think, through the use of the IPA, we do have the ability, and we have through other reports that have been provided, you know, we report on the amount of uses of force, the amount of complaints that are filed. Those are on our internet and our websites. But as far as, you know, where each officer lines up within an organization, right now, that is one of the areas that I believe is also being looked at the state level as far as transparency. I think that's an area that will probably bring change in the near future, especially during the dynamics of everything going on.

Chair Smith: Okay. Those are my questions. Council Member Kou, then Council Member Tanaka.

Council Member Kou: Nothing from me. Thank you.

Chair Smith: Council Member Tanaka?

Council Member Tanaka: No, not me either. Thank you.

Chair Smith: Thank you. I will take motions on the floor now. We have Commissioner Savage, then Commissioner Lee. You have to unmute yourself, Commissioner Savage. Hello?

MOTION

Commissioner Savage: Okay. For a motion: The HRC recommends that Palo Alto police retain the current policy, which allows for only that amount of force that reasonably appears necessary.

Chair Smith: Do I have a second on the motion? Is that the full motion?

Commissioner Savage: I can make it longer, but I'm trying to just make it short.

Chair Smith: Okay. We have a motion. Do we have a second? Okay, we have no second.

Motion dies for lack of second.

MOTION

Chair Smith: Do we have another motion on the floor, please? Commissioner Lee.

Commissioner Lee: On this one, you know, I'm a bit less prescriptive on this one because I really think this is one where we need a bit more time to figure out how to make it work. I feel like other jurisdictions have found a way to make a force continuum work for their community. So, I'm going to move that the HRC recommend that the police department explore different force continuum models, and to come back with options for one that would work in Palo Alto, for the HRC and Council review.

Chair Smith: Okay. Well, we're making this recommendation to the Council, so...

Commissioner Lee: Recommend that Council direct the PD.

Chair Smith: Yes. Because we can't direct the PD...

Commissioner Lee: Yes, yes.

Chair Smith: ... but we can ask... We're not their boss. That's not our job. but... the Council...

Commissioner Lee: Council. HRC recommend that Council...

Chair Smith: Recommends to the Council.

Commissioner Lee: To the Council, that it directs the police department to explore different force continuum models... Can we put force continuum?

Chair Smith: Commissioner Lee, can I make a recommendation on this?

Commissioner Lee: Can we get it typed out first, and then we can...?

Chair Smith: Yeah. Okay.

Commissioner Lee: Force continuum models and come back with the options for HRC and Council consideration. Okay. Go ahead. Sorry, Chair.

Chair Smith: Okay. I'm going to ask Council Member Kou and Council Member Tanaka to help me out here. I know that there are several ad hoc committees that are doing deeper dives into police modeling. Is there one of these ad hoc committees that this would be something for them to look at? Or should we refer it to the ad hoc committee and the Council?

Council Member Kou: We have an ad hoc committee that is reviewing the police policies data, as well as hiring practices. So, perhaps this might be referred over there, unless there... I'm trying to remember which other ad hoc committees we have, and whether this fits in any of those.

Chair Smith: City manager?

Mr. Shikada: Yes. Thank you, Chair, Council Member Kou. The four ad hoc committees that have been established by the Council include, one is – as Council Member Kou mentioned – on

police data, the policy manual and hiring practices. Second is on accountability and transparency. The third is alternative service models. The fourth is revealing the citywide diversity and inclusion and organizational culture. So, among those four, I think, clearly, that's a pretty comprehensive set, and any particular issues, including this, that the HRC wanted the Council to look more deeply at, I'm sure could be covered within one of those ad hoc committees.

Chair Smith: Commissioner Lee, I would say that we should ask the police and data policy... You don't have to take this recommendation, but ask the police and the policy and data community if we can do some more research into this. Refer it to them, and then say, can the HRC help by doing research into this model, or into other models? Would be my recommendation. Because they have a lot of work and we can really help them deep dive into this.

Commissioner Lee: Okay. Could you help wordsmith that?

Chair Smith: The HRC recommends to the Council that we refer this matter to the policy and... City Manager, please help me out.

Mr. Shikada: Policy manual. Ad hoc.

Chair Smith: Ad hoc. Ad hoc committee. To work and partner in tandem to find, to explore different force continuum models, and working with the PD. Or something. Because I think I do agree with Commissioner Regehr. Some of 8 Can't Wait is very easy and very tenable, but I do think there are alternative models out there that we can have a discussion with PD and everybody else about. Because I do feel that in certain communities, there is a fair or a perception that the use of force on black and brown bodies is more. So, I agree with the chief. I do not think the force continuum model is the correct model. But I also don't feel like a policy of just discretion, given human bias, is the right solution. But I do think it needs more in-depth work than just...

Commissioner Lee: Okay. Could we say to work in tandem with the HRC and PD to explore?

Chair Smith: Yep.

Commissioner Lee: Work in tandem with the HRC and PAPD to explore.... And to come back with options for HRC and Council. Yep. That works.

Chair Smith: Well, they wouldn't come back. We would be generating the options.

Commissioner Lee: Oh. Would it make sense for the HRC to work with the ad hoc committee, or for us to [crosstalk]...?

Chair Smith: Well, the Council has to determine how they want the HRC to work with them.

Commissioner Lee: Okay.

Chair Smith: When we kick it up to them, it's their determination back on how, if they want us to work, and how they want us to work. We can only make a recommendation of the whole commission.

Commissioner Lee: Okay.

Ms. van der Zwaag: Chair Smith, there are three hands raised.

Chair Smith: Thank you, ma'am. Let us start with my vice chair, then we'll go to Commissioner Regehr, then we'll go to Commissioner Savage. Thank you.

Commissioner Lee: Sorry, did you want to delete the second part, Chair? After "and?"

Chair Smith: Yes. Because we are not, I'm not PD's boss, so I'm not going to give them an assignment. If the Council wants to give them an assignment, that's their job, but I do think this... Yes. I do think this becomes a question for us to work through.

Commissioner Lee: Wait, hold on. What are we deleting here?

Chair Smith: We're saying...

[crosstalk]

Chair Smith: Just after "models."

Commissioner Lee: Yes, yes. So, period after "models," "continuum models," period.

Chair Smith: Models.

Commissioner Lee: Period. Okay.

Chair Smith: Period.

Commissioner Lee: You would second that? Chair?

Chair Smith: I would second that motion. Let's start with Commissioner Stinger, we'll go to Commissioner Savage, then we'll go to Commissioner Regehr.

Commissioner Stinger: First, I have a question, rhetorical question. A couple of us have said that the 8 Can't Wait are a good starting point, but really may not warrant a lot more detailed work.

Chair Smith: Yes.

Commissioner Stinger: I want to raise that question here. If we decide that this is an area where we think that extra, additional effort is warranted, would you consider this friendly amendment? To work in tandem with the HRC to explore optimum, or optimized... I can't get this right. Is that what we mean, "different force...?" To explore optimizing a force continuum model.

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Chair Smith: I wouldn't say "force continuum." I would say... What is the exact policy name? Maybe the Chief can help me. Is it the force policy? I don't want to use the word "continuum" because I don't think it's the correct word.

Commissioner Stinger: [crosstalk] optimum use of force?

Chief Jonsen: I agree with you, Chair Smith. I think... So, it's not specifically stated, but the policy that we use is a force options model, as opposed to what 8 Can't Wait is talking about, force continuum.

Commissioner Lee: I'm fine with that. Explore different force option models?

Chair Smith: Models, yep. Commissioner Regehr?

Commissioner Lee: Can we make sure we, that Mary has it?

Commissioner Regehr: I was going to say almost what Commissioner Stinger. I was thinking about all of these things, and we have some, instead of saying they're going to work with us, maybe have, ask if we could be on that ad hoc. Like, one person of the Commission. I'm just trying to figure out, like, if this happens, this is never going to be... I guess time is good.

Chair Smith: So, we can, we have two council members here, so they can bring what they feel forward optimally. I can only ask them to work with the HRC because, you know, I don't know what's the best approach there. But I do want, a least, say, work with the Human Relations Commission on this.

Commissioner Regehr: Okay. Okay.

Chair Smith: Because...

Commissioner Regehr: I guess my question is, because we do have... Three of you are police liaisons, and I'm just trying to figure out...

Chair Smith: Well, this would be, we're talking to Council...

Commissioner Regehr: Yes, yes, I know.

Chair Smith: ... and then, the Council will figure out how to move us around or put us on the chessboard. I think the police liaison is a different thing, so, that's where we're going. Commissioner Savage, please.

Commissioner Savage: I was also just going to suggest removing the word "force continuum," but it looks like that's already been done.

Commissioner Regehr: Yes.

Commissioner Savage: But also, just that last line, “PAPD to explore optimizing use of force options.”

Chair Smith: Use of force options. I like that. Okay.

Commissioner Lee: Chair Smith?

Chair Smith: Yes, Commissioner Lee.

Commissioner Lee: Which Council Members are on the policy manual ad hoc committee?

Chair Smith: I have no idea.

Commissioner Lee: Does the City Manager happen to know?

Mr. Shikada: I’m checking as we speak.

Council Member Kou: That would be me (inaudible).

Commissioner Lee: And while you do that, maybe we can just clean up the language and say, “The HRC recommends that the policy ad hoc committee work with us,” as opposed to... Does it have to go to Council?

Chair Smith: It has to go to Council because we are, our recommendations are going to the entire Council.

Commissioner Lee: Okay, so, “recommends to the Council that we refer to the policy manual ad hoc community...” It’s just awkwardly phrased, and that you work there, so I don’t know how we want to refer to that ad hoc committee.”

Chair Smith: “To work with the HRC...” We don’t have to do “in tandem.” If we just get rid of “in tandem” and we just say, “work with the HRC to explore optimizing use of force options.”

Commissioner Lee: “Recommend to the Council that it directs Policy Manual ad hoc Committee to work with the HRC.” It’s just awkwardly phrased. “Recommends to the Council that it direct the ad hoc committee to work with the HRC...” [crosstalk]

Chair Smith: Council Member Tanaka, Council Member Kou, does this statement work for you guys?

Council Member Kou: As it is, it works.

Chair Smith: Okay. Council Member Tanaka, does it work for you?

Council Member Tanaka: I don’t have a strong opinion on this.

Chair Smith: Okay, thank you. All right. Let’s go to votes. Commissioner Lee?

Commissioner Lee: Aye.

Chair Smith: Commissioner Regehr.

Commissioner Regehr: Aye.

Chair Smith: Commissioner Savage.

Commissioner Savage: Aye.

Chair Smith: Commissioner Stinger.

Commissioner Stinger: Aye.

Chair Smith: Commissioner Smith, Aye.

MOTION PASSES 5-0.

Chair Smith: Okay.

Commissioner Lee: Is that the first unanimous one?

Commissioner Regehr: No.

Chair Smith: No, I think we had one more tonight.

Commissioner Lee: Okay.

Chair Smith: We had the one where we agreed with the PD. We even had one where everybody agreed. It was a miracle. Let's talk about require all force be reported. Commissioner Lee?

Commissioner Lee: This was another one that I give a thumbs up. Good job. Yeah, I'm good.

Chair Smith: Okay. Commissioner Regehr?

Commissioner Regehr: Fine.

Chair Smith: Commissioner Savage?

Commissioner Savage: Yes, I think it's fine the way it is. I just want to add that, you know, remind people that there is an independent auditor with the police department, and he analyzes all citizen complaints, all incidents of uses of force, and has been doing that for years.

Chair Smith: Thank you. Thank you for that. We will now... Commissioner Stinger.

Commissioner Stinger: I just have a question for our chief or assistant chief. Can you confirm that the database is available for composite reporting? Can we look at the amount and use of

force over time? Like, compare this year to last year? Not by individual incident, but for the whole force?

Asst. Chief Binder: Yeah, we have the ability to do that.

Commissioner Stinger: Do we?

Asst. Chief Binder: I apologize if I wasn't clear. Yes, we have the ability to analyze our force statistics.

Commissioner Stinger: I'm sorry, I was just asking, do we get that report?

Chief Jonsen: Yes, that is something that is listed, even in our annual reporting, I believe, is the amount of uses of force that we had, as well as our complaints and everything else. So, that is something we report on an annual basis.

Commissioner Stinger: By race? By race?

Chief Jonsen: We don't get into the demographics. That gets into a whole other topic, which I'm more than happy to speak about.

Chair Smith: Please do.

Chief Jonsen: Yes, I mean, we've had that conversation, obviously, Chair...

Chair Smith: I know.

Chief Jonsen: ... where the state is going, and the department. For those who may not know, this department used to do an outstanding job collecting data as far as demographics, race, interactions, and that stopped in 2010. But it's going to begin again, really because of state law. They did it before without the implementation or oversight of law. AB 953, which I've spoken to in the past, is a law that requires all agencies in the state of California to document 17 points of interaction that do include race, demographics, obviously interaction, searching, reason for stop. It's quite the list, and that will come into play, for an agency of our size, by mandate in 2023, but we should have that up and running and in place well before that.

Chair Smith: Chief, can you please...? I'm going to take personal prerogative. Can you please talk about the database system that the forces require to implement? You have to change your whole database system. Is that correct?

Chief Jonsen: Yes, well, it doesn't change, I mean, these are things that are labor intensive. It can be done manually, and it can be done, and we've been able to do it, and that's how it was done in the past. But the budget reductions, I believe, in 2010, that employee was released, and that's when that database and that collection of information ceased or stopped. The database going forward does require a specific database that is capable of capturing all that, in every interaction that an officer has out in the field, and that's a whole record management system that we're upgrading to be able to do that. Again, that's why I believe we'll be able to do it before 2023

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because we're on pace to have that system in place well before them. And that's a report, to answer your question, Chairman Stinger, that's a report that mandates us to also release that information annually.

Chair Smith: Thank you. Who is next? Is that me? I'm good. Council Member Kou, Council Member Tanaka?

Council Member Tanaka: Thank you. So, I spoke a little bit about this last time, just in terms of, I think this is actually a really important topic, and I saw the slides that Asst. Chief Binder presented. I think what's important here is, kind of like timely accessibility of data by the public. That's why last time I was advocating – and I still advocate – that we try to do, like, the Stanford Open Data Project. I mean, there's a Project Comport, and a bunch of others, that I think we should be part of. I mean Stanford is like a no-brainer because it's literally our neighbor. So, I think making sure that we are having data that's available, having data that makes sense, makes it easy for us to compare our department against others, we have a baseline to compare against, I think is great. I think it also helps build trust in the community. So, I know a lot of these things are actually volunteer-driven. There's an interesting Wired article that talked about this. So, I just want to encourage that to actually happen.

Chair Smith: I'll entertain motions. Commissioner Lee, is that your hand up?

Commissioner Lee: Yes. I wanted to, to Council Member Tanaka's point, wanted to ask, do we currently make the data that we provide available to other, I guess aggregators of that sort of data?

Chief Jonsen: No, I mean, there's a lot of rules through not only... These are not necessarily all Palo Alto rules. There are state laws prohibiting access to specific information. So, that's one of the reasons the law gave agencies time to put the system in place, to ensure the privacy of others. So, again, it's a system that we're more than welcome to be involved in, and we're looking forward to being engaged in it and having it available to the public, but there are a lot of things that have to be redacted that are just not open data source available for anybody to look at.

Commissioner Lee: So, after AB 943, have you guys...[crosstalk]

Chief Jonsen: Nine fifty-three. I'm sorry?

Commissioner Lee: It sounds like after you all got up to speed on AB 943, then the data will be accessible by, like, agencies.... Not agencies, but other aggregators of data?

Chief Jonsen: Yes, there's also, and I've talked about it before, you know, we provide data in an open source. That was part of the Obama initiative, as well. So, even though previously approved PD's website, we also make accessible certain information, such as traffic stops, those kinds of things, that anybody can go in and do whatever they want with. We just put it in there, it is accessible to the public. And I do think after 953, and even some of the laws that are sitting in Sacramento right now that may be passed, transparency is a very important aspect of policing, and I think it's going to only open up as we move forward.

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Commissioner Lee: Okay, so, final question to Council Member Tanaka. Does that go far enough? Does there need to be something else? Maybe that's supporting state legislation that goes one step further. I don't know what that step is, but...

Council Member Tanaka: I'm not an expert in law, but I'm hoping that staff and the HRC and others can research this, because I know that on the Council, it's really hard for us to do this. But I guess the main thing is to check out what the restrictions are. I do know that for the Stanford Open Police Data Project, there's a lot of California cities already participating. So, if it is a state law, then whatever the other cities are doing, I think would be great for us to also do. That way, you have a comparison. Let me tell you where this came from. So, as you guys know, I'm on the ad hoc committee with Council Member Kniss to look at alternative public safety delivery models, right? So, Sunnyvale has a model where they have the fire and police together. So, one of the things that we wanted to do was figure out, okay, does the city actually have lower incidents of excessive force cases, right? I think that would be fairly straightforward to do, but it was not. It was really hard. I mean, we could not really get easy access to the data to compare, like, well, in this other model, you know, how does that compare to our current model. Like, maybe per police officer. I'm not sure what the metric is. That's why we have these open data source projects, is because... Actually, a lot of cities have the same problem. They can't really do comparison because they don't know the performance. For instance, cities that used the CAHOOTS model, right? What is their incident rate? So, this is kind of, like, I think Wired magazine wrote an article, I think it was two weeks ago, three weeks ago, that talked about, it started on Reddit, and it was there were a whole bunch of volunteers getting into this open police data. The idea behind it is, it's just so that, you know, when we talk about, like, adopting 8 Can't Wait, the question you asked, you know, if we adopt 8 Can't Wait, does that actually solve problems? What's the data behind it? But it's hard to compare because there's not an easy way to baseline and compare different cities that have different polices against each other. So, if we did participate in the Stanford Open Data Project, first of all, they're really close to us. That makes it pretty easy. But secondly, it would allow us to compare, let's say, to other... I think most of the cities actually in the Stanford Open Data Project are not in the state, actually California cities, but I've looked at a lot of these, so I've forgot what cities are in there. But I do recall some, at least some California cities in there. You know, they have some... I forgot to mention that we should get a Stanford professor working on this from Stanford University, but we have one in our back yard right now... [crosstalk]

Commissioner Lee: I apologize, I need to wrap up. So, to the police chief, do we currently participate in that Stanford open thing?

Chief Jonsen: Not Stanford. I mean, we can go into this all... There are a lot of different initiatives, a lot of different platforms. When President Obama put it out as a national police initiative, Palo Alto was one of the few agencies that voluntarily started entering data into that system, and still enters data into that system. Again, it's on our website. You can go up and you can look at our traffic citations, and our warnings, and our vehicle collisions. SB 1421, which was passed, the police data initiative, requires us to post use of force incidents that meet certain criteria. Those are also available on a special link within our website. So, again, we're not opposed to doing this. We're just trying to, and it probably should be done, in my opinion, at a

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national or state level, so all agencies are doing it, and it's all being looked at fairly equitably, and it's the same information that people are comparing it to.

Chair Smith: Thank you so much, Chief, Council Member Tanaka and Commissioner Lee. The data science is riveting. I would like us to put a motion on the floor for this now. Does anybody have a motion for this last point? Commissioner Savage, please. Commissioner Savage, I see your hand up.

MOTION

Commissioner Savage: Yes, just a simple motion. PAPD complies with this.

Chair Smith: Given that we are in the middle of changing data systems, I'm going to second this at this point, and there's some legal precedent for new stuff coming forward, so I will second this. We are on discussion. Is there any discussion, or friendly amendment? Anything new? Okay, thank you. Let us have a vote. Commissioner Lee?

Commissioner Lee: Aye.

Chair Smith: Commissioner Regehr.

Commissioner Regehr: Aye.

Chair Smith: Commissioner Savage.

Commissioner Savage: Aye.

Chair Smith: Commissioner Stinger.

Commissioner Stinger: Aye.

Chair Smith: Commissioner Smith, Aye.

MOTION PASSES 5-0.

Chair Smith: All right.

2. Additional findings not related to 8 Can't Wait.

Chair Smith: We are on a marathon session right now. We are moving into additional findings. This is all of your own opinion. You can choose to talk about what you want. You have five minutes. We are going to time it. I don't care what you say. I want to recommend to my fellow commission members, don't waste your five minutes responding to somebody else. Use your time for your thoughts. But before we start, I'm going to put Asst. Chief Binder on the spot. I know something. I know that he just finished doing some work on a capstone project, where he talked about policing and mental health, and gave some suggestions and thoughts. As we're prepping for talking about what we want to see, other changes... I had with a discussion with

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him a while back about this and I felt like this might be an interesting thing for him just to share. I'll give you three minutes. Can you give me an overview, Chief Binder?

Asst. Chief Binder: Absolutely. I think that, you know, based on everything happening in today's society, the criminal justice system has put officers at the forefront of having to address mental illness in individuals, and I think that while police officers do a good job in the vein of everything we're discussing here, I think that we could always do a better job. I did take a deep dive into what we do here in Palo Alto, and also what's happening nationally, and what works. One of my findings of my project is that we do have mental health issues that we go to 2018, based on my statistical analysis, that we're going to do PAPD as responding to a mental health incident almost once a day – every 29 hours. That's pretty significant. So, how do we best address that? Because there is a stigmatism that's associated with police responding to a mental health incident, and how do we alleviate that? Also, are there other options to reduce incarcerations and involuntary hospitalizations? Those are some of the things that I looked at, and I'm happy to say that there are. Agencies throughout California, throughout the country, and even the world, have found that you can't address these issues of police, dealing with those in mental health crises, and, even better news is that it's a very real possibility here in, not only the county of Santa Clara, but in the city of Palo Alto. We have been picked by the county behavioral health services, and this is what my capstone project essentially alluded to – and it was mentioned before by one of the callers – is PERTs. It's a psychiatric evaluation response team, and that's where a behavioral health clinician is paired up with an officer and they go to incidents involving those in mental health crisis, or that need mental health. Actually, this concept started back in the 1990's, down in southern California – San Diego, Los Angeles – and it's been widely successful, and it's been successful for a number of reasons. Number one is it, when you have this behavioral health clinician, they have training, they have experience, they have access that police officers don't have. They have the ability to be real subject matter experts in mental health, and they get to assist, they get to partner with the officer and help resolve the situation. Not only does it reduce the stigmatism, but it's also important. What my project found was that agencies or cities that employ these tandem, these co-teams, they're getting less calls for mental health crisis, and they're also having a dramatic decrease in return calls to those in mental health crisis. You know, one of the key components of this is to make sure that you get those in mental health crisis, because they're going to deteriorate if they're incarcerated, right? They're going to deteriorate further. So, what you want to do is get them into non-law enforcement type services that truly address their mental health and factors that are causing that mental health. We know that those who have mental health issues often live with other conditions that exacerbate their mental health, and that includes stuff like unemployment, substance abuse, homelessness. So, we need to get to the root of those problems, too, as almost a comprehensive approach to getting them healthy, and, the goal is to be able to remove law enforcement out of that picture. I'm not sure how much time I've got left, but...

Chair Smith: I think you covered it all. Thank you. One of the words we continue to hear is “reallocation of funding,” or looking at how to have police officers show up less to situations. When you told me about your capstone project, as we were talking, I felt like it was a great example of a real-world way we can do this. I'm going to give Council Member Tanaka and Council Member Kou an opportunity to make a quick statement, and then, I'm going to give

each commissioner five minutes. Commissioners, whatever you say is going to go directly to the Council. This is your words, your choice, because you've spent so much work, and we've done so much time, and I feel it's unfair not to give you your own voice in this process. So, Council Member Tanaka?

Ms. van der Zwaag: Chair Smith?

Chair Smith: Yes?

Ms. van der Zwaag: Can I interject before you go to the two council members? When the commissioners speak, though, we are really looking this to be clear and concise. So, as you mentioned, I think, in our prep time, we would like to see these, as much as possible, be bullets. It's not the intention of staff to pare down or clarify what someone says, because that might not be the point the commissioner wants to convey. But we would like to see these as just very clear bullet points.

Chair Smith: Thank you. Thank you, staff. Council Member Tanaka.

Council Member Tanaka: Sure. I really appreciate the Commission's work. I think these are some really tough problems. Actually, I do agree that 8 Can't Wait is, you know, probably just the beginning. There's probably a lot of other things that we could do to try and improve things. I just want to encourage HRC to go deep, think about innovative things that could work. I keep talking about, like, making it kind of data driven. Where possible, I think that's good. That way we know there's some proof points on it. So, yeah, I just want to applaud you guys for your work. This is almost, seems like a council meeting, where... Go for a really long time. But I think that's good. These are hard problems, right? These are hard questions. I think, I mean, if it was really easy to solve these problems, we would have solved them a long time ago, right? It's something that takes careful deliberation, and like I said earlier, I think at the start of this, I think if you guys need more time to kind of figure things out, I think it's more important that you guys do that. I can tell you, at the Council level, there's no way we could have the in-depth kind of conversation you guys have, or could have, simply because you guys have a lot less on your agenda than we do. So, I think... I think Council Member Kou and other council members would definitely appreciate that kind of thoroughness that you guys can do. You know, working with our staff to make sure that this thing works for our community, and for staff. So, just continue the great work, and really appreciate you guys trying to figure this stuff out.

Chair Smith: Thank you so much. I don't see Council Member Kou. I want to thank... Oh, there you go. Council Member Kou, please. Thank you.

Council Member Kou: I concur with that Council Member Tanaka said. Mostly, thank you for all the work that all of you are doing. You know, 8 Can't Wait, there are different opinions about it, but I think it is definitely a first step. It's not going to solve the problem that we're faced with, but it also provides us with opportunity to listen. I think listening to the community through this process has been extremely valuable. So, baby steps, but definitely moving forward with action. I just want to say thank you for all the work that you all are doing. It's been a privilege to be a liaison here. I've learned a lot, and I really appreciate it. So, again, thank you.

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Chair Smith: Thank you. I'd like to thank, because this is going to take a little bit of time, I'd like to thank Asst. Chief Andrew Binder, Police Chief Robert Jonsen, and City Manager Ed Shikada, for being with us. We'll do this in this order: Commissioner Lee, Regehr, Savage, Stinger, and then Commissioner Smith. I'm going to ask Mary, we're going to give you a five-minute time, so everybody has equal time and it will be fair. We are going to transcribe it, so she won't type it in right now. It will be from what you say, so please speak clearly and distinctly, so when it transcribes, it is very clear for them. Mary, if you could do a five-minute timer for me, please.

Ms. van der Zwaag: Mary, you might just want to do a five-minute timer that you are monitoring, so that you can still write what the commissioners say on the screen. Or I will do a five-minute timer. Why don't I do the five-minute timer and you write what's on the screen, and we'll go from there?

Ms. Constantino: I'm sorry, if I understood, that I'm not typing it...?

Chair Smith: No, I thought we were going to get it from the transcriptions.

Ms. van der Zwaag: Okay. That's fine. Thank you for the reminder.

Ms. Constantino: Should I stop this screen share?

Chair Smith: You can stop the screen share.

Ms. van der Zwaag: Okay. Thank you for the clarification.

Chair Smith: Yeah, we'll just get it from the transcription. Let's not try to take notes on the entire thing. Commissioner Lee, you are first.

Commissioner Lee: Right. So, I'll make this easy for you, Mary. I sent you an email, so feel free to just copy and paste that after the meeting. You know, I agree with a lot of what Assist. Chief Binder said. I think we've overloaded our police departments with tasks that they really shouldn't and aren't equipped to handle. So, the first thing that I would suggest is that the Council identify and reassign responsibilities, transfer them out of the PAPD, not just reimagining how we deliver law enforcement, but transferring them out of law enforcement so that non-law enforcement professionals can respond to specific needs. Related to that, number two is, you know, I think we need to reallocate those associated funds, too, and to increase more generally funds for community and social services that really get at the heart of... That don't get talked enough about in the equation of how we provide public safety, and how do we address inequality in this community. Under the subset of that point is, you know, I would be a strong proponent of expanding our office of human services. Right now, we have Minka and Mary, who do a fantastic job, but I think we really need to double down on that, and really think of that as ways that... Things that we do not just for altruistic reasons, but really as a component of public safety, and as a component of, you know, how do we address inequality more generally speaking. So, beyond expanding the office of human services, I would be interested in doubling our HSRAP funding to support mental health, homelessness, and other human services, as well as doubling our emerging needs fund, so that as needs come up, we can actually adequately

address them. The third point, I'm just going to say housing, housing, housing. I think we need to get serious about housing in this community. Housing is at the root of so many different issues, including this one. So, I'm not going to go into specifics, but housing is going to be a critical component of this. Services are nice, but if we don't get serious about housing, then it's... We're missing more than half of the equation. So, I don't think that's five minutes, but I'm going to give you back my time, for once.

Chair Smith: Thank you, Commissioner Lee. Commissioner Regehr.

Commissioner Regehr: Okay. I just want to say that I think that you're right, 8 isn't enough. So, I had a whole speech, but I think I'll just do my action items. I want to say thank you about the mental health. That was one of my issues. I think we should establish a policy to prosecute officers who engage in excessive use of force. Provide disciplinary consequences for failure of an officer to turn on body or vehicle cameras when interacting with citizens. I think just saying, "Oh, I forgot," is not enough. Use unarmed personnel for traffic control. I think that's part of the de-escalation. Establish or restore adequate funding for vital services that protect and enhance community health, including the library, children's theater, and other community services. This is about safety, and also a healthy community, and other community services, and work with these agencies to assure that they are all doing what they can to include diversity. I think, also, to include the HRC and other community activists on City Council subcommittees on transparency, accountability, as well as diversity. I think that's very important. Establish a police review board or empower the HRC to review complaints against this police department, and the review should be transparent and conducted outside of the police department. I think the HRC and City Council should be on the personnel review. I used to be a business agent for AFSCME and SEIU, representing city employees. I think there's a big thing that we could be part of more. Require that the chief of police, which used to happen and also happens in Mountain View, that the police participate in HRC meetings on a quarterly basis, or when requested by the HRC. Publicly disclose racial, ethnic, gender, and sexual orientation statistics for Palo Alto and city employees, council members and commission members. Work with the Palo Alto unified school district to assure that all the students from the Tinsley program are fully integrated in the student community, including before and after school events. I think the police should be off the community service, the police should be off school campuses, because there has been problems with them pulling kids out, which doesn't happen anymore, but it has been that police pull out certain students from the schools. I think that should be removed. I think we should just... That's it. I sent this to Mary, so she has all these lists of my bullet points. How much time do I have, Minka?

Ms. van der Zwaag: You have 2 1/2 more minutes.

Commissioner Regehr: I'm sorry, I talk so fast. I think that part of the problem in Palo Alto is that we think that we don't, that we're just really neat people and we don't have... We're all not racist. But I don't think we are racist. I think we have systematic racism that we're doing, and I think that we should look at that as a city. Not only we should we get ourselves in order as a city, and I think it's not just the police, it's our whole community. Because racism doesn't exist in a vacuum, and policing is one aspect, but I think that we should establish punishment that we treat everyone... And it's hard. It's sort of like Kaloma was saying – How do you make the culture?

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But I think affordable housing needs to be part of it, and I that, back to the whole thing about the Human Relations Commission, I think that, when you have more committee members, you have more diversity, you have more thoughts, you have more exchanges. We aren't here to be efficient. We're here to get things, get things quality done for our community. Like the speakers and professors said, this is a long haul. We shouldn't be just thinking this is a quick fix, and I think we should look at what are policies, and what we're doing is affecting the community. Thank you.

Chair Smith: Thank you so much, Commissioner Regehr. Commissioner Savage.

Commissioner Savage: Yes. I just have a few recommendations going forward. Number one, I'd like to see increase police focusing on implicit bias, mental illness, cultural competency, racism, and how to respond to age-related individuals. Specifically, implicit bias training should be mandatory for all officers. Number two – and Chief Jonsen said this is about to happen – enhance the collection of data on vehicle stops. Number three, review the role of school resource officers. I think that's what Patti was referring to as well. Lastly, continue to have increased community briefings. I think those do just an amazing amount of good PR work for the police department.

Chair Smith: Thank you so much. Commissioner Stinger.

Commissioner Stinger: I just wanted to begin by acknowledging that the Palo Alto police department has worked very diligently to address and improve appropriate police behavior. We all know that while progress has been made, it's undeniable that there is more work to be done. That was spirit that we began this endeavor with. I think we had, or I at least looked at it with three objectives. While we were looking to reduce excessive use of force in PAPD operations, and while we wanted to end the disproportionate and biased [inaudible] for people of color, I also wanted to recognize the challenges for the PAPD police officers as they work to protect the safety as citizens and maintain law and order. I think we've all... One of the advantages of going last is that I get to agree with everybody that came ahead of me. I think we all agree that 8 Can't Wait are generally acceptable as an immediate, but only a first step in response to national and local activism triggered by the killing of George Floyd, and to ensure that that progression continues, commitment to further police reform should be formalized. It will be difficult to maintain the energy from this pivotal moment, but commitment needs to be institutionalized, for example, by formally assigning responsibility for study and recommendations to a council subcommittee or to staff, to make sure that we really have a vision for going forward. Some of the things that I'd like to think about more specifically are: A metric to measure the progress against objectives. We need to look at changes that we suggest and how we move along those changes, and not give up if we've not met our objectives but revise our recommendations. Some of the things I'd like to consider are how we hire and transfer enforcement and correctional officers with a history of excessive force or misconduct complaints. How we handle large crowd, our crowd control techniques. I'd like to understand more the work that was just described to us, about handling mental health in behavioral crises. Look at alternatives for school resource officers. I think we know that there are some negative examples, but we also know that the PAPD has had some good success with school resource officers, and that's an area where I think we could be looking at a study, as was just described to us, for mental health. There are models

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of cities – Eugene, Oregon’s program, CAHOOTS; Denver’s Star – that I think would be models for us to look at. And then, I guess, just re-emphasize measuring, constantly measuring our success, and then, committing to police reform. Our work going forward is going to be to look at the history of racism and contemporary manifestations of racism. The more I think about it, I think that’s really important for us to do in concert with our recommendations for police reform. Thank you.

Chair Smith: Thank you so much, Vice Chair. I want to thank the entire Commission and everybody that is involved. As we continue to look at police reform, I think, as Commissioner Regehr has stated, we also need to look at community input. We should be looking at policies that are similar to the City of San Francisco, with its Caren Rules. We are forcing police officers to police bodies that are black and brown just because people feel uncomfortable with them in their community. The reality becomes that we in our community, we in the community need to have some responsibility for calling people just because they’re black and brown. I don’t know what that looks like, but I do believe that we need to control the input of the system. The second point I want to make is we need to really discuss what requires policing, and what does not require policing. Asst. Chief Binder made a phenomenal presentation around mental health. Several of my fellow commissioners have talked about traffic stops. We’ve talked about those other things. So, what can we legitimately, in the short term, start moving on, or stop putting officers in position? I do think that we should ask the PD questions in this process. Like, what do you hate going to? What do you not see as your job? And have them in this part of the conversation. The third thing is, we need to be the model of transparency and policy. We are Palo Alto. We have Stanford University, Google, Facebook. We create what the world wants to copy. So, as we look at policing, I think our job needs to be, in the next year, to five to 10 years, to be the model of what new policing looks like. The Black Lives Matter movement is the largest social justice movement ever in the history of the United States. We have the option to sort of ride the wave, or we have the option to lead the wave. I hope we lead the wave. Thank you.

3. Review of overview statement to be included in the Human Relations Commission report to City Council.

Chair Smith: We have one last element to get into, which is the overview. I’m going to make a recommendation on what the overview paragraph should be, and then we’ll bring it to a vote. Then we can go home. What I would simply like to do is write a paragraph that says, to the City Council: Through hundreds of hours of research and meetings, these are the findings of 8 Can’t Wait, and our additional findings. One critical point we would like to make, that this is only a beginning step. This is not the final step of the work, and the HRC is willing to be part of the continuing process of examining the very complicated elements that we’re dealing with. That’s what I would like to put in as the overview. If I could get a second on that, that would be great.

Commissioner Stinger: Second.

Chair Smith: Thank you. We are now open for discussion. No discussion?

Commissioner Regehr: Well, I just have a question on this motion. Because we have written letters to, before, to City Council, and sometimes we don’t even get a response, as a

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Commission. I'm concerned that we're making this thing and it's just going to be... So, can we make something so that we hear a response? I mean, when we wrote that letter about all our things that we, we never even... They didn't even put you on the agenda. You had to do it in oral communication. I'm just...

Chair Smith: I know, I know.

Commissioner Regehr: I'm wondering if we could...

Chair Smith: Well, we are part of the referral, so we are going to – and the city manager and city council members can correct me if I'm incorrect on this statement – we will be an agenda item because we are part of a city referral, so our report will be a discussion point in a meeting. Am I inco...? Okay, everybody is nodding. Thank you.

Commissioner Regehr: I just want to make that clear.

Chair Smith: Yes. Yes, Patti. Sorry. Commissioner Regehr, yes, that will happen.

Commissioner Regehr: That's fine.

Chair Smith: Okay. All right. We have a second, no discussion. Can we have votes?
Commissioner Lee?

Commissioner Lee: Aye.

Chair Smith: Commissioner Regehr.

Commissioner Regehr: Aye.

Chair Smith: Commissioner Savage.

Commissioner Savage: Aye.

Chair Smith: Commissioner Stinger.

Commissioner Stinger: Aye.

Chair Smith: Thank you. I'm going to go "aye," anyway, right?

MOTION PASSES 5-0.

Commissioner Lee: Do we know when, which meeting they will be taking this up yet? Mr. City Manager?

Mr. Shikada: We've suggested a special meeting of the Council on August 24th. That would be a date at which there's not currently planned a regular council meeting. It's subject to confirmation on availability of the Council members, but that's the date we're planning.

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Commissioner Lee: Okay.

Chair Smith: Okay, so, Commissioner Regehr, and then, I want to just have the police department say something, City Manager, and then we can wrap up and go.

Commissioner Regehr: I just had a question regarding that meeting. Will that be after the subcommittees have all did their research? Or what is the special meeting about?

Chair Smith: It will be about this.

Commissioner Regehr: I know about this, but we also asked the subcommittees... Will the ad hoc committees have already done their research before this meeting? Because one of our points was referring to the ad hoc.

Chair Smith: Well, the ad hoc committees are more long range than our initial 60-day report, so I don't know inside data, but I do assume that they probably won't have anything to report as early as August because they are more long-range in their work. Yes, Patti?

Commissioner Regehr: Because I thought we one of the motions, in one of them, that...

Chair Smith: They can pick us; they can loop us into their work. That's why I asked us to refer into their work because I understood that their work would be more long term and more in depth than the work that we were assigned by this referral.

Commissioner Regehr: Okay.

Chair Smith: Yes, Commissioner Lee?

MOTION

Commissioner Lee: Could I make a motion that we recommend that the Council make that piece of the meeting a study session with the HRC? I think it would be valuable to have us there. I think typically we do joint meetings every two years anyway, so that might be a good...

Chair Smith: I mean, we can make the motion.

Commissioner Lee: Okay, so, I move to recommend, to ask Council to hold a joint... What is it called? A study session? To hold a study session when they discuss 8 Can't Wait.

Chair Smith: Do we have a second on that motion?

Commissioner Regehr: I second.

Chair Smith: Second. Okay. I won't bring up discussion, this is just... Commissioner Lee, what's your vote?

Commissioner Lee: Aye.

Chair Smith: Commissioner Regehr.

Commissioner Regehr: Aye.

Chair Smith: Commissioner Savage.

Commissioner Savage: Aye.

Chair Smith: Commissioner Stinger.

Commissioner Stinger: Aye.

Chair Smith: Aye.

MOTION PASSES 5-0.

Chair Smith: Commissioner Lee, you got one tonight. We're happy for you. Chief Jonsen, go ahead.

Chief Jonsen: I really want to say thank you to all of you for allowing us to be part of this. You know, we've been involved in these conversations, whether it's town hall committee, wherever it may be, over the past several months, listening, learning, and really being engaged. I'm excited about where we're going to go because I think all of us are truly, truly committed to reimagining public safety. At times, if I feel as if I'm frustrated or opposing you, it's not that. I just care deeply about the protection of the residents of this community, and equally as protective about the men and women who choose to serve our communities. So, it's a balancing act. Again, I would just like to publicly say thank you for allowing us to be part of these conversations and thank you for all the work that you've done, bringing us here tonight. Thank you.

Chair Smith: Thank you. The last person will be the City Manager.

Mr. Shikada: Then I'll just echo the Chief's appreciation, and really, on behalf of the entire organization, the work that you've done here tonight and over the last several weeks has really been remarkable and moves this significantly forward. Quite a bit of work yet to be done, but again, not to in any way take away from the significance of the work that you've done to this point. Thank you.

Chair Smith: All right. Mary, do we have to vote on minutes? Because I always forget the minutes.

Ms. Constantino: No. No minutes.

Chair Smith: No minutes this week, okay. All right. Everybody, this meeting is adjourned. Thank you for working for the last five hours. Have a good evening.

V. REPORTS FROM OFFICIALS

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- VI. TENTATIVE AGENDA FOR NEXT REGULAR MEETING: Thursday, August 13, 2020**
- VII. ADJOURNMENT**

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