



# City of Palo Alto

## City Council Staff Report

(ID # 11690)

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**Report Type: Consent Calendar**

**Meeting Date: 11/2/2020**

**Summary Title: Accept the Staff Report on Palo Alto Police Department Policy 300 – Use of Force**

**Title: Accept the Staff Report on the Palo Alto Police Department (PAPD) Revised Policy 300 on Use of Force**

**From: City Manager**

**Lead Department: Police**

### **Recommendation**

Accept this staff report on the Palo Alto Police Department (PAPD's) Policy 300 - Use of Force.

### **Background**

In early June 2020, the City Council adopted a Resolution affirming that Black lives matter and committed to address systemic racism and bias, and honored the lives of George Floyd, Breonna Taylor, Ahmaud Arbery, and others. These events served as catalysts for leaders at every level of government to see the need for action to confront systemic racism and bias. A week later, the City Council approved their Race & Equity Framework and action plan. The City Council also approved a series of actions including reviewing policing practices, making changes to use-of-force policies to reduce the potential for violence, and engaging the community in ongoing, thoughtful dialogue and leadership.

The City Council also directed the Human Relations Commission (HRC) and Council Members Lydia Kou and Greg Tanaka to review and discuss police practices and how they compared to the recommendations identified by the 8 Can't Wait campaign on police reform. Mayor Fine also announced four Council Ad Hoc committees to add Council leadership to specific focus areas and help guide the policing, race and equity work underway.

Since that time, the City Council, several City boards, commissions and committees, and a cross functional team of City staff leadership have met, discussed focus areas and priorities and the City Council has discussed the Race and Equity Framework several times as regular City Council meetings to engage together as colleagues and engage the community on race and equity priorities: [Transmittal #1](#), [Transmittal #2](#), [Transmittal #3](#), Ad Hoc Update to the full City Council, August 24, 2020 - [Staff Report](#) and [Presentation](#) and [Informational Report](#) Regarding Race and Equity Data Transmitted to the City Council Ad Hoc Committees.

The HRC reviewed and discussed the referral from Council at two special and one regular commission meeting on the following dates: June 30, July 9 and July 22, 2020 (Draft HRC minutes from June 30, July 9, July 22). Their work included the following:

- 1) Review of the 8 Can't Wait policies and comparison against current PAPD policy and the policies of other police departments;
- 2) Public Forum on Police Reform – 8 Can't Wait – with community input and expert panel;
- 3) Presentation by Assistant Chief Andrew Binder of the Palo Alto Police Department on PAPD review of 8 Can't Wait; and,
- 4) HRC review and discussion of 8 Can't Wait policies and formulation of recommendations for Council. Councilmembers Lydia Kou and Greg Tanaka were present at all three meetings and participated in the review and discussion.

At the Human Relations Commission (HRC) meeting on July 22, 2020, Assistant Chief Andrew Binder reviewed and discussed PAPD's policies and how they compared to the recommendations identified by the 8 Can't Wait campaign on police reform. Following this discussion, the HRC [presented a report](#) to Council based on their review of the 8 Can't Wait policies with recommendations for revisions to PAPD's use of force policy.

At the City Council meeting on August 24, 2020, the Council discussed PAPD's use of force policy and the HRC's recommended revisions to it. City staff, including Chief Robert Jonsen and Assistant Chief Binder, joined HRC Chair Kaloma Smith in the discussion. Based on this discussion, Council provided the City Manager with direction to revise the use of force policy consistent with certain ideas as detailed in their Motion as Amended, and to return with the final revised policy ([CMR #11516](#)).

In the subsequent weeks, staff incorporated the substance of the HRC's recommendations and Council direction into a final revised policy. The final revised policy is attached to this staff report as Attachment A.

### **Discussion**

This staff report reflects Council direction over several months on policing review, and is informed by the City's race and equity community conversations. Staff recommends the City Council accept this report which outlines revisions to the Palo Alto Police Department's (PAPD's) Policy 300 - Use of Force.

The PAPD executive team, in conjunction with the leadership of the two employee associations that represent PAPD peace officers (the Palo Alto Peace Officers' Association and the Palo Alto Police Managers' Association), worked together to produce the final revised version of Policy 300 – Use of Force (Attachment A). This final revised policy addresses all of the Council's directives as detailed in their August 24, 2020 Council meeting motion, and also incorporates the latest legal updates from Lexipol (the PAPD's policy manual vendor). Below is a summary of

the policy revisions .

**i. Chokeholds, strangleholds, lateral vascular neck restraints, chest compressions, or any other intentional tactics that restrict blood flow to head or neck be explicitly prohibited;**

Revised Policy: It is important to note that PAPD leadership had already proactively altered this policy to prohibit the use of the carotid control hold on June 9, 2020. Following the City Council meeting discussion on August 24, the PAPD has now added the expanded language sought by Council and the HRC. The final revised policy *Section 300.3.4 – Carotid Control Hold* now explicitly states that “the use of the carotid restraint, or any technique (e.g. “chokeholds,” “strangleholds,” lateral vascular neck restraints, chest compressions, etc.) deliberately applied for the purpose of restricting blood flow or air flow to the head or neck, is not authorized.” This language is also consistent with that found in [AB 1196](#), which was signed into law by Governor Newsom on September 30 and has since been codified as Government Code § 7286.5; it specifies that a law enforcement agency “shall not authorize” the use of a carotid restraint or choke hold, as defined.

**ii. Add more comprehensive use of force language with respect to de-escalation and to add de-escalation tactics as listed;**

Revised Policy: The final revised policy *Section 300.3.5 – Alternative Tactics – De-Escalation* adds a significant amount of expanded language as sought by Council and the HRC. It requires officers, when feasible, to utilize de-escalation techniques and crisis intervention techniques, and to consider other alternatives to using force. The policy also now requires officers, when feasible, to attempt to understand *why* a subject may be non-compliant, which may help to resolve the situation without the need for any force. Also, as recommended by the HRC in [their report](#) to Council on August 24, the final revised policy now includes in its entirety the detailed de-escalation language used by the San Francisco Police Department’s (SFPD) General Order on Use of Force; notably, PAPD executives and the leadership of the two employee associations that represent PAPD peace officers chose to expand upon SFPD’s language. They added three additional de-escalation alternatives to SFPD’s list to enumerate even more options for how personnel could endeavor to resolve a situation as safely as possible and minimize or eliminate the need for any force.

**iii. Revise the deadly force application to require officers to evaluate each situation in consideration of the circumstances in each case and to use other available resources and techniques when reasonably safe and feasible to do so, including that an officer must reasonably believe the use of deadly force is necessary to justify its use;**

Revised Policy: The final revised policy *Section 300.6 – Deadly Force Applications* now includes the language as sought by Council and the HRC. The section requires officers to evaluate the totality of the circumstances and to use other reasonably available resources and techniques when safe and feasible to do so. Additionally, the final revised policy states that deadly force is only justified when the officer reasonably believes it is necessary in defense of human life.

**iv. Include the concept of shooting as a last resort, consistent with the HRC and PAPD**

**objectives;**

Revised Policy: The final revised policy *Section 300.6 – Deadly Force Applications* incorporates this concept as sought by Council and the HRC. The section requires officers to evaluate and use other reasonably available resources and techniques when determining to use deadly force, based on the totality of the circumstances. The final revised policy states that deadly force is only justified when the officer reasonably believes it is necessary in defense of human life.

**v. Include language on use of force options informed by SFPD General Order on Use of Force;**

Revised Policy: The final revised policy *Section 300.4 – Force Options* adds a significant amount of expanded language as desired by Council and the HRC. As recommended by the HRC in [their report](#) to Council on August 24, the final revised policy now includes a new chart based on the “force options” subsection of SFPD’s General Order on Use of Force. This chart delineates how a subject’s actions and level of resistance can correlate to the type of force available to the officer.

**vi. Consider moving the pointing of a weapon or the discharge of a weapon to the use of force section of the policy manual;**

Revised Policy: While this language already existed in the Report Preparation section of the PAPD Policy Manual, PAPD leadership agreed with the Council that it would be more appropriately located within the use of force policy. As a result, the final revised policy *Section 300.6.2 – Displaying of Firearms* has been added to the use of force policy. It continues to require an officer to document any time they point a firearm at a person, or discharge their firearm, in an approved report.

**vii. Return to Council with the final Police Department Policy, including all 8 Can’t Wait policies and a summary of department feedback:**

**8 Can’t Wait Policy #1 – Ban Chokeholds and Strangleholds**

Staff addresses this point in section (i) above.

**8 Can’t Wait Policy #2 – Require De-escalation**

Staff addresses this point in section (ii) above.

**8 Can’t Wait Policy #3 – Require Warning Before Shooting**

In [their report](#) to Council on August 24, the HRC found that the PAPD use of force policy was already consistent with this component of 8 Can’t Wait, and did not propose any changes. The final revised policy *Section 300.6 – Deadly Force Applications* requires an officer, where feasible, to warn in advance that deadly force may be used.

**8 Can’t Wait Policy #4 – Requires Exhaust All Alternatives Before Shooting**

Staff addresses this point in section (iii) above.

### **8 Can't Wait Policy #5 – Duty to Intervene**

In [their report](#) to Council on August 24, the HRC found that the PAPD use of force policy was already consistent with this component of 8 Can't Wait, and did not propose any changes. The final revised policy *Section 300.2.1 – Duty to Intercede* requires an officer to intercede to prevent the use of unreasonable force by another officer.

### **8 Can't Wait Policy #6 – Ban Shooting at Moving Vehicles**

In [their report](#) to Council on August 24, the HRC recommended that shooting at moving vehicles only be allowed when the person poses a deadly threat. The final revised policy *Section 300.6.1 – Shooting At or From Moving Vehicles* aligns with the HRC's recommendation, and only allows for an officer to discharge a firearm at a moving vehicle in defense of the officer's life or the life of another person, when there are no other reasonable means to avert the imminent threat of the vehicle, or if deadly force other than the vehicle is directed at the officers or others.

### **8 Can't Wait Policy #7 – Require Use of Force Continuum**

It is important to note that neither the Council nor the HRC recommended that the PAPD adopt a force continuum model, acknowledging this was an outdated concept. However, Council and the HRC did recommend that the PAPD explore optimizing its use of force options.

Staff addresses this point in section (v) above.

### **8 Can't Wait Policy #8 – Require Comprehensive Reporting**

In [their report](#) to Council on August 24, the HRC found that the PAPD use of force policy was already consistent with this component of 8 Can't Wait, and did not propose any changes. The final revised policy *Section 300.5 – Reporting the Use of Force* requires any use of force to be documented promptly, completely, and accurately in the appropriate report.

### **Timeline**

The final revised version of Policy 300 – Use of Force will be implemented following the acceptance of the staff report.

### **Resource Impact**

No resource impacts are anticipated.

### **Policy Implications**

This report is consistent with Council discussion and direction on race and equity, as discussed throughout this report.

### **Stakeholder Engagement**

The HRC has discussed the 8 Can't Wait policies at two special meetings (on June 30 and July 9, 2020) and one regular commission meeting (on July 22, 2020). Staff and commissioners conducted broad outreach through personal contacts, e-mails, and social media to inform the public of these meetings. Each of these meetings included an extended period for public comment on the 8 Can't Wait policies and police reform in general. This engagement is recorded in the minutes, copies of all of which are available for review on the City website [here](#).

Another opportunity for stakeholder engagement came at the City Council meeting on August 24, 2020, where Chiefs Jonsen and Binder, HRC Chair Smith, City staff, and Council discussed the HRC's report and recommendations for the 8 Can't Wait campaign policies. The minutes for this meeting, which include the public commentary, can be found on the City website [here](#). At this meeting, Council directed the City Manager to revise PAPD's use of force policy.

In addition, as a way to engage and inform the community, the Palo Alto Police Department released a series of community briefings focus on different aspects and elements of police work. The community briefings can be found here:

- [Overview](#)
- [Use of Force Police and Use of Force Investigations](#)
- [Laws of Arrest and Search and Seizure](#)
- [Accountability](#)

To expand the City's engagement efforts early on in the City's race and equity conversations, HRC Chair Kaloma Smith hosted a Question and Answer session with the City Manager and Chief of Police Robert Jonsen in July. To view this informational session focused on policing, go [here](#).

### **Environmental Review**

Revision of Police Department Policy 300 is not a project requiring environmental review pursuant to the California Environmental Quality Act.

### **Attachments:**

- Attachment A- Revised Policy 300 - Use of Force

## Use of Force

### 300.1 PURPOSE AND SCOPE

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

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

#### 300.1.1 DEFINITIONS

Definitions related to this policy include:

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

**Feasible** - Reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person (Government Code § 7286(a)). 

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

**Serious bodily injury** - A serious impairment of physical condition, including but not limited to the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement (Penal Code § 243(f)(4)). 

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

### 300.2 POLICY

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

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

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

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### 300.2.1 DUTY TO INTERCEDE

Any officer present and observing another law enforcement officer or an employee using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances based upon the totality of information actually known to the officer, shall, when in a position to do so, intercede to prevent the use of unreasonable force.

When observing force used by a law enforcement officer, each officer should take into account the totality of the circumstances and the possibility that other law enforcement officers may have additional information regarding the threat posed by the subject (Government Code § 7286(b)).

### 300.2.2 FAIR AND UNBIASED USE OF FORCE

Officers are expected to carry out their duties, including the use of force, in a manner that is fair and unbiased (Government Code § 7286(b)). See Section 402, Racial or Bias-Based Profiling for additional guidance.

### 300.2.3 DUTY TO REPORT EXCESSIVE FORCE

Any officer who observes a law enforcement officer or an employee use force that exceeds what the officer reasonably believes to be necessary based upon the totality of information actually known to the officer shall promptly report these observations to a supervisor as soon as feasible (Government Code § 7286(b)).

## 300.3 USE OF FORCE

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

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

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

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

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

### 300.3.1 USE OF FORCE TO EFFECT AN ARREST

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

### 300.3.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

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

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

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

#### 300.3.3 PAIN COMPLIANCE TECHNIQUES

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

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

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

#### 300.3.4 CAROTID CONTROL HOLD

The use of the carotid restraint, or any technique (e.g. “chokeholds,” “strangleholds,” lateral vascular neck restraints, chest compressions, etc.) deliberately applied for the purpose of restricting blood flow or air flow to the head or neck, is not authorized. 

#### 300.3.5 ALTERNATIVE TACTICS - DE-ESCALATION

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

When feasible officers shall utilize de-escalation techniques, crisis intervention techniques, and other alternatives to force. (Government Code § 7286(b)(1)). Such alternatives may include:

- (a) Formulating a plan with responding officers before entering an unstable situation that does not reasonably appear to require immediate intervention;
- (b) Attempting to isolate and contain the subject;

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- (c) Creating time and distance from the subject by establishing a reactionary gap and utilizing cover to avoid creating an immediate threat that may require the use of force;
- (d) Requesting additional resources, such as Crisis Intervention Team (CIT) trained officers, Crisis/Hostage Negotiation Team, or a Kinetic Energy Weapon;
- (e) Attempting to establish rapport and engage in communication with the subject;
- (f) Identify resources available for help, assistance, and/or treatment in lieu of threats of penalties, or criminal prosecution;
- (g) Verbal volume or non-verbal communication, including posturing, silence and delayed response;
- (h) Tactically re-positioning to maintain the reactionary gap, protect the public, and preserve officer safety; and
- (i) Taking as much time as reasonably necessary to resolve the incident, without having to use force, if feasible.

When feasible, officers shall attempt to understand and consider the possible reasons why a subject may be noncompliant. This may not make the subject any less dangerous, but understanding a subject's situation may enable officers to calm the subject and allow officers to use de-escalation techniques while maintaining public and officer safety. A subject may not be capable of understanding the situation because of a medical condition; mental, physical, or hearing impairment; language barrier; drug interaction; or emotional crisis, and have no criminal intent.

### 00.4 FORCE OPTIONS

The following chart illustrates how a suspect's resistance/actions correlate to the force applied by an officer; it is offered as general guidance to officers for consideration and is not intended to be exhaustive. It should be considered as part of and in conjunction with the entire policy manual.

Other, more specific guidance can be found elsewhere.

Officers are not required to use these force options based on a continuum.

It should be noted that the suspect's actions (as described below) are those perceived by a reasonable officer taking into account the totality of the circumstances. It is also recognized that a suspect's actions can change rapidly and without warning.

Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain, and rapidly evolving.

Ultimately, despite what may appear in any chart, officers shall use only that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to

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or perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose, consistent with Graham v. Connor and CA Penal Code 835a.

SUBJECT ACTIONS	DESCRIPTION	RESPONSIVE FORCE OPTION EXAMPLES
Compliance	Subject offers no resistance	<ul style="list-style-type: none"><li>• Mere professional appearance</li><li>• Nonverbal actions</li><li>• Verbal requests and commands</li><li>• Handcuffing and control holds</li></ul>
Passive non-compliance	Does not respond to verbal commands but also offers no physical form of resistance	<ul style="list-style-type: none"><li>• Officer's strength to take physical control, including lifting/ carrying</li><li>• Pain compliance control holds, takedowns and techniques to direct movement or immobilize</li></ul>
Active resistance	Physically evasive movements to defeat an officer's attempt at control, including bracing, tensing, running or walking away, verbally, or physically signaling an intention to avoid or prevent being taken into or retained in custody.	<ul style="list-style-type: none"><li>• Use of personal body weapons to gain advantage over the subject</li><li>• Pain compliance control holds, takedowns and techniques to direct movement or immobilize a subject</li></ul>

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#### Assaultive

Aggressive or combative; attempting to assault the officer or another person, verbally or physically displays an intention to assault the officer or another person

- Use of device and/or techniques to ultimately gain control of the situation
- Use of personal body weapons or other available weapon to gain advantage over the subject

#### Life-threatening

Any action likely to result in serious bodily injury or death of the officer or another person

- Utilizing available weapons or actions in defense of self and others to stop the threat

### 300.5 REPORTING THE USE OF FORCE

Any use of force by a member of this [department/office] shall be documented promptly, completely, and accurately in an appropriate report, depending on the nature of the incident. The officer should articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances. To collect data for purposes of training, resource allocation, analysis, and related purposes, the [Department/Office] may require the completion of additional report forms, as specified in [department/office] policy, procedure, or law. See the Report Preparation Policy for additional circumstances that may require documentation.

#### 300.5.1 NOTIFICATION TO SUPERVISORS

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

- (a) The application caused a visible injury.
- (b) The application would lead a reasonable officer to conclude that the individual may have experienced more than momentary discomfort.
- (c) The individual subjected to the force complained of injury or continuing pain.
- (d) The individual indicates intent to pursue litigation.
- (e) Any application of a CED or control device.
- (f) Any application of a restraint device other than handcuffs, shackles, or belly chains.
- (g) The individual subjected to the force was rendered unconscious.
- (h) An individual was struck or kicked.
- (i) An individual alleges unreasonable force was used or that any of the above has occurred.

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#### 300.5.2 INCIDENTS REQUIRING A SUPERVISOR'S REPORT

Use of force incidents that meet any one of the below listed criteria will be investigated and documented.

- (a) An officer strikes a blow using any physical strength or object to a subject;
- (b) An officer uses force which causes any visible or apparent physical injury, or which results in the subject claiming he or she was injured;
- (c) An officer strikes a blow using any physical strength or object to a subject that causes any visible physical injury or which the subject complains of pain;
- (d) An officer uses physical control on a subject beyond a physical compliance hold that causes any visible physical injury or which the subject complains of pain;
- (e) An officer uses O.C./baton/ASP on any subject;
- (f) An officer delivers a Less Lethal Kinetic Energy projectile at a person;
- (g) A CEW application by an officer;
- (h) Any bite or injury resulting from the use of a police service dog;
- (i) Any other incident for which the supervisor/Watch Commander deems a "use of force" report is necessary.
- (j) Any use of force where the suspect becomes unconscious.

#### 300.5.3 SUPERVISOR'S REPORT ON USE OF FORCE

The on-duty supervisor will investigate the use of force and complete the "Supervisor's Report on Use of Force" form. All relevant documents will be attached. The Supervisor's "Use of Force" report narrative should be documented in a memorandum format and contain the following headings/information:

- (a) Synopsis - A brief narrative of the incident:
- (b) Suspect Information/Statements - If the supervisor was able to obtain a statement from involved suspect, the statement should be provided.
- (c) Injuries - Describe in detail any injuries suffered by the suspect, officers or any other involved subject(s).
-  (d) De-Escalation - Describe any de-escalation techniques employed or an explanation why such techniques were not feasible
- (e) Property Damage - Any property damage that occurred.
- (f) Involved Officer(s) and Roles - Describe actions taken by involved officers.
- (g) Investigation- Investigative steps taken.
- (h) Attachments - Any pertinent documents and attachments.
- (i) Opinions and Conclusions - A summary of the incident.

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The report will be submitted prior to the end of the shift. The investigating supervisor must obtain approval from the Watch Commander if the report cannot be completed in time. The report will be routed through the chain of command for approval. The Division Captain, Assistant Police Chief and the Police Chief will conduct a final review.

### 300.5.4 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

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

### 300.6 DEADLY FORCE APPLICATIONS

Where feasible, the officer shall, prior to the use of deadly force, make reasonable efforts to identify him/herself as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts (Penal Code 835a(5)(c)(1)(B)).

If an objectively reasonable officer would consider it safe and feasible to do so under the totality of the circumstances, officers shall evaluate and use other reasonably available resources and techniques when determining whether to use deadly force. To the extent that it is reasonably practical, officers should consider their surroundings and any potential risks to bystanders prior to discharging a firearm (Government Code § 7286(b)).

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

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

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

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

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### 300.6.1 SHOOTING AT OR FROM MOVING VEHICLES

Shots fired at or from a moving vehicle are rarely effective and may involve additional considerations and risks. When feasible, officers shall take reasonable steps to move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants. An officer shall not discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the imminent threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others (Government Code § 7286(b)).

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

### 300.6.2 DISPLAYING OF FIREARMS

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

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

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

The following incidents shall be documented using the appropriate approved report:

- (a) Anytime and officer points a firearm at any person
- (b) Any firearm discharge (see the Firearms Policy)

### 300.7 MEDICAL CONSIDERATION

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

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

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

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

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

### 300.8 SUPERVISOR RESPONSIBILITY

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

- (a) Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- (b) Ensure that any injured parties are examined and treated.
- (c) When possible, separately obtain a recorded interview with the subject upon whom force was applied. If this interview is conducted without the person having voluntarily waived his/her *Miranda* rights, the following shall apply:
  1. The content of the interview should not be summarized or included in any related criminal charges.
  2. The fact that a recorded interview was conducted should be documented in a property or other report.
  3. The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.
- (d) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.
- (e) Identify any witnesses not already included in related reports.
- (f) Review and approve all related reports.
- (g) Determine if there is any indication that the subject may pursue civil litigation.
  1. If there is an indication of potential civil litigation, the supervisor should complete and route a notification of a potential claim through the appropriate channels.

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- (h) Evaluate the circumstances surrounding the incident and initiate an administrative investigation if there is a question of policy non-compliance or if for any reason further investigation may be appropriate.

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

### 300.8.1 WATCH COMMANDER RESPONSIBILITY

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

### 300.9 USE OF FORCE INCIDENTS/INTERNAL AFFAIRS INVESTIGATIONS

At any time after a use of force incident the supervisor has reason to believe the involved officer could be facing disciplinary action, the supervisor should immediately notify the Watch Commander. The Watch Commander will consult with the Division Captain and the Personnel and Training Lieutenant. If the decision is made to conduct an Internal Affairs Investigation, the initial supervisor should not conduct any further investigation unless directed otherwise. The initial supervisor will complete as much of the "Supervisor's Report on Use of Force" Form as possible. The supervisor will then check the box on the report form indicating Administrative Investigation and forward the report form to the designated Internal Affairs Investigator.

### 300.10 TRAINING

Officers, investigators, and supervisors will receive periodic training on this policy, relevant statutes and caselaw, and demonstrate their knowledge and understanding (Government Code § 7286(b)). Training should occur not less than biannually.

Subject to available resources, the Personnel and Training Lieutenant should ensure that officers receive periodic training on de-escalation tactics, including alternatives to force.

Training should also include (Government Code § 7286(b)):

- (a) Guidelines regarding vulnerable populations, including but not limited to children, elderly persons, pregnant individuals, and individuals with physical, mental, and developmental disabilities.
- (b) Training courses required by and consistent with POST guidelines set forth in Penal Code § 13519.10.

### 300.11 USE OF FORCE COMPLAINTS

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

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#### **300.12 POLICY REVIEW**

The Chief of Police or the authorized designee should regularly review and update this policy to reflect developing practices and procedures (Government Code § 7286(b)).

#### **300.13 POLICY AVAILABILITY**

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

#### **300.14 PUBLIC RECORDS REQUESTS**

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

#### **300.15 UPDATE**

10-13-2020