To: Honorable Mayor and Members of the City Council

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

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

RECOMMENDATION
1. Direct the City Manager and the Berkeley Police Department (“BPD” or “the Department”) to amend General Order U-2: Use of Force (“General Order U-2”) to:
   a. Enhance BPD’s use of force policy statement; and, 
   b. Create a definition of use of force; and
   c. Require that all uses of force be reported; and
   d. Categorize uses of force into levels for the purposes of facilitating the appropriate reporting, investigation, documentation and review requirements; and
   e. Require Use of Force Reports to be captured in a manner that allows for analysis; and
   f. Require that the Department prepare an annual analysis report relating to use of force to be submitted to the Chief of Police, Police Review Commission and Council.

2. Direct that the City Manager report to the Council by December 12, 2017 on the progress to date.

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

Specifically, the June 27, 2017 draft report commissioned by BPD and authored by CPE—an independent, non-profit, grant-funded organization—advised that BPD policy is not comprehensive in tracking use of force by BPD officers:
“BPD departmental policy does not require the comprehensive tracking of use of force incidents. In particular, BPD policy does not require that an officer’s use of physical force be reported unless the officer used a weapon, the subject was injured, or the subject complains. As a result, incidents of physical force not involving a weapon are not comprehensively reported or tracked by BPD, and are not reflected.”

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

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

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

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

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

It is necessary to ensure that the Department and City have a clear understanding of its use of force policies and how force is being used in practice. Current reporting policies
are in some cases ambiguous and incomplete. Further review of BPD General Order U-2 has indicated that it could be improved with substantive and organizational amendments relating to use of force.

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

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

Third, the proposed update reorganizes and enhances the use of force reporting section. Similar to the general orders of BART PD and OPD, the proposed update requires all uses of force to be reported, and categorizes uses of force into levels for the purposes of facilitating the appropriate reporting, investigation, documentation and review, and for illustrating the force continuum. Physical force and the intentional pointing of a weapon are explicitly referenced as a reportable uses of force. Body cameras are also referenced with the expectation that the body camera implementation will be finalized soon. If the program is not finalized by the time General Order U-2 is updated, the body camera language should be added upon implementation.

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

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

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

ENVIRONMENTAL SUSTAINABILITY
No Ecological Impact

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

ATTACHMENTS
  1. Proposed amendments to General Order U-2
  2. Use of Force policies of the BART PD and OPD
SUBJECT: USE OF FORCE

PURPOSE

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

POLICY

2 - The Berkeley Police Department values the protection and sanctity of human life. The Department is committed to accomplishing the police objective with respect and minimal reliance on the use of force.

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

4 - Officers must strive to use the minimal amount of force necessary. The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Use of reasonable force and the public welfare requires monitoring, evaluation and a careful balancing of all interests. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary, with limited information and in circumstances that are tense, uncertain and rapidly evolving.

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

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

7 - Officers are required to de-escalate the force when the member reasonably believes a lesser level or no further force is appropriate. Officers shall use de-escalation techniques whenever feasible and appropriate: to potentially reduce or eliminate the need to use force; and to prevent injuries to the subject, the public and the officer(s). De-escalation techniques may include verbal persuasion, warnings and tactical de-escalation techniques, such as: slowing down the pace of an incident; “waiting out” subjects; creating distance (and thus the reactionary gap) between the officer and the threat; and requesting additional resources (e.g.,
specialized units, mental health care providers, negotiators, etc.) to resolve the incident.

8 - Officers and employees shall intervene and prevent or stop the use of unreasonable force by other members. Officers and employees are prohibited from the use of unreasonable force and using force for interrogation or punishment.

9 - Use of force against vulnerable populations (such as, without limitation, children, elderly, pregnant women, people with physical and mental disabilities, and people with limited English proficiency) can undermine public trust and should only be used if no other options appear reasonable or effective. It is recognized that the above may not be readily apparent or known to the officer.

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

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

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

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

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

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

DEFINITIONS

13 - Use of Force: The application of physical techniques or tactics, vehicles, chemical agents or weapons to another person.
14 - **Lethal Force:** Any use of force that creates a substantial risk of causing death or serious bodily injury.

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

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

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

17 - **Officer (or) Police Officer:** Any sworn peace officer.

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

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

20 - **Deploy:**

(a) **With respect to less-than-lethal munitions**, removal of a launcher, projectile or other device from its storage container for the purpose of operational use.

(b) **With respect to chemical agents and smoke**, removal of a canister or delivery device from its storage container for the purpose of operational use.

21 - **Use:**

(a) **With respect to less-than-lethal munitions**, to discharge a less-than-lethal munition.

(b) **With respect to chemical agents and smoke**, to discharge the contents of a canister or delivery device.

**PROCEDURES**

**Use of Lethal Force**

22 - Officers shall not discharge firearms or use other lethal force in connection with police duty, except in the following circumstances:
(a) When the officer reasonably believes that doing so is necessary to protect the officer or others from death or serious bodily injury, and, where feasible, some warning has been given.

(b) To apprehend a suspected fleeing felon:

(1) When necessary to prevent escape, and

(2) When the officer has probable cause to believe that the suspected fleeing felon poses a significant threat of death or serious bodily injury to the officer or others, and

(3) Where feasible, some warning has been given.

(c) During other police duty:

(1) In supervised Department training sessions at an approved range, or other site.

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

**Use of Vehicles**

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

(a) When the officer reasonably believes that doing so is necessary to protect the officer or others from death or serious bodily injury, and, where feasible, some warning has been given.

(b) To apprehend a suspected fleeing felon:

(1) When necessary to prevent escape, and

(2) When the officer has probable cause to believe that the suspected fleeing felon poses a significant threat of death or serious bodily injury to the officer or others, and

(3) Where feasible, some warning has been given.

**Deployment and Use of Less-Than-Lethal Force**

24 - Less-than-lethal munitions shall only be deployed and used by trained officers authorized by the Chief of Police.
25 - Except during authorized training programs, less-than-lethal force shall be deployed only at the direction of a sergeant or command officer, or the Incident Commander in a crowd situation.

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

(a) When an act of violence is occurring, or is about to occur;

(b) To overcome the resistance of a physically combative person, or to gain compliance from a non-compliant person reasonably believed to be armed;

(c) To deter a person who is reasonably believed to be armed and is threatening to harm him/herself, another person, or an officer; or,

(d) To resolve a potentially violent incident not otherwise described above, when deemed reasonable by the authorizing sergeant or commander.

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

(a) Prior to deployment, efforts should be made to ensure an appropriate medical response is available.

(b) In the event exigent circumstances preclude prior command approval, the supervisor authorizing less-than-lethal force deployment shall notify the Watch Commander, or in his/her absence the DCO, as soon as practical.

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

(a) In the event immediate use is necessary, notification to the Chief of Police, or his/her designee, should be made as soon as possible after the deployment.

(b) In the event a use of force as described in Section 23 of this Order occurs during an unusual occurrence as described in General Order U-4, the officer shall prepare a supplemental report as soon as practical following the incident.

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

(d) Officers deploying pepper spray in a crowd situation shall attempt to limit collateral exposure to non-involved parties. Where there is probable cause to arrest for a crime, officers shall prioritize where practical the arrest of individuals upon whom pepper spray has been deployed.

Use of Non-Lethal Force

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

(a) To protect themselves or another person from physical injury;

(b) To restrain or subdue a resistant individual; or

(c) To bring an unlawful situation safely and effectively under control.

Prohibited Uses of Force

30 - The following uses of force are prohibited:

(a) Carotid Restraint Hold: Council Resolution No. 52,605 - N.S., dated February 14, 1985, “Prohibiting use of ‘chokehold’ for law enforcement purposes in the City of Berkeley” states: “Be it resolved by the Council of the City of Berkeley as follows: That the chokehold, including but not limited to the carotid restraint and the bar-arm hold, is hereby banned from use for law enforcement purposes in the City of Berkeley.”

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

(b) Oleoresin Capsicum (pepper spray) should not be directed against a person or persons who are engaged in peaceful, non-violent expression of First Amendment rights e.g. persons sitting or simply standing during a demonstration. Officers shall not use pepper spray to disperse a crowd, move a crowd, or against subjects involved in passive resistance.

(c) Deployment of less-than-lethal munitions from a shotgun is prohibited.

Provision of Medical Attention

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

Unauthorized Use of Force / Intervention and Reporting

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

(a) If the witness employee is a sworn officer, he or she shall immediately take reasonable action to attempt to mitigate such use of force. This may include verbal intervention or, if appropriate, physical intervention.

(1) A sworn officer's failure to act may potentially expose him/her to criminal charges and/or civil liability.

(b) Any officer or employee who observes a potentially unauthorized use of force shall make an oral report to an on-duty sergeant or a command officer at the first opportunity.

USE OF FORCE REPORTING, INVESTIGATION, DOCUMENTATION, AND REVIEW

Use of Force / Reporting Requirements

33 - Personnel shall notify his/her supervisor immediately or as soon as practical, of any use of force, allegation of a use of force, or an allegation of unreasonable force.

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

Use of Force / Level 1

35 - Level 1 Incident Parameters:

(a) No suspect injury or complaint of injury due to interaction with officer.

(b) No allegation of misconduct against officer, regarding force.
(c) Officer body camera was activated in a timely manner, per policy and recorded the use of force.

(d) Officer used lesser levels of force.

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

**Use of Force / Level 2**

37 - Level 2 Incident Parameters:

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

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

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

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

**Use of Force / Level 3**

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

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

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

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

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

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

Use of Force / Additional Supervisor Responsibilities

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

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

(a) When an officer discharges a firearm (intentional or unintentional) while on duty, except during a supervised training session.

(b) When an officer discharges a firearm while off-duty pursuant to his or her authority as a law enforcement officer.

(c) When an officer or employee reports a use of force by another officer or employee of the Department, or of any other law enforcement agency, that he or she believes is unauthorized.

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

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

44 When an officer discharges a firearm (intentional or unintentional) while on duty, except during a supervised training session.

44 When an officer discharges a firearm while off-duty pursuant to his or her authority as a law enforcement officer.
44 When an officer or employee uses force that results in death or injury, or when a subject complains that an injury has been inflicted. (See also General Order C-16)

44 When an officer or employee uses a non-lethal weapon (e.g., Oleoresin Capsicum or baton) on a person, whether or not an injury is sustained.

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

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

45 Supervisors and commanders have the discretion to elevate any level of force investigation in order to conduct a more thorough investigation of the incident. The Watch Commander shall approve elevating a force investigation to a Level.

46 Supervisors and commanders shall be held accountable for the timely, accurate, and thorough documentation of all use of force incidents.

47 The supervisor conducting a Use of Force Report shall:

(a) Attach copies of all police reports relating to the incident to the Use of Force Report. (See Use of Force Report form at the end of this General Order).

(b) Route the Use of Force Report (with attached police reports) and/or Use of Pepper Spray Report forms to the Division Captain through the chain of command.

Use of Force / Supervisor Responsibilities

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

When an officer discharges a firearm (intentional or unintentional) while on duty, except during a supervised training session.

When an officer discharges a firearm while off-duty pursuant to his or her authority as a law enforcement officer.

When an officer or employee uses force (including, but not limited to, a non-lethal weapon) that results in death or injury, or when a subject complains that an injury has been inflicted. (See also General Order C-16)

When an officer or employee reports a use of force by another officer or employee of the Department, or of any other law enforcement agency, that he or she...
believes is unauthorized.

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

A supervisor shall complete a Use of Force Report whenever an officer or employee uses a non-lethal weapon on a person, even if no injury results.

The supervisor shall attach copies of all police reports relating to the incident to the Use of Force Report. (See Use of Force Report form at the end of this General Order)

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

Use of Force / Administrative Review

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

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

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

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

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

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

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

(a) An analysis of use of force incidents with regard to race and ethnicity, location and type of force used.
(b) The identification of any trends in the use of force by members.

(c) Training needs recommendations.

(d) Equipment needs recommendations.

(e) Policy revision recommendations

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

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

SPECIAL PROCEDURES / DEATHS AND SERIOUS BODILY INJURY

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

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

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

References:

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

DATE ISSUED: September 13, 2017

GENERAL ORDER U-2

EXEMPLAR

BERKELEY POLICE DEPARTMENT
USE OF FORCE REPORT

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

Date: 

To: Chief of Police via Chain of Command

From: 

Subject: USE OF FORCE REVIEW

Refer to Case Number(s): 

Date / Time of Incident: 

Location of Incident: 

Nature of Incident: 

Officer(s)/Employee(s) Involved: 

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

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

Was Officer or Police Employee injured? □ Yes □ No

If yes, nature of injuries: 

Medical treatment required: BFD Response - □ Yes □ No
DATE ISSUED: September 13, 2017

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

If “yes,” nature of injuries: __________________________________________________________
________________________________________________________________________________

Medical treatment required:  BFD Response - □ Yes  □ No
________________________________________________________________________________
________________________________________________________________________________

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

________________________________________________________________________________

Were photographs taken?  □ Yes  □ No

Summary of actions of Officer(s) involved: ____________________________________________
________________________________________________________________________________
________________________________________________________________________________
________________________________________________________________________________

Supervisor’s Comments:
________________________________________________________________________________
________________________________________________________________________________
________________________________________________________________________________

Division Captain Recommendation:
________________________________________________________________________________

Findings:  □ Within Policy
□ Referred for Administrative Action/Investigation

Chief of Police (Signature)  

(Date)
SUBJECT: USE OF FORCE

PURPOSE

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

POLICY

2 - The Berkeley Police Department values the protection and sanctity of human life. The Department is committed to accomplishing the police objective with respect and minimal reliance on the use of force.

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

4 - Officers must strive to use the minimal amount of force necessary. The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Use of reasonable force and the public welfare requires monitoring, evaluation and a careful balancing of all interests. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary, with limited information and in circumstances that are tense, uncertain and rapidly evolving.

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

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

7 - Officers are required to de-escalate the force when the member reasonably believes a lesser level or no further force is appropriate. Officers shall use de-escalation techniques whenever feasible and appropriate: to potentially reduce or eliminate the need to use force; and to prevent injuries to the subject, the public and the officer(s). De-escalation techniques may include verbal persuasion, warnings and tactical de-escalation techniques, such as: slowing down the pace of an incident; “waiting out” subjects; creating distance (and thus the reactionary gap) between the officer and the threat; and requesting additional resources (e.g., specialized units, mental health care providers, negotiators, etc.) to resolve the incident.
8 - Officers and employees shall intervene and prevent or stop the use of unreasonable force by other members. Officers and employees are prohibited from the use of unreasonable force and using force for interrogation or punishment.

9 - Use of force against vulnerable populations (such as, without limitation, children, elderly, pregnant women, people with physical and mental disabilities, and people with limited English proficiency) can undermine public trust and should only be used if no other options appear reasonable or effective. It is recognized that the above may not be readily apparent or known to the officer.

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

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

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

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

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

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

DEFINITIONS

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

14 - **Lethal Force**: Any use of force that creates a substantial risk of causing death or serious bodily injury.
15 - **Less-Than-Lethal Force:** Any use of force which, due to possible physiological effects of application, presents less potential for causing death or serious injury than conventional lethal force options.

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

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

17 - **Officer (or) Police Officer:** Any sworn peace officer.

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

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

20 - **Deploy:**

   (a) **With respect to less-than-lethal munitions,** removal of a launcher, projectile or other device from its storage container for the purpose of operational use.

   (b) **With respect to chemical agents and smoke,** removal of a canister or delivery device from its storage container for the purpose of operational use.

21 - **Use:**

   (a) **With respect to less-than-lethal munitions,** to discharge a less-than-lethal munition.

   (b) **With respect to chemical agents and smoke,** to discharge the contents of a canister or delivery device.

**PROCEDURES**

**Use of Lethal Force**

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

   (a) When the officer reasonably believes that doing so is necessary to protect the officer or others from death or serious bodily injury, and, where feasible, some warning has been given.
(b) To apprehend a suspected fleeing felon:

(1) When necessary to prevent escape, and

(2) When the officer has probable cause to believe that the suspected fleeing felon poses a significant threat of death or serious bodily injury to the officer or others, and

(3) Where feasible, some warning has been given.

c) During other police duty:

(1) In supervised Department training sessions at an approved range, or other site.

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

**Use of Vehicles**

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

(a) When the officer reasonably believes that doing so is necessary to protect the officer or others from death or serious bodily injury, and, where feasible, some warning has been given.

(b) To apprehend a suspected fleeing felon:

(1) When necessary to prevent escape, and

(2) When the officer has probable cause to believe that the suspected fleeing felon poses a significant threat of death or serious bodily injury to the officer or others, and

(3) Where feasible, some warning has been given.

**Deployment and Use of Less-Than-Lethal Force**

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

25 - Except during authorized training programs, less-than-lethal force shall be deployed only at the direction of a sergeant or command officer, or the Incident Commander in a crowd situation.
26 - Less-than-lethal force shall only be used in the following situations, and, where feasible, after some warning has been given:

(a) When an act of violence is occurring, or is about to occur;

(b) To overcome the resistance of a physically combative person, or to gain compliance from a non-compliant person reasonably believed to be armed;

(c) To deter a person who is reasonably believed to be armed and is threatening to harm him/herself, another person, or an officer; or,

(d) To resolve a potentially violent incident not otherwise described above, when deemed reasonable by the authorizing sergeant or commander.

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

(a) Prior to deployment, efforts should be made to ensure an appropriate medical response is available.

(b) In the event exigent circumstances preclude prior command approval, the supervisor authorizing less-than-lethal force deployment shall notify the Watch Commander, or in his/her absence the DCO, as soon as practical.

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

(a) In the event immediate use is necessary, notification to the Chief of Police, or his/her designee, should be made as soon as possible after the deployment.

(b) In the event a use of force as described in Section 23 of this Order occurs during an unusual occurrence as described in General Order U-4, the officer shall prepare a supplemental report as soon as practical following the incident.

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

(d) Officers deploying pepper spray in a crowd situation shall attempt to limit collateral exposure to non-involved parties. Where there is probable cause
to arrest for a crime, officers shall prioritize where practical the arrest of individuals upon whom pepper spray has been deployed.

Use of Non-Lethal Force

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

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

Prohibited Uses of Force

30 - The following uses of force are prohibited:

(a) Carotid Restraint Hold: Council Resolution No. 52,605 - N.S., dated February 14, 1985, “Prohibiting use of ‘chokehold’ for law enforcement purposes in the City of Berkeley” states: “Be it resolved by the Council of the City of Berkeley as follows: That the chokehold, including but not limited to the carotid restraint and the bar-arm hold, is hereby banned from use for law enforcement purposes in the City of Berkeley.”

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

(b) Oleoresin Capsicum (pepper spray) should not be directed against a person or persons who are engaged in peaceful, non-violent expression of First Amendment rights e.g. persons sitting or simply standing during a demonstration. Officers shall not use pepper spray to disperse a crowd, move a crowd, or against subjects involved in passive resistance.

(c) Deployment of less-than-lethal munitions from a shotgun is prohibited.

Provision of Medical Attention

31 - When an officer or employee uses force that results in injury, or when a subject complains that an injury has been inflicted, the officer or employee shall ensure that the subject receives appropriate medical care. (See also General Order A-17).
Unauthorized Use of Force / Intervention and Reporting

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

(a) If the witness employee is a sworn officer, he or she shall immediately take reasonable action to attempt to mitigate such use of force. This may include verbal intervention or, if appropriate, physical intervention.

(1) A sworn officer's failure to act may potentially expose him/her to criminal charges and/or civil liability.

(b) Any officer or employee who observes a potentially unauthorized use of force shall make an oral report to an on-duty sergeant or a command officer at the first opportunity.

USE OF FORCE REPORTING, INVESTIGATION, DOCUMENTATION, AND REVIEW

Use of Force / Reporting Requirements

33 - Personnel shall notify his/her supervisor immediately or as soon as practical, of any use of force, allegation of a use of force, or an allegation of unreasonable force.

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

Use of Force / Level 1

35 - Level 1 Incident Parameters:

(a) No suspect injury or complaint of injury due to interaction with officer.

(b) No allegation of misconduct against officer, regarding force.

(c) Officer body camera was activated in a timely manner, per policy and recorded the use of force.

(d) Officer used lesser levels of force.¹

¹ For example, any of the following force options were used:
36 - An uninvolved supervisor will respond to the scene and conduct a Use of Force Investigation and Report.

**Use of Force / Level 2**

37 - Level 2 Incident Parameters:

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

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

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

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

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

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

**Use of Force / Level 3**

39 - Level 3 Incident Parameters:

(a) Use of firearm, officer involved shooting

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

(c) Any unintentional firearms discharge

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(1) Control holds/pressure point application

(2) Leverage

(3) Grab

(4) Bodyweight

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

(6) Vehicle pursuit with no collision

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

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

(1) Takedowns, lifts and leg sweeps

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

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

(4) Use of body or body parts

(5) Intentional pointing of a firearm at another person

(6) Use of any other non-lethal or less-than-lethal weapon
(d) Any intentional impact weapon strike to the head

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

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

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

Use of Force / Additional Supervisor Responsibilities

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

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

(a) When an officer discharges a firearm (intentional or unintentional) while on duty, except during a supervised training session.

(b) When an officer discharges a firearm while off-duty pursuant to his or her authority as a law enforcement officer.

(c) When an officer or employee reports a use of force by another officer or employee of the Department, or of any other law enforcement agency, that he or she believes is unauthorized.

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

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

45 - Supervisors and commanders have the discretion to elevate any level of force investigation in order to conduct a more thorough investigation of the incident. The Watch Commander shall approve elevating a force investigation to a Level.

46 - Supervisors and commanders shall be held accountable for the timely, accurate, and thorough documentation of all use of force incidents.

47 - The supervisor conducting a Use of Force Report shall:

(a) Attach copies of all police reports relating to the incident to the Use of Force Report. (See Use of Force Report form at the end of this General Order).
(b) Route the Use of Force Report (with attached police reports) and/or Use of Pepper Spray Report forms to the Division Captain through the chain of command.

Use of Force / Administrative Review

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

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

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

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

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

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

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

(a) An analysis of use of force incidents with regard to race and ethnicity, location and type of force used.

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

(c) Training needs recommendations.

(d) Equipment needs recommendations.

(e) Policy revision recommendations

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

55 - Use of Force Reports will be held in file for five (5) years and then purged, unless
SPECIAL PROCEDURES / DEATHS AND SERIOUS BODILY INJURY

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

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

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

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

BERKELEY POLICE DEPARTMENT
USE OF FORCE REPORT

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

Date: ________________________________

To: Chief of Police via Chain of Command

From: ________________________________

Subject: USE OF FORCE REVIEW

Refer to Case Number(s): ________________________________

Date / Time of Incident: ________________________________

Location of Incident: ________________________________

Nature of Incident: ________________________________

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

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

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

Was Officer or Police Employee injured? □ Yes □ No

If yes, nature of injuries: ________________________________

Medical treatment required: □ BFD Response - □ Yes □ No
Was a citizen(s) injured during this incident?  

- Yes  
- No

If “yes,” nature of injuries: 

________________________________________________________________________

Medical treatment required:  BFD Response -  

- Yes  
- No

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

________________________________________________________________________

Were photographs taken?  

- Yes  
- No

Summary of actions of Officer(s) involved: 

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Supervisor’s Comments:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Division Captain Recommendation:

________________________________________________________________________

________________________________________________________________________

_______________________________  ________________
Chief of Police (Signature)  (Date)

Findings:  

- Within Policy
- Referred for Administrative Action/Investigation
Use of Force

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

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

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

300.1.1 DEFINITIONS
Definitions related to this policy include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Officers shall, when feasible, continually assess the dynamics of a situation, and modulate their response and actions appropriately. Officers may be justified in using force at one moment, but not justified in using force the next moment due to a change in dynamics.

(b) De-escalation techniques may include verbal persuasion, warnings and tactical de-escalation techniques, such as: slowing down the pace of an incident; “waiting out” subjects; creating distance (and thus the reactionary gap) between the officer and the threat; and requesting additional resources (e.g., specialized units, mental health care providers, negotiators, etc.) to resolve the incident.

1. Officers should recognize that they may withdraw to a position that is tactically advantageous or allows them greater distance to de-escalate a situation.

2. Officers should consider a variety of options, including lesser force or no force options.

3. Officers should perform their work in a manner that avoids unduly jeopardizing their own safety or the safety of others.

4. Officers shall not intentionally and unnecessarily escalate and/or create a need to use force.

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

6. Officers should continue de-escalation techniques, when feasible and appropriate, and take as much time as reasonably necessary to resolve the incident, in effort to avoid and/or minimize the use force.

(c) When an officer recognizes that mental illness, post-traumatic stress disorder, alcohol and/or drug addictions, or other health issues are causing an individual to behave erratically, the officer shall, when feasible and appropriate, try to de-escalate the situation using de-escalation and/or Crisis Intervention techniques.

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

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

300.3 FACTORS TO DETERMINE THE REASONABLENESS OF FORCE

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

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

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

Factors from Graham v. Connor:

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

Factors from the California Penal Code:

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

(b) An officer may not, under color of authority, without lawful necessity, assault or beat any person (Penal Code § 149).

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

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

(d) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.

(e) The conduct of the officer prior to the use of force. Specifically, did the officer violate policy and unnecessarily escalate the situation to a use of force.

(f) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).

(g) The effects of drugs or alcohol.

(h) Subject's mental state or capacity, including any apparent/known mental health issues.

(i) Proximity of weapons or dangerous improvised devices.

(j) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.

(k) The availability of other options and their possible effectiveness.

(l) Seriousness of the suspected offense or reason for contact with the individual.

(m) Training and experience of the officer.

(n) Potential for injury to officers, suspects and others.

(o) Whether the person appears to be resisting, attempting to evade arrest by flight or is attacking the officer.

(p) The risk and reasonably foreseeable consequences of escape.

(q) The apparent need for immediate control of the subject or a prompt resolution of the situation.

(r) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.

(s) Prior contacts with the subject or awareness of any propensity for violence.

(t) Any other exigent circumstances.

(u) Officers must strive to use the minimal amount of force necessary.

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

(a) The degree to which the application of the technique may be controlled given the level of resistance.

(b) Whether the person can comply with the direction or orders of the officer.

(c) Whether the person has been given sufficient opportunity to comply.

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

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

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

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

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

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

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

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

300.4 DEADLY FORCE APPLICATIONS
Use of deadly force is justified in the following circumstances:
Use of Force

(a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes would be an imminent threat of death or serious bodily injury.

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

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

(a) The person has a weapon or is attempting to access one and it is reasonable to believe the person intends to use it against the officer or another.

(b) The person is capable of causing serious bodily injury or death without a weapon and it is reasonable to believe the person intends to do so.

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

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

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

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

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

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

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

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

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

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

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

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

(a) The application caused a visible injury.
(b) The application would lead a reasonable officer to conclude that the individual may have experienced more than momentary discomfort.
(c) The individual subjected to the force complained of injury or continuing pain.
(d) The individual indicates intent to pursue litigation.
(e) Any application of a control device as defined in Policies 308 and 309:
    1. Batons and other impact weapons
    2. Chemical agents (OC Spray)
    3. SIMS Projectile
    4. Conducted Electrical Weapon (any activation whether effective or not)
(f) Any application of a restraint device other than handcuffs or the WRAP.
(g) The individual subjected to the force was rendered unconscious.
(h) An individual was struck or kicked.
(i) An officer draws/deploys a firearm during the performance of his/her duties to defend, detain or take any person into custody (the suspect is contacted or arrested, the officer is within potential sight of the suspect).
(j) An individual alleges any of the above has occurred.
300.5.2 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE
The Records Manager or the authorized designee shall ensure that data required by the Department of Justice (DOJ) regarding all officer-involved shootings and incidents involving use of force resulting in serious bodily injury is collected and forwarded to the DOJ as required by Government Code § 12525.2.

300.5.3 EMPLOYEES WHO USE FORCE WHILE ON A SPECIAL ASSIGNMENT
When a BART Police employee has a use of force as defined in this policy, the use of force must be reported to a BART Police supervisor and investigated in accordance with this policy.

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

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

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

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

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

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

(a) Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.

(b) Ensure that any injured parties are examined and treated.

(c) When possible, separately obtain a recorded interview with the subject upon whom force was applied. This interview should not be conducted in the presence of officers who were involved in using force. If this interview is conducted without the person having voluntarily waived his/her Miranda rights, the following shall apply:
   1. The content of the interview should not be summarized or included in any related criminal charges.
   2. The recording should be saved and attached in the BlueTeam entry for the use of force investigation.
   3. The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.

(d) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.

(e) Identify any witnesses to the use of force. Interview and record witness statements for inclusion in the use of force investigation.

(f) Review the portion(s) of the Axon Flex video pertaining to the use of force and/or allegation of misconduct.

(g) Review and approve all related reports.

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

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

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

300.7.1 USE OF FORCE INVESTIGATION, DOCUMENTATION, AND REVIEW
Use of force must be documented in a police report and reviewed by a supervisor who was not directly involved in the incident.

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

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

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

**Level 2: Use of Force**
Level 2 Incident Parameters:
(a) No suspect injury or complaint of injury due to interaction with officer.
(b) No allegation of misconduct against officer, regarding force.
(c) Officer body camera was activated in a timely manner, per policy.
(d) Officer used any of the following force options:
   (a) Control holds/pressure point application
   (b) Leverage
   (c) Grab
   (d) Bodyweight
   (e) Takedown that is non-dynamic (no forceful impact)
   (f) Vehicle pursuit with no collision
Use of Force

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

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

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

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

Level 3: Use of Force

Level 3 Incident Parameters:

(a) Would have otherwise been classified as a Level 2, except one of more of the following apply:
   1. Suspect injury or complaint of injury due to interaction with officer.
   2. Allegation of misconduct against officer, regarding force.
   3. Officer body camera was not activated during use of force.

(b) The use of force is Level 3 if the officer used any of the following force options:
   1. Dynamic/forcible takedown
   2. TASER Activation/LLIMS Activation
   3. Chemical Agents/Munitions
   4. Impact Weapon Strikes Personal
   5. Body Weapons
   6. Police canine deployment resulting in injury

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

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

**Level 4: Use of Deadly Force**

**Level 4 Incident Parameters:**

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

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

300.7.2 WATCH COMMANDER RESPONSIBILITY

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

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

300.8 TRAINING

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

300.9 USE OF FORCE ANALYSIS

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

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

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

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

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

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

302.2.1 COMPOSITION OF THE BOARD
The Use of Force Review Board shall be comprised of the following persons:

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

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

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

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

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

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

(a) The employee's actions were within department policy and procedures.

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

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

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

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

TO: All Personnel

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

DATE: 16 Dec 13

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

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

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

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

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

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

By order of

Sean Whent
Interim Chief of Police
Date Signed: 12-16-13
USE OF FORCE

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USE OF FORCE

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

I. POLICY STATEMENT

A. The Oakland Police Department values the protection and sanctity of human life. The Department is committed to accomplishing the police mission with respect and minimal reliance on the use of physical force.

B. This policy provides guidelines and procedures for using force in order to protect the safety of both themselves and the public in accomplishing the police mission.

C. Members are allowed to use a reasonable amount of force based on a totality of the circumstances. Members are required to de-escalate the force when the member reasonably believes a lesser level or no further force is appropriate. Members shall intervene and prevent or stop the use of unreasonable force by other members.

D. Members are prohibited from the use of unreasonable force and using force for interrogation or punishment.

E. Although the use of force is primarily intended for sworn officers, various non-sworn employee job classifications include Departmental training in specific force options normally reserved for sworn officers. Employees are held to the same standard as members for the application of these authorized force options. All employees shall maintain their right to self-defense by any objectively reasonable means.

F. A member or employee who uses force or directs a use of force shall be considered as “Involved Personnel.”
II. FORCE CONSIDERATIONS

A. Reasonable Force

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

1. Force must be analyzed under the Fourth Amendment’s objective reasonableness test.¹ The application of this test requires an analysis of the totality of circumstances, including these factors to determine if the seizure is reasonable:

   a. The severity of the crime at issue;

   b. Whether the suspect poses an immediate threat to the safety of law enforcement officers or others; and

   c. Whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

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

2. Factors when determining if force is reasonable include, but are not limited to:

   a. Physical differences (e.g., age, size, relative strength, skill level, injuries, exhaustion, number of members/employees verses subjects);

   b. Influence of drugs or alcohol on the subject;

   c. Proximity of weapons to the subject;

   d. Training and experience level of the member or employee; and

   e. Other exigent circumstances.

B. Immediate Threat

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

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

1. Intent: The subject’s apparent desire, which can be indicated by words,
body language or actions.

2. Means: The instrument, mechanical or physical, that may be used to cause
injury.

3. Opportunity: The time and/or place which allows the subject to use the
means to cause injury.

4. Ability: The subject has the capability to carry out the action or threat.

C. Use of Force

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

D. Less-Lethal Force

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

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

E. Lethal Force

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

Lethal Force includes, but is not limited to:

1. Discharge of a firearm with lethal ammunition;

   a. Lethal ammunition is ammunition that, by design and application,
is intended to cause serious bodily injury or death.
2. Carotid restraint; and
3. Intentional impact weapon strike to the head.

F. Serious Bodily Injury

A serious impairment of physical condition, including but not limited to:
1. Loss of consciousness;
2. Concussion;
3. Bone fracture;
4. Protracted loss, impairment, serious disfigurement, or function of any bodily member or organ;
5. Wound requiring extensive suturing; and
6. Serious disfigurement

III. FORCE OPTIONS THAT DO NOT INCLUDE FIREARMS

A. Verbal Persuasion

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

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

B. Use of Physical Force or Defensive Tactics and Techniques

At times it may be necessary for a member to use force or defensive tactics and techniques to accomplish the police objective, such as taking a subject into custody, preventing the commission of a crime or in response to a suspect’s resistance.
The defensive tactics and techniques that may be used include, but are not limited to: hand/palm/elbow strikes, kicks, take-downs, leg sweeps, arm-bar takedown and control holds, such as escort (elbow), bent wrist, twist lock and arm-bar hammerlock.

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

C. Use of Canines

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

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

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

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

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

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

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

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\(^2\) Young v. LA County, 655 F.3d 1156 (9th Cir. 2011)
Use shall be compliant with Oakland Police Department policies and training. Refer to TB III-H.2, HAND-HELD IMPACT WEAPONS and TB III-H, SPECIALTY IMPACT WEAPONS

E. Electronic Control Weapon (ECW)

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

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

F. Chemical Agents and Oleoresin Capsicum (OC)

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

IV. USE OF FIREARMS AND OTHER LETHAL FORCE

A. Drawing, Exhibiting and Pointing Firearms

1. The intentional pointing of a firearm at another person is a use of force.

2. The drawing, exhibiting and intentionally pointing of a firearm at another person is threatening and intimidating and when unwarranted may cast a negative impression on members. A member may intentionally point a firearm only when the member has reasonable cause to believe it may be reasonable for his/her safety or for the safety of others.

3. The pointing of a firearm at a person is a seizure and requires legal justification. No member shall draw and point a firearm at or in the direction of a person unless there is a reasonable perception of a substantial risk that the situation may escalate to the point where lethal

3 Bryan v. MacPherson, 630 F. 3d 805 (9th Cir. 2010)
4 Young v. LA County, 655 F.3d 1156 (9th Cir. 2011)
5 Robinson v. Solano County, 278 F. 3d 1007 (9th Cir. 2002)
force would be permitted. When it is determined that the use of lethal force is not necessary, as soon as practicable, firearms shall be secured or holstered.

B. Firearms Discharge

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

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

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

C. Other Firearm Discharges

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

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

D. Discharging a Firearm at a Person

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

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

1. In self-defense when the member has reasonable cause to believe that he or she is in immediate danger of death or serious bodily injury.

2. In defense of another person when the member has reasonable cause to believe that the person is in immediate danger of death or serious bodily injury.

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

E. Moving Vehicles

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

1. Defend the member or another person against the vehicle occupant’s immediate threat of death or serious bodily injury, by means other than the vehicle; or

2. Defend the member or another person against the vehicle operator’s use of the vehicle to cause death or serious bodily injury and the member or other person has no reasonable avenue of protection or escape.
   a. Members are prohibited from intentionally positioning themselves in a location vulnerable to vehicular attack;
   b. Whenever possible, members shall move out of the way of the vehicle, instead of discharging his or her firearm at the operator;
   c. Members shall not discharge a firearm at the operator of the vehicle when the vehicle has passed and is attempting to escape.
3. Members shall consider whether the threat to the member or other persons (including all occupants of the vehicle) is increased by incapacitating the operator with lethal force, considering that if the operator is incapacitated, the vehicle may still be a threat to anyone in the vehicle’s path. This threat shall be weighed against the threat posed by the suspect continuing in control of the vehicle.

4. Members shall also consider what risk the use of lethal force would pose to other vehicle occupants when weighed against the threat.

5. Absent exigent circumstances, the discharge of firearms from a moving vehicle is prohibited.

F. Other Lethal Force

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

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

V. OTHER REQUIREMENTS

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

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

2. Members shall handle and manipulate a firearm in accordance with Department approved firearms training.

B. Administrative Leave

Members involved in a lethal force incident shall be placed on paid administrative leave for not less than three days, unless otherwise directed by the Chief of Police. The Incident Commander may recommend other personnel be placed on paid administrative leave to the Chief of Police. The assignment to administrative leave shall not be interpreted to imply or indicate that a member acted improperly.
While on administrative leave, members shall remain available at all times for official Departmental business, including interviews and statements regarding the incident.

C. Counseling Services

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

D. Providing First Aid or Medical Treatment

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

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

1. First Aid

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

2. Emergency Medical Treatment

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

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

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

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

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

1. Any and all less-lethal specialty impact weapons designed to be skip fired or otherwise deployed in a non-directional non-target specific manner, including but not limited to the Multiple Wood Baton Shell (264W) manufactured by Armor Holdings, Inc. shall not be used at all by OPD during demonstrations or crowd events.

2. The use of the Stinger Grenade containing rubber pellets designed to be deployed in a non-directional non-target specific manner is also prohibited for all crowd control use.

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

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

1. Direct Fired SIM may be used against a specific individual who is engaging in conduct that poses an immediate threat of loss of life or serious bodily injury to him or herself, members or the general public, or who is engaging in substantial destruction of property which creates an immediate risk to the lives or safety of other persons.
In such instances, Direct Fired SIM shall be used only when other means of arrest are unsafe and when the individual can be targeted without endangering other crowd members or bystanders.

2. The use of Direct Fired SIM shall cease when the violent or destructive actions cease. These weapons shall not be used for the purpose of apprehension or to otherwise prevent escape unless escape would present a substantial risk of continued immediate threat to loss of life or serious bodily injury.

3. Members shall only deploy Direct Fired SIM during a demonstration or crowd event under the direction of a supervisor.

4. When circumstances permit, the supervisor on the incident scene shall make an attempt to accomplish the policing goal without the use of Direct Fired SIM as described above, and, if practical, an audible warning shall be given to the subject before deployment of the weapon.

5. Any person struck by a round shall be transported to a hospital for observation and any necessary treatment. Ambulance service, if required, shall be ordered per Department General Order I-4, AMBULANCE SERVICE. First aid, when necessary, shall be administered per Training Bulletin III-K, FIRST AID.

6. No member shall use Direct Fired SIM without formal training and certification.

7. Direct Fired SIM shall not be used against a person who is under restraint.

8. Members shall not discharge a Direct Fired SIM at a person's head, neck, throat, face, left armpit, spine, kidneys, or groin unless deadly force would be justified.

By Order of

Sean Whent
Interim Chief of Police

Date Signed: 12-16-13
The page numbering format has been revised to facilitate updating and tracking revisions to publications contained in this Handbook.

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

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

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REPORTING AND INVESTIGATING THE USE OF FORCE

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REPORTING AND INVESTIGATING THE USE OF FORCE

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

I. POLICY

A. Commanders, investigators and supervisors shall complete a Department approved training course for the Departmental use of force policy (DGO K-3) and reporting and investigating use of force incidents (DGO K-4) prior to conducting any use of force investigation. The training course shall include provisions of the Public Safety Officers’ Procedural Bill of Rights (POBR), Departmental General Order (DGO) M-3, RECEIVING AND PROCESSING COMPLAINTS AGAINST DEPARTMENT PERSONNEL OR PROCEDURES and DGO M-4.1, CRIMINAL INVESTIGATIONS INVOLVING ACTIVE LAW ENFORCEMENT, OR A MEMBER OR EMPLOYEE OF THE DEPARTMENT.

B. Personnel shall notify his/her supervisor immediately or as soon as practical, of any use of force, allegation of a use of force, or an allegation of unreasonable force.

1. When notified of a Level 1, 2, or 3 use of force, the supervisor or commander shall respond to the scene and conduct the appropriate force investigation.

2. When notified of an allegation of a use of force and the member/employee denies using force, the supervisor or commander shall respond to the scene and conduct a preliminary investigation into the use of force allegation.

3. When a subject who has incurred an injury requiring more than basic first-aid and the injury did not occur as a result of a member’s use of force and there is no allegation of force by the subject; or
4. When there is a discharge at an object (e.g., street light, alarm box, door lock or vehicle tire) by a member to accomplish a tactical police purpose that does not result in injury.

C. If any force investigation indicates misconduct, the supervisor or commander shall conduct, at a minimum, a Level 2 force investigation and additionally initiate an internal investigation in accordance with the provisions of DGO M-3. Document the date the IAD was notified in the Use of Force Report (TF-967).

D. If any force investigation indicates criminal misconduct, the supervisor or commander shall conduct, at a minimum, a Level 2 force investigation and additionally make the proper notifications in accordance with the provisions of DGO M-4.1. Document the date the CID was notified in the Use of Force Report.

E. Personnel shall request medical service without delay when a subject has visible injuries or the subject has a complaint of injury.

F. Supervisors and commanders shall be held accountable for the timely, accurate, and thorough documentation of all use of force incidents.

G. Reports shall not contain “boilerplate” or “pat” language (e.g., “furtive movement” or “fighting stance,” etc.) without descriptive or explanatory details of the action.”

H. Supervisors and commanders have the discretion to elevate any level of force investigation in order to conduct a more thorough investigation of the incident. The Watch Commander shall approve elevating a force investigation to a Level 1.

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

1. In the event personnel working a tour of duty in the Patrol Division, of the rank of sergeant or above, are involved in a Level 2 or 3 use of force incident, the Watch Commander shall assign an investigator to conduct the investigation.
2. In the event personnel working a tour of duty in any division other than Patrol, of the rank of sergeant or above is involved in a Level 2 or 3 use of force incident, the unit commander shall assign an investigator to conduct the investigation with the approval of the division commander and, if unavailable, the Watch Commander.

3. The Watch Commander may approve a supervisor or commander to investigate, a Level 2 or 3 use of force with their own self-reported Level 4 use of force when they occur in the same incident.

J. In the event multiple members use the same level of force in a single incident, the reporting member shall prepare only one Use of Force Report listing all involved personnel.

In the event multiple members use different levels of force in a single incident, the reporting member shall prepare only one Use of Force Report listing all involved personnel. An investigation shall be conducted at the highest level when multiple force options are used.

K. Supervisors and commanders shall identify Department or individual training and tactical issues and make recommendations for corrective action, when appropriate and document the recommendations in the Use of Force Report.

L. Supervisors and commanders shall ensure the provisions of POBR are properly applied.

M. Personnel may delay compliance with the provisions of this order if the scene is unstable, there is community unrest, or other conditions make immediate compliance impracticable. The protection of Department personnel and the public, and the maintenance of public safety shall remain the priority. The approving supervisor or commander shall ensure the reason for the delay is documented in the Use of Force Report. Such compliance delays are subject to review by the appropriate review board.

N. Injured or killed animals shall be handled and/or properly disposed of in accordance with the provisions of DGO A-5, ANIMAL CONTROL PROCEDURES.

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

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

A. Level 1

1. Any use of force resulting in death;

2. Any intentional firearm discharge at a person, regardless of injury;

3. Any force which creates a substantial risk of causing death;

4. Serious bodily injuries, to include:
   a. Any use of force resulting in the loss of consciousness; and
   b. Protracted loss, impairment, serious disfigurement, or function of any bodily member or organ (includes paralysis).

5. Any unintentional firearms discharge:
   a. If a person is injured as a result of the discharge; or
   b. As directed by the BOI Deputy Chief.

6. Any intentional impact weapon strike to the head.

7. Any use of force investigation that is elevated to a Level 1 approved by a Watch Commander.

B. Level 2

1. Any strike to the head (except for an intentional strike with an impact weapon);

2. Carotid restraint is applied that does not result in the loss of consciousness;

3. Use of impact weapons, including specialty impact munitions or any other object, to strike a subject and contact is made, regardless of injury.

4. Any unintentional firearms discharge that does not result in injury;
5. A police canine bites the clothing or the skin of a subject, or otherwise injures a subject.

6. Any use of force which results in injuries to the subject requiring emergency medical treatment (beyond first-aid) or hospital admittance.

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

C. Level 3

1. Oleoresin Capsicum (OC/Pepper Spray) or other chemical agent is applied to a person;

2. The use of a Taser® involving any of the following circumstances;
   a. When one or more probes impacts or penetrates the subject’s clothing or skin;
   b. When the push stun arc touches the subject’s clothing or skin; or
   c. A Taser® is fired at a person, but misses.

3. Any impact weapon, including specialty impact munitions, or any other instrument is used in an attempt to strike another person but **no contact is made**; or

4. The baton is used for a non-striking purpose (e.g., prying limbs, moving or controlling a person);

5. A Weaponless Defense Technique other than control holds, excluding strikes to the head. Examples include;
   a. Hand/palm/elbow strikes;
   b. Kicks;
   c. Leg sweeps; and
   d. Takedowns.

6. An on-duty firearm discharge at an animal other than to dispatch an injured animal.
D. Level 4

1. A firearm is intentionally pointed at a person;

2. A Weaponless Defense Technique is applied to a Vulnerable Area, excluding strikes (e.g., Hair grab, pressure to mastoid or jaw line; and shoulder muscle grab).

3. An on-duty firearm discharge to dispatch an injured animal; or

4. A Weaponless Defense Technique Control Hold is applied:
   a. Escort (elbow);
   b. Twist lock;
   c. Arm-bar; or
   d. Bent-wrist.

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

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III. LEVEL 1 FORCE OR IN-CUSTODY DEATH INCIDENTS

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

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

1. Notify and brief their supervisor immediately, or as soon as practical. If the immediate supervisor is unavailable, another field supervisor or commander shall be notified.

2. Every member or employee who uses or is a witness to a Level 1 use of force shall not discuss the incident with others and limit any discussion of the incident to information required:

   a. For a Public Safety Statement;
   b. To assist in the investigations; or
   c. To lead to the apprehension of the suspect.

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

1. Conduct a reasonable canvas in an effort to identify and obtain statements from witnesses in the proximity of the use of force incident.

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

   a. Outside Agency Personnel

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

   1) Name;
   2) Rank/Title;
   3) Serial number; and
   4) Agency affiliation.
b. Private Person Witnesses

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

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

3. Document, in the appropriate report, why witness information was not obtained in situations where it was unsafe or impractical to obtain, (e.g., hostile crowd, public safety concerns, insufficient police resources), when the witness refused to remain at the scene, or is uncooperative.

4. Members shall not detain or delay a witness who refuses to remain at the scene; however the witness’ physical description, license plate, comments, or other identifiers shall be obtained when available and documented in the appropriate report.

5. Members shall summon a supervisor to the scene in the event a witness refuses to give a statement or provide identification information.

6. Offense/Supplemental Reports shall be prepared independently without discussing the details of the incident with other personnel on scene. Group reporting is prohibited.

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

C. Supervisor Responsibilities

1. Respond to the location of the incident unless community unrest or other conditions make such response impracticable. In such instances, an alternate safe location shall be arranged.
2. Scene security:
   a. Ensure a Crime Scene Security Log is maintained to record the time and identifying information of all persons entering and exiting the scene, to include:
      1) Department personnel;
      2) Medical personnel;
      3) Fire Department unit number and personnel; and
      4) Other persons.
   b. Ensure the Crime Scene Security Log is delivered to the Homicide Section investigator for inclusion in the investigative case file.

3. Manage the scene, until relieved by the Incident Commander.

4. Ensure the Watch Commander has been notified and briefed of the incident.

5. Manage the scene, until relieved by the Incident Commander.

6. Attempt to obtain and document a Public Safety Statement, to include:
   a. A verbal account from involved personnel to help determine the general circumstances of the incident;
   b. Assess the need for resources and notifications;
   c. Help set the perimeter;
   d. Locate injured persons;
   e. Determine the nature of the evidence to seek;
   f. Identify the number of suspects involved;
   g. Identify the number of suspects outstanding; and
   h. The number and direction of shots fired, if any.
The supervisor shall not ask the involved personnel to provide a step-by-step narrative of the Level 1 (lethal force) incident or to provide a motive for their actions.

7. Coordinate the apprehension of the suspect, if still outstanding.

8. Coordinate the preliminary investigation with the IAD and Homicide investigators, to include but not limited to:
   a. Identifying involved and witness personnel;
   b. Designating a reporting officer;
   c. Ensuring the preservation of evidence;
   d. Identifying other witnesses in accordance with the provisions of Part III, B; and
   e. Assisting investigators to ensure statements are taken.

9. Respond to the location of a witness who has declined to give a statement or has refused to give witness identification information when requested by a member or employee. The outcome shall be documented in the member’s Supplemental Report after the supervisor has talked to the witness.

10. Separate and prohibit communication between involved personnel and witnesses.

11. Ensure involved personnel limit any discussion of the incident to information necessary:
   a. For a Public Safety Statement;
   b. Required to assist in the investigations; or
   c. Leading to the apprehension of the suspect.

12. Ensure personnel complete a Supplemental Report who were on scene at the time of the incident (not including involved or witness personnel) or were assigned to assist at the scene.

Offense/Supplemental Reports shall be prepared independently without discussing the details of the incident with other personnel on scene. Group reporting and interviewing is prohibited.

13. Document the reason in a Supplemental Report when personnel are directed not to complete a required report.
14. Contact and provide the IAD investigator with the complaint information if notified of an allegation of unreasonable force.

D. Follow-up Investigators Responsibilities

1. Homicide Section

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

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

a. The DA’s Office will respond with their on-call shooting team to all fatal officer-involved shootings and other incidents as they deem necessary.

b. In the event of an officer-involved shooting in which a person is struck, and when a conflict of interest exists, the Bureau of Investigation Deputy Chief shall confer with the DA’s Office to determine the most appropriate agency or investigative body to conduct the investigation.

3. Internal Affairs Division

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

E. The Watch Commander or Designee Responsibilities

1. Respond to the scene and take command of the incident.

2. Monitor the incident to ensure good scene management and ensure the assigned supervisor coordinates and assists with a thorough and proper preliminary investigation.
3. Ensure the following notifications are made as soon as possible unless conditions at the scene make such notification impractical:

a. The Homicide Section Commander and Homicide Call-Out Team;

b. Internal Affairs Division Investigative Section Commander and IAD Call-Out Team;

c. Chief of Staff (OCOP);

d. Chief of Police (COP);

e. Alameda County District Attorney’s Office Standby Team for force incidents resulting in death or injury likely to result in death;

f. Office of the City Attorney (OCA);

g. Office of Inspector General (OIG);

h. City Administrator;

i. Bureau of Field Operations (BFO) and Bureau of Investigations (BOI) Deputy Chiefs;

j. Division commander of the involved member or employee.

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IV. LEVEL 2 FORCE INCIDENTS

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

Responsibilities

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

1. Notify and brief their supervisor immediately or as soon as practical. If the immediate supervisor is unavailable, another field supervisor or commander shall be notified.

2. Complete and submit for review the appropriate Offense/ Supplemental Report prior to the end of tour of duty, unless extended by the Watch Commander. The member or employee who uses force shall include the following minimum information regarding the use of force incident in their Offense or Supplemental Report:

   a. The original reason for police presence on the scene;
   b. The circumstances that resulted in the use of force; and
   c. A detailed description of the force used.

3. Ensure the subject is transported to a medical facility for medical evaluation if a carotid restraint is applied. Document a refusal for medical treatment.

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

1. Conduct a reasonable canvas in an effort to identify and obtain statements from other witnesses in the proximity of the use of force incident, commensurate with the availability of resources and the conditions of the event.

2. Witnesses to a use of force shall be identified to the extent that it is reasonable and listed in a Supplemental Report (536-937) or Victim/Witness Report (536-935). Statements shall be taken from outside agency personnel or private person witnesses, when practical. The following criteria shall be used when listing witnesses:
a. Outside Agency Personnel

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

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

b. Private Person Witnesses

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

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

3. Document in the appropriate report why witness information was not obtained in situations where it was unsafe or impractical to obtain, (e.g., hostile crowd, insufficient police resources), the witness refused to remain at the scene, or is uncooperative.

4. Members shall not detain or delay a witness who refuses to remain at the scene; however the witness’ physical description, license plate, comments, or other identifiers shall be obtained when available and documented in the appropriate report.

5. Members shall summon a supervisor to the scene in the event a witness refuses to give a statement or provide identification information.

6. Complete a Supplemental Report without discussing the details of the incident with other personnel on scene. Group reporting is prohibited.
7. Personnel on scene at the time of the use of force incident, but not involved in or a witness to the use of force, shall be separately interviewed by the investigating supervisor, prior to clearing from the incident. Any relevant information revealed in the interview shall be included in the member or employee’s Supplemental Report.

C. Supervisor Responsibilities

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

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

2. Secure and manage the scene.

3. Coordinate the apprehension of the suspect, if still outstanding.

4. Ensure the subject is transported to a medical facility for medical evaluation when a carotid restraint is applied.

5. Contact the Communications Division before the end of tour of duty and advise the Communications Division Shift Supervisor to enter the use of force incident into the Daily IAD Incident Log.

6. When the situation has been stabilized and it can be accomplished safely:

   a. Advise the Watch Commander or commander of the operation of the incident;

   b. Ensure involved personnel and witnesses, outside agency personnel, and private person witnesses are identified in accordance with the provisions of RWM Insert U-1.

   c. Ensure involved personnel and witnesses have been separated and advised that communication regarding the incident is prohibited.
7. Conduct an investigation in a timely manner to include, but not limited to, the following:

a. A separate, personal interview with involved and witness personnel including, if necessary, a written or recorded statement.

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

c. A personal interview with the subject(s) upon whom the use of force was used to include a written or recorded statement, when possible.

d. Contact medical personnel, when practical, who evaluated and/or provided treatment to the subject for available information on the subject’s injuries and condition.

e. Ensure photographs are taken of:

1) The physical condition of the subject and involved personnel, to record the presence or lack of injuries;

2) The location of the use of force incident; and

3) Other relevant evidence.

Document the reason why photographs were not taken.

f. Ensure digital photographs or film are submitted and processed utilizing one of the following procedures:

1) Digital – Copy digital files to a compact disk, handle and submit as evidence, and list as evidence in the Use of Force Report; or
2) Film – Submit film for processing utilizing a Photo Evidence Card (536-317). Complete the appropriate boxes on the card. Additionally, ensure the following information is on the card:

   a) **Comments** box – Indicate “Use of Force” & RD No. & “Put on CD”;
   b) **Send To** box – “To IAD Administrative Supervisor.”

8. Respond to the location of a witness who has declined to give a statement or has refused to give witness identification information when requested by a member or employee. The outcome shall be documented in the member’s Supplemental Report after the supervisor has talked to the witness.

9. Ensure personnel who were on scene at the time of the incident or were assigned to assist at the scene complete the appropriate report.

10. Offense/Supplemental Reports shall be prepared independently without discussing the details of the incident with other personnel on scene. Group reporting is prohibited.

11. When a supervisor, commander or investigator directs personnel not to complete a required report, the reason shall be documented in the Use of Force Report.

12. Conduct a thorough review of all documents to be included in the Use of Force Report packet to ensure completeness, accuracy, and quality.

13. Ensure the appropriate Offense or Supplemental Report contains the following minimum information regarding the use of force incident:

   a. The original reason for police presence on the scene;
   b. The circumstances that resulted in the use of force; and
   c. A detailed description of the force used.

14. Incomplete or inadequate reports shall be returned for additional details or clarification.
15. Prepare a Use of Force Report (TF-967) in accordance with the provisions of RWM Insert U-1, USE OF FORCE REPORT, unless otherwise directed by a commander or investigator.

16. Ensure the Use of Force Report packet contains:
   a. The original Use of Force Report to include a Chronological Activity Log and Use of Force Checklist;
   b. A copy of the appropriate report (e.g., Offense Report or field contact card); and
   c. Copies of ancillary documents, if necessary (e.g., statements (if any), Supplemental Reports, Technician Reports, Detail, CAD purge, available medical information obtained, and photographs, if available).

17. Email only the Use of Force Report face sheet (page 1) to the following, prior to the end of tour of duty:
   a. opdiad@oaklandnet.com;
   b. bfoadmin@oaklandnet.com;
   c. Involved member or employee’s Division Commander; and
   d. Involved member or employee’s Bureau Deputy Chief/Director.

18. Ensure the original Offense Report and ancillary documents are deposited in the Report Writing Receptacle in an In-Custody or Case Envelope.


20. Complete and forward the Use of Force Report packet, within seven (7) calendar days, through the appropriate chain-of-review\(^2\). The due date may be extended with the approval of the reviewing Division Commander and shall be documented in the Chronological Activity Log.

\(^2\) For the purpose of this order, the appropriate chain-of-review refers to the chain-of-command under which the involved member was working during that tour of duty when the force incident occurred.
D. Watch Commander or Commander of the Operation Incident Scene Responsibilities

1. Respond to the scene and take Incident Command when advised the incident involves significant Department resources or is likely to generate unusual public interest.

2. Monitor and ensure the use of force investigation is conducted in a thorough, methodical, and efficient manner.

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V. LEVEL 3 FORCE INCIDENTS

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

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

1. Notify and brief their supervisor immediately or as soon as practical. If the immediate supervisor is unavailable, another field supervisor or commander shall be notified.

2. Every member or employee who uses or witnesses a level of force requiring a Level 3 investigation shall independently complete the appropriate Offense or Supplemental Report;

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

   a. The original reason for police presence on the scene;

   b. The circumstances that resulted in the use of force; and

   c. A detailed description of the force used.

3. Personnel who are assigned to assist at the scene shall complete a Supplemental Report if directed by a supervisor, commander or investigator.

B. Supervisor/Commander Responsibilities

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

1. Secure the scene, if necessary;

2. Coordinate the apprehension of the suspect, if still outstanding;

3. Discuss the general circumstances of the incident with the involved personnel and witnesses to assess the appropriate reporting level, the need for resources, and to assess whether injuries, if present, are consistent with the force applied;
4. Conduct a personal interview with the subject(s) upon whom the use of force was used to include a written or recorded statement, when possible.

5. The responding on-scene supervisor or commander may authorize a Level 3 use of force incidents to be reported as a Level 4 when there is no injury to the subject requiring emergency medical treatment (beyond first-aid) or hospital admittance, allegation of misconduct, and no indication the use of force was out of policy. Affirmative approval shall be made by signing the approval box on the Use of Force Report - Part 3a. The following Level 3 use of force incidents may be considered:

   a. A Taser® is fired at a person, but misses;

   b. Oleoresin Capsicum (OC/Pepper Spray) or other chemical agent applied to a person;

   c. Any impact weapon, including specialty impact munitions, or any other instrument is used in an attempt to strike another person but no contact is made;

   d. A baton used for a non-striking purpose (e.g., prying limbs, moving or controlling a person); or

   e. A Weaponless Defense Technique other than control holds, excluding strikes to the head, to include:

      1) Hand/palm/elbow strikes;
      2) Kicks;
      3) Leg sweeps; and
      4) Takedowns.

In the event the Watch Commander is involved in a Level 3 use of force incident enumerated above in Part V, B, 5, a-e, he/she shall contact his/her immediate superior officer to determine the appropriate level of reporting. If a Level 3 investigation is determined, the superior officer has the discretion to respond to the scene to conduct the investigation or assign another investigator.
6. Level 3 reporting shall include documentation of the following:
   a. The absence of injuries to the subject;
   b. A description of the injury not requiring emergency medical treatment or hospital admittance; or
   c. Any injury to OPD personnel and any medical care or treatment provided.

7. Assess any complaint of injury and consider it as a factor toward elevating the Level 3 force to a Level 2 force investigation.

8. Ensure photographs are taken of the subject and involved member/employee to record the presence or absence of injuries, the location of the incident, and other relevant evidence. Document the reason why photographs were not taken.

9. Ensure digital photographs or film are submitted and processed utilizing one of the following procedures:
   a. Digital – Copy digital files to a compact disk, handle and submit as evidence, and list as evidence in the Use of Force Report; or
   b. Film – Submit film for processing utilizing a Photo Evidence Card (536-317). Complete the appropriate boxes on the card. Additionally, ensure the following information is on the card:
      1) **Comments** box – Indicate “Use of Force” & RD No. & “Put on CD”;
      2) **Send To** box – “To IAD Administrative Supervisor.”

10. Interview available witnesses at the scene.

   **NOTE:** Written/recorded statements are not required for a Level 3 force incident.

11. Contact Communications Division and advise the Communications Supervisor, or in his/her absence, the on-duty Police Communications Supervisor, to enter the use of force into the Daily IAD Incident Log.
12. Ensure personnel complete a Supplemental Report who were witnesses to a Level 3 force incident or were assigned to assist at the scene.

13. When a supervisor, commander or investigator directs personnel not to complete a required report, the reason shall be documented in the Use of Force Report.

14. Conduct a thorough review of all documents to be included in the Use of Force Report packet to ensure completeness, accuracy, and quality.

15. Ensure the appropriate Offense or Supplemental Report contains the following minimum information regarding the use of force incident:
   a. The original reason for police presence on the scene;
   b. The circumstances that resulted in the use of force;
   c. A detailed description of the force used; and
   d. Document the number of bursts, duration of each burst, the approximate distance from the subject, and the location of spray contact, when OC is used.

16. Incomplete or inadequate reports shall be returned for additional details or clarification.

17. Prepare a Use of Force Report (TF-967) in accordance with the provisions of RWM Insert U-1, USE OF FORCE REPORT, unless otherwise directed by a commander or investigator.

18. Ensure the Use of Force Report packet contains:
   a. The original Use of Force Report to include a Chronological Activity Log and Use of Force Checklist;
   b. A copy of the appropriate report (e.g., Offense Report or field contact card); and
   c. Copies of ancillary documents, if necessary (e.g., statements (if any), Supplemental Reports, Technician Reports, Detail, CAD purge, available medical information obtained, and photographs, if available).
19. Email only the face sheet of the Use of Force Report to the following, prior to the end of tour of duty:
   a. opdiad@oaklandnet.com;
   b. bfoadmin@oaklandnet.com;
   c. Involved member or employee’s Division Commander; and
   d. Involved member or employee’s Bureau Deputy Chief/Director.

20. Ensure the original Offense Report and ancillary documents are deposited in the Report Writing Receptacle in an In-Custody or Case Envelope.

21. If notified of an allegation of unreasonable force, the supervisor shall conduct a preliminary investigation.
   a. If there is corroborating evidence that unreasonable use of force occurred, the supervisor shall conduct a Level 2 force investigation and initiate an internal investigation.
   b. If there is no corroborating evidence that unreasonable use of force occurred, the supervisor shall document the results of the preliminary complaint investigation in the narrative of the Use of Force Report.

22. Retain an electronic copy of the Use of Force Report until documented in the member/employee’s annual performance appraisal.

23. Complete and forward the Use of Force Report packet, within seven (7) calendar days, through the appropriate chain-of-review. The due date may be extended with the approval of the reviewing Division Commander and shall be documented in the Chronological Activity Log.

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3 For the purpose of this order, the appropriate chain-of-review refers to the chain-of-command under which the involved member was working during that tour of duty when the force incident occurred.
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VI. LEVEL 4 FORCE INCIDENTS

A self-reported use of force.

A. Involved Personnel Responsibilities

1. Notify and brief their supervisor immediately or as soon as practical. If the immediate supervisor is unavailable, another field supervisor or commander shall be notified.

2. Complete a Use of Force Report (TF-967) in accordance with the provisions of RWM Insert U-1, USE OF FORCE REPORT or when authorized by a supervisor or commander.

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

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

   a. The original reason for police presence on the scene;
   b. The circumstances that resulted in the use of force; and
   c. A detailed description of the force used.

4. Place the original Use of Force Report and, if applicable, the appropriate Offense Report and ancillary documents in an In-Custody/Case Envelope and deliver to his/her immediate supervisor or, if unavailable, to an on-duty supervisor for review prior to the end of tour of duty.

B. Supervisor/Commander Responsibilities

1. When contacted by involved personnel, supervisors shall review the general circumstances of the incident with the involved personnel as necessary, and ensure the facts are consistent with the reporting level. Supervisors are not required to respond to the incident.
2. Prior to reducing a Level 3 use of force incident to a Level 4, the approving supervisor shall ensure there is no injury to the subject requiring emergency medical treatment (beyond first-aid) or hospital admittance, allegation of misconduct, and there is no indication the use of force was out of policy. Affirmative approval shall be made by the supervisor by signing the appropriate box on the Use of Force Report - Part 3a.

3. If notified of an allegation of unreasonable force, the supervisor shall conduct a preliminary investigation.

   a. If there is corroborating evidence that unreasonable use of force occurred, the supervisor shall conduct a Level 2 force investigation and initiate an internal investigation.

   b. If there is no corroborating evidence that unreasonable use of force occurred, the supervisor shall document the results of the preliminary complaint investigation in a Risk Management Memorandum if no Use of Force Report is completed.

4. Level 4 incidents do not require witness identification.

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VII. LEVEL 1 FORCE INCIDENTS INVOLVING AN OUTSIDE AGENCY

A. A Level 1 force incident occurring outside the City of Oakland

1. Upon notification, the Watch Commander shall:
   
a. Send an on-duty supervisor to the jurisdiction in which the incident occurred unless the distance makes it impractical. The supervisor shall remain with the member(s) during the investigation by the outside agency;
   
b. Notify the BOI Deputy Chief who shall determine if Homicide investigators are to be called-out; and
   
c. Notify the IAD Commander who shall determine if IAD investigators are to be called-out.

2. The law enforcement agency which has jurisdiction, in which the incident occurred, shall have incident command and primary criminal investigation responsibility. The Homicide Section shall only assume primary criminal investigation responsibility upon the request of the outside agency.

3. Homicide Section investigators shall request to attend the interview of OPD personnel, unless the distance involved makes this impractical.

4. IAD investigators shall request to monitor the interview of OPD personnel, unless the distance involved makes this impractical.

B. A Level 1 force incident involving outside agency personnel within the City of Oakland

1. The Homicide Section shall conduct the criminal investigation for the following incidents:
   
a. Any use of force resulting in death;
   
b. Any intentional firearm discharge at a person regardless of injury;
   
c. Any force which creates a substantial risk of causing death;
d. Any unintentional firearms discharge if a person is injured as a result of the discharge; or

e. Any use of force incident referred by a Watch Commander.

2. The outside agency may assist at the discretion of the BOI Deputy Chief.
VIII. COMMAND REVIEW AND ENDORSEMENT

A. All reviewers shall:

1. Review the Use of Force Report packet and evaluate the Use of Force Report and ancillary documents for completeness, accuracy, and quality and ensure reports do not contain “Boilerplate” or “Pat” language without descriptive or explanatory details of the action. Return any reports that are incomplete or inadequate and ensure corrections are made;

2. Order further investigation or additional investigative resources when necessary;

3. Evaluate and document whether the use of force was in compliance with Departmental policy and comment on any training and tactical issues, when appropriate; and

4. Document extension approvals by the reviewing Division Commander on the Use of Force Chronological Activity Log. The Division Commander shall ensure the IAD and BFO Administrative Unit are notified of any approved extensions.

5. Complete, endorse, and sign a Use of Force Report Signature Page (TF-967c) and forward the Use of Force Report packet within four (4) calendar days.

B. Level 1 Force Review Responsibilities

1. The Homicide Section Commander shall:

   a. Ensure a follow-up investigation is conducted and the assigned Homicide investigator prepares a Follow-up Investigation Report (336-201) in accordance with the provisions of Homicide Section Policy and Procedure 01, LEVEL 1/IN-CUSTODY DEATH INVESTIGATIONS.

   b. Review and forward the approved Follow-up Investigation Report to the IAD within 45 calendar days of the incident, unless extended by the BOI Deputy Chief in accordance with the provisions of Homicide Section Policy and Procedure 01.
2. The IAD Commander shall:
   
a. Ensure IAD investigators have conducted a concurrent use of force investigation and prepared a Use of Force or In-Custody Death Report in accordance with the provisions of RWM Insert U-1 and IAD Policy and Procedure 05-04 **within 60 calendar days of the incident**, unless extended by the Chief of Police.

b. Review and forward the approved Use of Force or In-Custody Death Report packet to the BOS Deputy Chief and Chief of Staff, **within 15 calendar days from receipt**, unless extended by the COP in accordance with the provisions of IAD Policy and Procedure 05-04.

c. Provide an oral report to the COP within 24 hours of the incident.

3. Chief of Staff (COS)
   
a. Enter data from the Use of Force/In-Custody Death Report face sheet into a log upon receipt;

b. Track the Use of Force/In-Custody Death Report due date to ensure the timeliness of the investigation, and ensure the BOS Deputy Chief has received the Use of Force Report packet and information necessary to conduct the EFRB. Contact the IAD Commander and ascertain the delay if not received **within 76 calendar days of the incident** and notify the COP of the delay.

C. Level 2 and 3 Force Review Responsibilities

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

   **NOTE:** BFO Administration Unit shall receive and track **ALL** Use of Force Report packets, regardless of originating unit.
b. If a training issue arises from a Level 3 incident, the Division Commander shall ensure training is conducted and a Training Memorandum is completed and forwarded to the Training Division for input into the Training Management System (TMS).

AND/OR

c. Training is requested from the Training Division, through a Training Memorandum, when it cannot be accomplished at the division level. Training Division personnel shall input completed training in the TMS.

d. If a Department-related service recommendation (e.g., policy revision, equipment evaluation, new Department publication) arises from a Level 3 incident, the Division Commander shall prepare and forward a recommendation memorandum through the chain-of-command to the Chief of Police.

2. BFO Administrative Unit shall:

a. Notify the appropriate commander if the Use of Force Report packet has not been received within 16 calendar days of the incident.

b. Review the Use of Force Report;

c. If the Use of Force Report is returned for additional follow-up or clarification, the due date may be extended, as needed, by the BFO Administrative Supervisor and documented in the Chronological Activity Log.

d. Forward completed Use of Force Report packet to the IAD, within four (4) calendar days of receipt of a completed packet.

D. Level 4 Force Review Responsibilities

1. Reviewing supervisor:

a. Conduct a thorough review of all documents to ensure completeness, accuracy, and quality.
b. Ensure the appropriate Offense, Supplemental, or Use of Force Report contains the following minimum information regarding the use of force incident:

1) The original reason for police presence on the scene;

2) The circumstances that resulted in the use of force; and

3) A detailed description of the force used.

c. Incomplete or inadequate reports shall be returned for additional details or clarification.

d. Ensure the Use of Force Report has an Incident number. Advise the Communications Division Shift Supervisor to enter the use of force into the Daily IAD Incident Log.

e. Ensure the original Offense Report and ancillary documents are deposited in the Report Writing Receptacle in an In-Custody or Case Envelope.

f. Upon approval, sign the appropriate Level 4 Reviewer box on the Use of Force Report; and

g. Ensure the Use of Force Report packet contains:

1) The original Use of Force Report (No Chronological Activity Log or Use of Force Checklist is required);

2) A copy of the appropriate report (e.g., Offense/Supplemental Report or field contact card); and

3) Copies of statements (if any).

h. Forward the original Use of Force Report packet to the first-level commander for review, prior to the end of tour of duty.

2. The first-level commander shall:

a. Review the original Use of Force Report packet. If the Use of Force Report is returned for additional follow-up or clarification, the due date may be extended, as needed, and documented in the Chronological Activity Log.
b. Upon approval, sign the appropriate Level 4 Reviewer box on the Use of Force Report; and

c. Forward approved Use of Force packet to the BFO Administrative Unit **within four (4) calendar days of approval.**

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

E. IAD

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

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

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IX. RISK MANAGEMENT

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

The supervisor shall:

A. Respond to the scene;

B. Ensure the involved member documents the circumstances of the incident in the appropriate report;

C. Obtain an Incident Number from the Communications Division;

D. Conduct a preliminary investigation;

1. If the preliminary investigation reveals corroborating evidence that the use of force occurred, the supervisor or commander shall conduct a Level 2 force investigation\(^4\), initiate an internal investigation in accordance with the provisions of DGO M-3, and notify the Watch Commander;

2. The Watch Commander shall contact the IAD to determine if a call-out is warranted;

3. If the preliminary investigation reveals no corroborating evidence that the alleged use of force occurred, the supervisor or commander shall document the results of the preliminary complaint investigation in the narrative of the Use of Force Narrative Report (Level 2-4) or a Risk Management Memorandum if no Use of Force Report is completed.

E. Risk management documentation shall include:

1. A summary of the incident;

2. Written or recorded statement(s) from the complainant, injured person, and witnesses, if practical;

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\(^4\) The IAD shall include risk management documentation in a Level 1/In-Custody Death Report.
3. Indicate complainant was:

   a. Advised of their right to file a complaint with CPRB;
   b. Provided with a Complaint Packet (TF-3208); and
   c. Provided with the Incident Number.

4. Photographs;

5. Documentation of evidence collected or reason why evidence was not collected.

6. Offense or Supplemental Report(s) from involved personnel; and

7. Other pertinent documents (if available).

F. Contact the Communications Division Shift Supervisor, at the conclusion of the preliminary investigation, and provide the following information:

1. Complainant’s name (for verification);

2. Time contact made with complainant;

3. Name of Watch Commander/Unit Commander notified; and

4. Disposition of complaint.

G. If a Level 2-4 Use of Force Report is being prepared, check the “Risk Management Advisement” box on the Use of Force face sheet

For Level 4 force incidents only:

1. The officer who used the force shall prepare a Use of Force Report.

2. The notified supervisor shall prepare a Use of Force Narrative Report to include the required elements enumerated in Part IX, A-F.

H. When no Use of Force Report is required, the notified supervisor shall prepare a Risk Management Memorandum to include the required elements enumerated in Part IX, A-F.

I. Forward the Use of Force Report packet or the Risk Management Memorandum with documentation, through the appropriate chain-of-review to the IAD.

By order of

Wayne G. Tucker
Chief of Police

Date Signed: ______________