

**June 28, 2020**

**To: Chair Calavita, Police Review Commission**

**From: George Perezvelez, Chair, Use of Force Subcommittee**

**Re: Use of Force Policy Review Memo**

Please find enclosed a summary detailing the historical background, core review principle, reference materials, critical discussion/review points and outstanding issues by the Use of Force subcommittee. It will delineate the work-load, review and background on the proposal to the full Berkeley Police Review Commission in reference to the June 9, 2020 City Council referral.

### **Historical background**

1. 2009-2011- PRC discusses reviewing the Use of Force Policy
2. 2011 PRC Agenda COMMITTEE REPORTS (For Discussion or Action) A. Use of Force Subcommittee -The subcommittee met on Nov. 30, 2011, and is reviewing the Use of Force policy. The next meeting is scheduled for Jan. 25, 2012; the deadline for submitting comments to BPD is Jan. 18.
3. 2103- ACCREDITATION SUBCOMMITTEE Commissioners: Allen, Perezvelez and Sherman AGENDA Wednesday October 23, 2013- Use of Force Policy not included as the department expressed that they were working on some changes and needed extra time before presenting them to the subcommittee for review. Policy submission for review was never presented.
4. 2016- Retirement of Captain Harris and changes in leadership at the Officer Standards Division (the division in charge of reviewing and presenting the Use of Force policy to the subcommittee and the PRC).
5. 2017- July 14, 2017  
To: D. Williams-Ridley, City Manager From: A. Greenwood, Chief of Police Re: Release of Draft Interim Report from the Center for Policing Equity
6. 2017- October 31, 2017- Council directed PRC, CM and BPD to look into the use of Force Policy and come back with recommendations.
7. 2019- Signature by Governor of AB-392 on August 19, 2019 and SB-230 on September 8, 2019
8. 2019- October 2019 new use of force subcommittee created by the PRC. This subcommittee was created as a pre-emptive action in order to establish a review process prior and in anticipation to the submittal by the department. Extremely critical after the department informed the PRC that due to newly legal compliance obligations, the department would be implementing its new policy on January 2020.
9. 2020- Use of Force Subcommittee meets twice before the shelter in place order took effect due to the COVID-19 health crisis.
10. 2020- June 9, 2020- City Council Urgency Resolution on Use of Force Review
11. 2020- In order to comply with the 2020 expedited referral review by City Council, the subcommittee, which includes Commissioners Chang, Leftwich, and Ramsey, convenes seven times (6.11, 6.15, 6.17, 6.19, 6.22, 6.24 and 6.26) for a total of 28 hours to listen to public comment, review, discuss and propose language.

## **Core Subcommittee agreed upon Principle**

Objectively Reasonable, Objectively Necessary, Proportional and Minimal Reliance on Use of Force Standard

## **Subject Matter, Case Law and Policy Analysis**

1. The subcommittee referred to the 8 Can't Wait and NAACP recommendations as well as the 2017 and 2020 City Council referrals.
2. Reviewed the Berkeley Police Department compliance with 4 out of the 8 stipulations per the Chief of Police Use of Force memo to the community dated June 8, 2020.
3. Reviewed compliance with: AB 392, Weber. Peace officers: deadly force. Section 196 and 835a changes to the penal code.
4. Reviewed City Attorney's language for compliance with: SB 230, Caballero. Law enforcement: use of deadly force: training: policies. Adding Chapter 17.4 (commencing with Section 7286) to Division 7 of Title 1 of the Government Code, and to add Section 13519.10 to the Penal Code, relating to law enforcement.
5. Reviewed police department policies from Boston, Massachusetts, Camden, NJ, Seattle, Washington, as well as California's Oakland, San Francisco, BART and Los Angeles police departments.
6. Reviewed by several subcommittee members: Police Executive Forum (PERF), DOJ 21<sup>st</sup> Century Policing, NOBLE Association, ACLU and National Institute of Justice studies and recommendations on Use of Force

## **Critical Review Points:**

1. Sanctity of Life Language
2. Purpose and Scope
3. Use of Force Standard
4. Core Principles
5. Definitions
6. Duty to Intercede
7. Use of Force
8. Factors used to Determine Reasonableness, Necessity and Proportionality
9. Use of Force Continuum
10. De-escalation Tactics
11. Pain Compliance Techniques
12. Use of Non-Lethal Force
13. Use of Lethal Force
14. Chokehold Prohibition
15. Use of Deadly Force
16. Drawing or Pointing of a Firearm
17. Shooting at or From Moving Vehicles
18. Reporting Requirements

- 19. Supervisor Responsibility
- 20. Use of Force Reporting Levels
- 21. Use of Force Analysis