



## Community Message regarding the Berkeley Police Department Use of Force Policy

June 8, 2020

To Our Berkeley Community:

In the wake of the events of the past two weeks, from the abhorrent murder of George Floyd, to sickening videos of police inexplicably using force on community members peacefully assembled to exercise their first amendment rights, I've received *many* questions asking about how our Department's Use of Force policy aligns with suggested force policy reforms across the country.

We want our community to know we lead the way in our profession, and our current and coming revised force policy will keep us at the forefront of progressive policing in our country.

From a local perspective, we serve in a unique, challenging environment. We have considerable crime issues. As in many cities, our community struggles to respond to those who are visibly suffering from mental illness, drug addiction, and poverty, and other conditions. These *all* play out within structures fundamentally undermined by systemic racism and injustice. Safety nets for those suffering are broken. Police are often involved because of a safety issue. Resources and health-care and criminal justice systems are over-stressed, and effective solutions are unclear.

Against this backdrop, our officers respond to over *70,000* calls for service each year. We make several thousand arrests, and issue thousands of citations. We do this work with a minimal reliance on force. We accomplish our work with an average of 32.4 uses of force per year from 2015 through 2019<sup>i</sup>.

It is *extremely* rare for us to have to use deadly force. In the past ten years, we've been involved in three shootings, the most recent of which occurred in 2012.<sup>ii</sup> Over the past *forty* years, our Special Response Team has been involved in only two shootings<sup>iii</sup>. This is true even though we deal with a multitude of potentially violent situations, including when our officers have been physically assaulted or attacked.

We achieve these results for many reasons, not the least among them: We screen for and hire good, smart, brave people; we train them according to our strong policies and organizational culture; and we provide active supervision in the field.

We strive to treat people with dignity and respect, in accordance with our core values<sup>iv</sup>. We implement and follow policies to minimize or eliminate harms, injuries, or deaths. We avoid

reliance on use of force whenever we can. We train and employ de-escalation tactics to slow events down; we train in Crisis Intervention Training to respond mindfully to people in crisis.

Our current policy, [General Order U-2 Use of Force](#), has been in place with slight modifications over the past decade. However, as best practices and law have evolved, we at the Department and the City Council recognized the policy needed to be updated. To that end, we've substantially updated the policy, now known in draft form as [Policy 300 Use of Force](#)<sup>1</sup>.

We submitted this draft Policy 300 to the Police Review Commission earlier this year, and it is now being considered by a subcommittee. That subcommittee met twice before the pandemic struck, and is starting up again—with my full support—to continue work on the policy.

Here is how GO U-2 and draft Policy 300 align with the [8cantwait.org](#) website's recommendations:

### **1. BAN CHOKEHOLDS AND STRANGLE HOLDS**

Chokeholds have been banned in Berkeley for 35 years, following a 1985 Council Resolution. This ban is codified in both GO U-2 and in draft Policy 300.

### **2. REQUIRE DE-ESCALATION**

The Berkeley Police Department was the first police department in California to receive POST certification for an [all day course](#), including class lecture and scenario based training. De-escalation has become prominent in our use of force culture. To help subjects experiencing mental or emotional crisis, our officers receive Crisis Intervention Training. Our training outlines on [De-escalation Training](#) and [Crisis Intervention Policy](#) are on our website.

Though GO U-2 does not specifically address de-escalation, we have fully embraced the use of de-escalation tactics through our training and practice.

Draft Policy 300 contains substantial policy requiring officers to utilize de-escalation techniques where immediate action is not necessary.

### **3. REQUIRE VERBAL WARNING BEFORE SHOOTING**

Both GO U-2 and draft Policy 300 require a verbal warning where feasible. Draft Policy 300 has more substantial language requiring officers to identify themselves, and warn that deadly force may be used, if feasible

Unfortunately, in some circumstances, there is not time to warn before shooting. An ambush or spontaneous attack upon an officer may simply not provide for an opportunity to issue a warning. For example, in 2012, the most recent officer-involved shooting in Berkeley, the suspect—wanted for murder—suddenly and without warning began firing on officers. No warning was feasible. The suspect was shot by an officer and survived his wounds.

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<sup>1</sup> Draft Policy 300 begins on page 9 of the PRC Document.

Sudden deadly attacks on police can and do occur, e.g. during a car stop, and again, it is not feasible to require a warning for officers fighting for their lives responding to sudden, deadly attacks.

#### **4. EXHAUST ALL OTHER MEANS BEFORE SHOOTING**

Both GO U-2 and Policy 300 require officers to evaluate the use of force based on the totality of the circumstances and make use of force decisions based on that criteria. Factors include the immediacy and severity of a threat to the safety of the officers or others, the severity of the crime involved, or whether the suspect is fleeing or resisting.

Draft Policy 300 has substantial language on de-escalation and tactics to utilize *far* before using deadly force.

#### **5. DUTY TO INTERVENE AND STOP EXCESSIVE USE OF FORCE BY OTHER OFFICERS**

Both GO U-2 and Draft Policy 300 require officers to intervene to stop an officer from using unauthorized force.

#### **6. BAN SHOOTING AT MOVING VEHICLES**

G.O. U-2 does not ban shooting at moving vehicles, but only allows it when firearms and deadly force are justified.

Draft Policy 300 has substantial language directing officers to not place themselves in the path of a vehicle, lest that become the rationale for using deadly force. A moving vehicle alone does not presumptively constitute a threat that justifies deadly force.

Deadly force *would* be justified if the officer is attempting to stop an imminent vehicle attack on a crowd, e.g. the 2017 domestic terrorist attack on demonstrators in Charlottesville, which killed Heather Heyer. Similar attacks have occurred in Manhattan in 2017, and in London, Nice, and other countries around the world.

You should know it is *extremely* rare for a Berkeley officer to fire into a moving vehicle. The last time a Berkeley Police officer shot into a moving vehicle was 2012, when officers attempted to stop a wanted suspect. An officer fired when the suspect backed into an officer, whose legs were slammed between the suspect and officer's vehicle. The suspect survived, and our officer was medically retired due to his injuries.

#### **7. REQUIRE USE-OF-FORCE CONTINUUM**

GO U-2 includes a Use of Force Continuum. This language was removed in draft Policy 300 in order to better align our policy with case law covering use of force.

Draft Policy 300 provides extensive guidance in the factors that officers should consider when making Use of Force Decisions.

## 8. REQUIRE COMPREHENSIVE REPORTING EACH TIME AN OFFICER USES FORCE OR THREATENS TO DO SO

GO U-2 requires that officers complete formal Use of Force reports whenever force results in complaint of injury, visible injury, or any weapon is used. *Every* Use of Force report is reviewed at each level through the chain of command, up to and including the Chief of Police.

Draft Policy 300 would expand the circumstances under which a formal Use of Force Report shall be completed, to also include instances where force was used to overcome active resistance.

The City Council's approval of a comprehensive Body Worn Camera program has supported our review of uses of force since October 2018. Body Worn Cameras have proved to be an invaluable tool in ensuring accountability.

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We look forward to completing our work with the Police Review Commission, and moving forward with implementing the updated policy on use of force. We anticipate presenting our annual Crime Report and our first annual Use of Force Report to Council on July 21, 2020, in conjunction with the Annual Crime Report.

These are serious, challenging times. My urgent hope is that we as a community refuse to let the wrong actions of others drive a wedge between the Berkeley community and the extraordinary and diverse team of men and women of the Berkeley Police Department. We are all in new territory, together. The way forward is through hard work, together, setting aside blame and shame, so that we emerge stronger, together, than we have ever been.

Yours in service,

Andrew R. Greenwood  
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<sup>i</sup> 2015-2019: 162 uses over five years, avg. 32.4/yr. By year: 2015-37; 2016-31; 2017-40; 2018-15; 2019-39.

<sup>ii</sup> In the past ten years we have had three shootings:

In 2010, [an officer shot at a suspect who was shooting at officers](#).

In 2012, [an officer shot at a suspect](#) who'd just backed his car into an officer, crushing his legs. The suspect survived and the officer was medically retired due to his injuries.

In 2012, [an officer shot a murder suspect who'd just fired on several other officers](#).

<sup>iii</sup> In forty years, the Special Response Team has fired on suspects only twice: During [the hostage rescue](#) at Henry's, and at a takeover robbery suspect.

<sup>iv</sup> Our BPD core values are: Integrity, Safety, Respect, Diversity, Professionalism