



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Police

Prepared by: Diana Bishop,
Chief of Police

City Manager Approval: 

TOPIC: POLICE USE OF FORCE POLICY

SUBJECT: PROPOSED REVISIONS TO THE CITY OF SAN RAFAEL POLICE DEPARTMENT'S USE OF FORCE POLICY

RECOMMENDATION:

Staff recommends the City Council accept this report and direct the Chief of Police to implement the recommended changes to the Police Department's Use of Force Policy.

EXECUTIVE SUMMARY:

In June 2020, Mayor Phillips signed President Barack Obama's "[Mayor's Pledge](#)" to review San Rafael's use of force policing policies. Additionally, the Mayor assembled a community task force to assist City leaders in reviewing and determining whether the City should make any changes to the Police Department's Use of Force Policy, particularly in light of Campaign Zero's [#8cantwait](#) policy recommendations. The task force members worked collaboratively alongside City leaders to review the current policies and discussed proposed changes to the policy. This specific analysis of the Use of Force Policy is not an end point, but rather a step along the way as the City reviews how our service delivery takes place and seeks solutions to address systemic racial injustice found throughout our society in governments, education, health care, employment laws/practices, criminal justice, and more.

BACKGROUND:

As noted above, in June 2020, Mayor Phillips signed President Barack Obama's "Mayor's Pledge" to review San Rafael's use of force policing policies and assembled a community task force to assist City leaders in reviewing and determining whether the City should make any changes to the Police Department's Use of Force Policy, with a particular focus on the [#8cantwait](#) policy recommendations.

["Campaign Zero"](#) is a non-profit organization that supports the analysis of policing practices across the country, conducts research to identify effective solutions to end police violence, and provides technical assistance to improve police accountability and model legislation to end police violence nationwide. The [#8cantwait](#) initiative is a project of Campaign Zero with the goal of improving police practices and reducing excessive use of force. Through the past few months, the messaging of the [#8cantwait](#) campaign has

FOR CITY CLERK ONLY

Council Meeting: _____

Disposition: _____

been updated regularly, but the basic eight principles remain to encourage more restrictive use of force policies with the goal of saving lives.

While the task force used the #8cantwait as a framework/starting point, there have been other similar policy recommendations made by others such as California Attorney General Xavier Becerra. In fact, the [media release](#) announcing the Attorney General's recommendations says that they "largely align with the current nationwide #8cantwait campaign."

The Mayor's task force consisted of the following members:

Alyssa Martinez, Community Member
Bishlam Bullock, Community Member
Carly Bainbridge, Community Member
Cristine Alilovich, Assistant City Manager
Damien Oyobio, Community Member
Darin White, Fire Chief
Diana Bishop, Chief of Police
Ember A. Vosmek-Park, Community Member
Gary Phillips, Mayor
Iman Kayani, Analyst
Jim Schutz, City Manager
Justin Read, Community Member
Kate Colin, Vice Mayor
Lucia Martel-Dow, Community Member
Renee Vargas, Community Member
Rob Epstein, City Attorney
Ruth Etcheverria, Community Member
Shibani Nag, Director of Employee Experience and Culture
Zachary Brickell, San Rafael Police Association President

The task force met virtually on June 24th and July 9th. The meetings were led by community member Lorenzo Jones, a professional facilitator. Supervisor Damon Connolly was also an instrumental participant in the task force.

At the first meeting, the group started by getting to learn a little bit about one another. Then, there was a review and Q&A of an overview document that the police department published in mid-June regarding use of force policies, entitled "[We Will Never Wait: A Commitment to Our Community](#)." The Chief of Police spoke about the department's alignment with the goals of the #8cantwait proposals. She also discussed the de-escalation that officers perform daily that significantly lessens the number of times officers must use force. In 2019, for example, the department responded to 49,105 calls for service. Only 66 of those calls (0.13% - or about one-eighth of one percent) resulted in the use of force. The Chief also shared with the group that our officers are trained to use time, de-escalation, and crisis intervention techniques to safely resolve tense situations. After some initial discussion of the policies, the group needed to review the information and return for a subsequent meeting.

The task force then met again on July 9th and reviewed a first set of redlined changes to the policy document which led to a deeper discussion of the policies and the intent underlying them. The discussion spurred some additional changes that have been incorporated in the final draft of the policy. A more comprehensive summary of the task force meetings is attached after the recommended policy changes.

ANALYSIS:

Based on the meetings with the task force, staff is proposing numerous changes to the Police Department's Use of Force Policy (attached) which is Section 300 of the Departmental policy manual. The overall manual is more than 700 pages long, but the task force focused in on Section 300 which contains the use of force policy and is the appropriate section to consider the #8cantwait guidelines.

The first change that readers likely will notice is a "Chief's Preface" that is now page one of the overall policy manual. Previously, the manual did not have a Chief's preface. This preface is intended to set the context and tone for the rest of the document. It captures the values of the Police Department in the Chief of Police's own words. It stresses the department's guiding principle when using force, which is **reverence for human life**.

The other changes are intended for inclusion in Section 300 of the San Rafael Police Department policy manual. To make it simple to identify what has been changed, the attached is shown in "track changes" with underlined words or sentences being new and strike-out to show what has been removed.

As shown in the attachment, there are "track changes" throughout Section 300. While most of the changes arose from direct conversation with the task force, there are additional revisions that reflect the latest update from Lexipol, which is an organization that provides the Department the most up-to-date base policies based on the Government Code, Penal Code, legislative changes, and best practices.

The revisions to Section 300 begin with another new preface intended to set the context for use of force in the department. Each of the #8cantwait elements are now reflected in various parts of Section 300 including chokeholds/strangleholds, de-escalation, warning before shooting, exhausting alternatives before shooting, duty to intervene, shooting at moving vehicles, use of force continuum, and comprehensive reporting.

At the August 17 City Council meeting, the Chief of Police will review the key changes made to the policy manual. Changes have been made in each of the policy topics raised by #8cantwait in addition to other related topics. There is also a new focus on stating clear expectations for minimizing the use of force in particular situations, as opposed to simply providing authority to use force when other options are infeasible.

The proposed policy changes were shared and discussed with San Rafael Police Association (SRPA) per the Meyer-Milias Brown Act. The SRPA supports the proposed changes to the use of force policy.

Again, these revisions to the Use of Force Policy are not intended to be an end point, but rather a step along the way as the City reviews how our service delivery takes place and seeks solutions to address

systemic racial injustice found throughout our society in governments, education, health care, employment laws/practices, criminal justice, and more.

Police professionals across our nation are addressing issues of use of force and racial injustice and reimagining the role of police services in response to quality of life concerns that may not necessitate an officer response. Once the revisions to the Use of Force Policy are accepted by the City Council, staff intends to continue examining public safety service delivery in the coming months as we review the City's annual goals and objectives.

Staff will develop a community process for the City Council's consideration to work with the Police Department to specifically analyze its calls for service and explore alternative means to better direct certain types of calls to assistance-providers that are not sworn peace officers. The Chief of Police has been consistently supportive of this concept since it was initially raised.

COMMUNITY OUTREACH:

The City created a [webpage](#) and form to capture input from our San Rafael community about actions to be considered by the City of San Rafael to make progress on racial and social justice in our community. We encourage the community to see the progress and directly comment on the webpage. The above mentioned "We Will Never Wait" was shared with our community using multiple forms of social media. The San Rafael Police Department has 15,100 Twitter followers, 10,985 Facebook followers, 2,450 Instagram followers and 36,633 subscribers on NextDoor.

FISCAL IMPACT:

There is no fiscal impact associated with this action.

RECOMMENDED ACTION:

Staff recommends the City Council accept the report.

ATTACHMENTS:

1. Revised Use of Force Policy
2. Summary of Community Task Force Meetings

CHIEF'S PREFACE

We in law enforcement must continue to improve and hold ourselves to the highest standard. The women and men of the San Rafael Police Department (SRPD) strive to reach that standard every day and are committed to providing professional, fair, compassionate, and dedicated law enforcement with integrity and respect.

This Police Department Policy Manual covers all our general, patrol, traffic, and investigation operations. It also covers equipment, support services, personnel rules, and more. Most of the Policy Manual sets forth legal procedures established by State and Federal statutes and case law which must be followed by the SRPD.

However, legal procedures are not always successful in revealing the heart and passion of our organization or exactly what we mean by the values shown on page three of the manual.

Over San Rafael's history, this isn't the first "Chief's Preface" to a SRPD Policy Manual and it won't be the last. But I write this at a time of incredible challenge and opportunity for our country due to a renewed national focus on social and racial equity. The fact we are also in a global pandemic serves to highlight inequity and systemic racism that exists in our country.

I want to assure our community that the San Rafael Police Department is committed to being part of the solution and working with City leaders and our community to find better ways for us to serve; to help uplift, build trust, protect, and guarantee the health and safety of all people in San Rafael.

I could not be prouder of the amazing individuals who embody the SRPD. I acknowledge the efforts made by our Department to address the problems of racial and social inequity through bias-based policing training, de-escalation techniques, being the first in Marin to use body worn cameras department-wide, and our focus on community engagement. Although we strive to be leaders in our profession, there is still work to be done by **all** Police Departments to deter the violence we have witnessed at the hands of Police officers nationwide.

We have recently modified the Use of Force section in this Policy Manual to stress our guiding principle when using force which is **reverence for human life**. We instruct our officers to use the least amount of force needed to successfully resolve an incident. We take the policies in this Manual very seriously and will hold all our officers accountable to them.

We investigate all citizen complaints and initiate our own internal investigations of our officers' conduct. In addition, certain investigations OF OUR OFFICERS are referred to separate law enforcement agencies, rather than SRPD. A variety of sanctions can and will be used to address

violations of these policies, including demotion, reduction in pay, suspension from employment, termination from employment, or criminal prosecution of the offending officer.

We also recognize that the same injustice and prejudice seen through the unlawful use of force against Black and Brown Americans lies at the foundation of so many other challenges facing our communities, including equal access to housing, education, healthcare, and employment.

The San Rafael Police Department stands ready to work with our community, community-based organizations, and other governmental agencies to continually improve and reimagine ways to ensure community safety that don't necessarily involve traditional law enforcement. There will always be the need for highly trained, ethical police officers. That is the makeup of the San Rafael Police Department. But I am excited to work with our officers, support staff, and our community to be a part of the best possible social justice system that uniquely meets the needs of the City of San Rafael.

This Policy Manual is, first and foremost, the guide for our officers. But we proudly post it on our website in a spirit of transparency and striving for both excellence and continual improvement.

Diana Bishop
Chief of Police
August 2020

San Rafael Police Department

San Rafael PD Policy Manual

DRAFT POLICY

300

The use of force by members of law enforcement is a matter of critical concern both to the public and the law enforcement community. It is recognized that some individuals will not comply with the law or submit to control unless compelled to do so by the use of force; therefore, officers are sometimes called upon to use force in the course of their duties. The San Rafael Police Department also recognizes that members of law enforcement must be ever mindful that they are not only the guardians but also the servants of the public.

The San Rafael Police Department's guiding principle when using force shall be reverence for human life. Officers shall attempt to control an incident by using time, distance, communication, and available resources in an effort to de-escalate the situation, whenever it is safe, feasible, and reasonable to do so, however, officers shall have no obligation or duty to retreat or desist from lawful enforcement action.

As set forth and in further detail below, Department personnel may use objectively reasonable force to carry out their duties. Officers may use deadly force only when they reasonably believe, based on the totality of the circumstances, that such force is necessary in defense of human life or against serious bodily injury. Officers who use unreasonable force degrade the confidence of the community we serve, expose fellow officers to physical hazards, violate the law and rights of individuals upon whom unreasonable force or unnecessary deadly force is used, and subject the Department and themselves to potential civil and criminal liability. Conversely, officers who fail to use force when warranted may endanger themselves, the community and fellow officers.

Officers shall carry out their duties, including use of force, in a manner that is fair and unbiased. Discriminatory conduct based on actual or perceived characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, or disability is prohibited.

Use of Force

300.1 PURPOSE AND SCOPE

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

In addition to those methods, techniques, and tools set forth below, the guidelines for the reasonable application of force contained in this policy shall apply to all policies addressing the

potential use of force, including but not limited to the Control Devices and Techniques and Conducted Energy Device policies.

300.1.1 DEFINITIONS

Definitions related to this policy include:

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

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

Force - The application of physical techniques or tactics that a reasonable officer would believe is likely to cause more than momentary discomfort, chemical agents, or weapons to another person. It is not a use of force when a person allows him/herself to be searched, escorted, handcuffed, or restrained.

Reasonable force – An objective standard of force viewed from the perspective of a reasonable officer, without benefit of 20/20 hindsight, and based on the totality of the circumstances known or perceived by the officer at the time. Determination of reasonableness will be through Policy 300.3.2.

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

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

300.2 POLICY

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

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

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

300.2.1 DUTY TO INTERCEDE AND REPORT

Any officer present and observing another law enforcement officer or an employee using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, shall, intercede to prevent the use of unreasonable force when and where it is safe and feasible to do so. An officer's duty is not diminished or impeded due to the experience,

rank, or assignment of the individual engaging in the unlawful conduct. An officer who observes a law enforcement officer or an employee use force that potentially exceeds what the officer reasonably believes to be necessary shall promptly report these observations to a supervisor as soon as feasible (Government Code § 7286 (b)).

300.2.2 PERSPECTIVE

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

300.2.3 FAIR AND UNBIASED USE OF FORCE

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

300.3 USE OF FORCE

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

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

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

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 approved tools, weapons, techniques 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 objectively 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.

300.3.1 USE OF FORCE TO EFFECT AN ARREST

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

300.3.1 ALTERNATIVE TACTICS - DE-ESCALATION

De-escalation is a fundamental principle of how we conduct police work. Taking no action, passively monitoring a situation, or bringing in partners such as a mobile crisis unit may be the most reasonable response to a situation, particularly those involving mental health crises. This policy manual refers to the importance of de-escalation in multiple sections. See, in particular, Section 466.6, our de-escalation policy.

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

- (a) Summoning additional resources that are able to respond in a reasonably timely manner.
- (b) Formulating a plan with responding officers before entering an unstable situation that does not reasonably appear to require immediate intervention.
- (c) Employing other tactics that do not unreasonably increase officer jeopardy.

In addition, when reasonable, officers should evaluate the totality of circumstances presented at the time in each situation and, when feasible, consider and utilize reasonably available alternative tactics and techniques that may persuade an individual to voluntarily comply or may mitigate the need to use a higher level of force to resolve the situation before applying force (Government Code § 7286(b)(1)). Such alternatives may include but are not limited to:

- (a) Attempts to de-escalate a situation.
- (b) If reasonably available, the use of crisis intervention techniques by properly trained personnel.

300.3.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

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

- (a) The apparent immediacy and severity of the threat to officers or others (Penal Code § 835a).
- (b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time (Penal Code § 835a).

- (c) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (d) The conduct of the involved officer leading up to the use of force (Penal Code § 835a).
- (e) The effects of suspected drugs or alcohol.
- (f) The individual's apparent mental state or capacity (Penal Code § 835a).
- (g) The individual's apparent ability to understand and comply with officer commands (Penal Code § 835a).
- (h) Proximity of weapons or dangerous improvised devices.
- (i) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (j) The availability of other reasonable and feasible options and their possible effectiveness (Penal Code § 835a).
- (k) Seriousness of the suspected offense or reason for contact with the individual prior to and at the time force is used.
- (l) Training and experience of the officer.
- (m) Potential for injury to officers, suspects, bystanders, and others.
- (n) Whether the person appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.
- (o) The risk and reasonably foreseeable consequences of escape.
- (p) The apparent need for immediate control of the subject or a prompt resolution of the situation.
- (q) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- (r) Prior contacts with the subject or awareness of any propensity for violence.
- (s) Any other exigent circumstances.

300.3.3 PAIN COMPLIANCE TECHNIQUES

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

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

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

300.3.4 CAROTID CONTROL HOLD AND CHOKE HOLD

San Rafael Police Officers are banned from using any technique, including the Carotid Control Hold and Choke Hold, that restricts the air or blood flow by restricting the neck or throat of a person.

Officers may use these techniques *only* if an individual is presently violent to the point where the officer reasonably believes that the individual will cause serious bodily injury or death to officers or others.

~~The proper application of the carotid control hold may be effective in restraining a violent or combative individual. However, due to the potential for injury, the use of the carotid control hold is subject to the following:~~

- ~~(a) The officer shall have successfully completed department approved training in the use and application of the carotid control hold.~~
- ~~(b) The carotid control hold may only be used when circumstances perceived by the officer at the time indicate that such application reasonably appears necessary to control a person in any of the following circumstances:
 - ~~1. The subject is violent or physically resisting.~~
 - ~~2. The subject, by words or actions, has demonstrated an intention to be violent and reasonably appears to have the potential to harm officers, him/herself or others.~~~~
- ~~(c) The application of a carotid control hold on the following individuals should generally be avoided unless the totality of the circumstances indicates that other available options reasonably appear ineffective, or would present a greater danger to the officer, the subject or others, and the officer reasonably believes that the need to control the individual outweighs the risk of applying a carotid control hold:
 - ~~1. Females who are known to be pregnant~~
 - ~~2. Elderly individuals~~
 - ~~3. Obvious juveniles~~
 - ~~4. Individuals who appear to have Down syndrome or who appear to have obvious neck deformities or malformations, or visible neck injuries~~~~

- ~~(d) Any individual who has had the carotid control hold applied, regardless of whether he/she was rendered unconscious, shall be promptly examined by paramedics or other qualified medical personnel and should be monitored until examined by paramedics or other appropriate medical personnel.~~
- ~~(e) The officer shall inform any person receiving custody, or any person placed in a position of providing care, that the individual has been subjected to the carotid control hold and whether the subject lost consciousness as a result.~~
- ~~(f) Any officer attempting or applying the carotid control hold shall promptly notify a supervisor of the use or attempted use of such hold.~~
- ~~(g) The use or attempted use of the carotid control hold shall be thoroughly documented by the officer in any related reports.~~

300.3.5 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~~ shall not 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 San Rafael Police Department for this specific purpose.

300.4 DEADLY FORCE APPLICATIONS

Providing a verbal warning before an application of deadly force is the default and should always take place, unless it is not feasible and/or the officer has objectively reasonable grounds to believe the person is aware they are a peace officer and that deadly force may be used.

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

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

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

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

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

300.4.1 SHOOTING AT OR FROM MOVING VEHICLES

A ban on shooting at or from a moving vehicle is the default unless the following conditions exist: An officer should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the **imminent** threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others (Government Code § 7286(b)).

Shots fired at or from a moving vehicle are rarely effective and may involve additional considerations and risks. When feasible, officers should take reasonable steps to move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants.

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

300.4.2 DISPLAYING OF FIREARMS

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

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

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

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. To collect data for purposes of training, resource allocation, analysis, and related purposes, the Department may require the completion of additional report forms, as specified in department policy, procedure, or law. See the Report Preparation Policy for additional circumstances that may require documentation.

300.5.1 NOTIFICATION TO SUPERVISORS

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

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

300.5.2 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

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

300.6 MEDICAL CONSIDERATION

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

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

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

The on-scene supervisor or, if the on-scene supervisor is not available, the primary handling officer shall ensure that any person providing medical care or receiving custody of a person following any

use of force is informed that the person was subjected to force. This notification shall include a description of the force used and any other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

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

300.7 SUPERVISOR RESPONSIBILITY

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

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

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

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

300.7.1 SHIFT SUPERVISOR RESPONSIBILITY

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

300.8 TRAINING

The Department shall provide training to officers, investigators, and supervisors on this policy a minimum of three times per year and demonstrate their knowledge and understanding (Government Code § 7286(b)). De-escalation and situational reassessment are part of all range, scenario, simunition, defensive tactics, and active shooter training. The Department also provides 12 scenario-based training bulletins each month to assist officers in learning how to apply policies and improve their ability to make well-reasoned decisions.– Policy 466 Crisis Intervention Incidents outlines de-escalation techniques and considerations.

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

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

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

300.9 USE OF FORCE COMPLAINTS

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

300.10 ADMINISTRATIVE REVIEW

The supervisor shall attach a completed "Use of Force Analysis Form" to a copy of the associated incident report and route through the chain of command for staff review and recommendations. If the incident involved the use of a Conducted Energy Weapon (CEW), then the supervisor shall complete and attach an "CEW Use Form", along with the Electro Muscular Disruption Technology (EMDT) data download.

The report is based on the initial information available at the time the incident is reviewed. Once the form has been reviewed by the Chief of Police it shall be forwarded to his or her designee for

statistical information gathering and early intervention purposes. The completed and signed "Use of Force Analysis Form" will be retained, but the attached copy of the associated report will then be destroyed. The review of control holds, or other pain compliance techniques does not require review above the rank of Lieutenant unless there are associated injuries.

The purpose of this review is to meet the stated objectives of this policy and is not intended to determine whether each application of force was within policy. This review is independent of any notification and review required under "Supervisor Responsibility" or any subsequent internal administrative investigations.

The administrative review shall be used to provide direction to command staff regarding general policy issues, identify any potential training concerns and maintain statistical information related to Use of Force incidents. The statistical information shall be maintained in a spreadsheet format and minimally include the following categories:

Date, Case Number, Type of Force Used, Overall Effectiveness, and Injuries Sustained (Officer and Subject). Any application of force other than a simple control hold or pain compliance technique is required to be documented on the "Use of Force Analysis Form." The pointing of a firearm at a person shall be reported as an application of force.

The statistical information spreadsheets shall be stored in the following file location: "W:\Staff Share\Use of Force Reports."

Yearly, the Department will post Use of Force statistics on the Department's website and other platforms for review.

300.11 USE OF FORCE ANALYSIS

At least annually, the Operations Bureau Commander or designee should prepare an analysis report on use of force incidents. The report should be submitted to the Chief of Police. 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.

300.12 POLICY REVIEW

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

300.13 POLICY AVAILABILITY

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

300.14 PUBLIC RECORDS REQUESTS

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

Summary of Community Task Force Meetings on Police Use of Force Policy

In June 2020, San Rafael Mayor Phillips created a community task force to review the [#8cantwait](#) policy recommendations and determine if the City should make any changes to our Police Department's use of force policy. The task force, including community members and key City leaders collaboratively reviewed the current policies together and discussed the Chief of Police's proposed changes based on the feedback from the community members. A list of the members of the task force can be found on the City's [website](#).

The task force met twice, with meetings facilitated by Lorenzo Jones, a professional consultant/facilitator.

Task Force Meeting #1 via Zoom: June 24, 2020

- Chief Bishop reviewed her most recent messaging to the community in a document titled "[We Will Never Wait – A Commitment to Our Community](#)" which includes specific information in an effort to assure our community that our police department is committed to being part of the solution as it relates to racial justice and to will continue working with City leaders and our community to find better ways for our police department to serve.
- The task force also reviewed the San Rafael Police Department's (SRPD) current use-of-force policies. The Chief of Police clarified that these policies are based on Federal and California law and most of the language is provided by Lexipol who sets the industry rules and standards for policies following adoption of new laws. The taskforce also learned more about the SRPD's extensive training program and how many of the concepts put forward by the #8cantwait campaign are already incorporated into policy and practiced here in San Rafael.
- The task force discussed the key elements related to #8cantwait policies and how these could be incorporated into SRPD's operational protocols and discussed specific changes to the use of force policy itself. It was noted that altering some of the language in the current policies would help clarify the operational protocols and make it easier for the public to understand.
- Chief Bishop shared the use of force statistics for 2019, in which only 66 of 49,105 reports (or 0.13%) taken required use of force.
- Several members of the task force suggested that the "use of force" data be made public and accessible online for the community. SRPD reports certain uses-of-force cases to the Department of Justice on an annual basis, having this information readily available online will help build trust between the community and local law enforcement. There was discussion about the expansion of comprehensive reporting requirements requiring officers to report all incidents involving a threat to use force or pointing of firearm at an individual.
- Several task force members raised questions related to accountability if an officer were not to not intercede if they were to witness another officer using excessive force. Chief Bishop clarified that the duty to intercede is clear requirement in the department's current policy.

- The Chief of Police clarified that the department conducts internal investigations when there is alleged misconduct and holds officers accountable for violating department policy. There are various levels of discipline (i.e. reduction in pay, demotion, suspension from employment, termination). The City Attorney further elaborated that there are also civil and criminal proceedings that could occur if the conduct of the officer warranted it.

Task Force Meeting #2: July 9, 2020

- The second task force meeting focused on the review of use-of-force policies and the intent behind them, starting with a discussion of the Police Chief's Preface to the Police Procedure Manual. This preface is essentially an introduction by the Chief of Police about her policing philosophy and vision for the Police Department. Chief Bishop's preface highlighted the disproportionate use-of-force against people of color nationwide and the underlying inequities in policing, and other parts of our society, as well as, the role of leaders to drive change.
- Next, the task force discussed the SRPD's "Policy 300" which outlines the use-of-force guidelines. Several task force members suggested revising the language in these policies to add clarity. For example, the language on the Carotid Control Hold policy was considered to be longwinded and somewhat confusing. The original language went into the details of when, how, and where to use this technique. The Chief of Police clarified that in effect the carotid hold is currently prohibited because officers have not been trained in using it and therefore are not authorized to do so. The Chief agreed to simplify this language to make it more clear that the use of a carotid hold is banned.
- The Chief of Police discussed the department's philosophy and practice to use de-escalation techniques as a best practice in the course of their duties. Additional language is proposed to confirm this approach is clearly preferred over use of force.
- The group discussed the definition of the word "reasonable", which is used throughout the policy. Factors used to determine "reasonableness" are based partly on [Assembly Bill 392](#). This standardized terminology is used because it is impractical to foresee every conceivable situation that an officer might encounter. Several members of the task force felt the need to clarify this further, therefore the Chief of Police is proposing adding additional language to the policy to define "reasonable force".
- The task force members shared a concern regarding the language qualifying when an officer has the duty to intercede. This feedback helped to inform edits to this language proposed by the Police Chief which will further clarify the duty to intercede.
- The task force also reviewed SRPD's training standards. The policy states that training is provided "periodically," however in actuality SRPD conducts training multiple times per year on an ongoing basis. All training is documented, and the State of California audits these records to make sure required training courses are documented properly. Some of the task force members expressed that the training should not be used as a punitive measure after an incident, but rather it should be conducted more proactively to train officers as a preventative measure. The Chief of Police proposed adding language to the policy to clarify the frequency of proactive training.

- The task force also discussed the desire to make data available publicly for the community. Currently, the data provided by SRPD is divided into two categories: criminal vs. non-criminal. Members of the task force expressed that more specific data would help build trust with the community and help the community better understand the types and number of cases.
- Lastly, the task force discussed the use of bodycams. It was noted that in 2014, SRPD was the first agency in Marin County to incorporate body cameras across the board. The task force wanted to better understand how this footage is used. The Chief shares that body camera footage is audited by supervisors to review any problematic incidents and used in the course of internal investigations.

Next Steps

The Chief of Police will prepare recommended changes to the SRPD Use of Force Policy based on feedback from the task force and the San Rafael Police Association for the City Council to consider at an upcoming meeting.