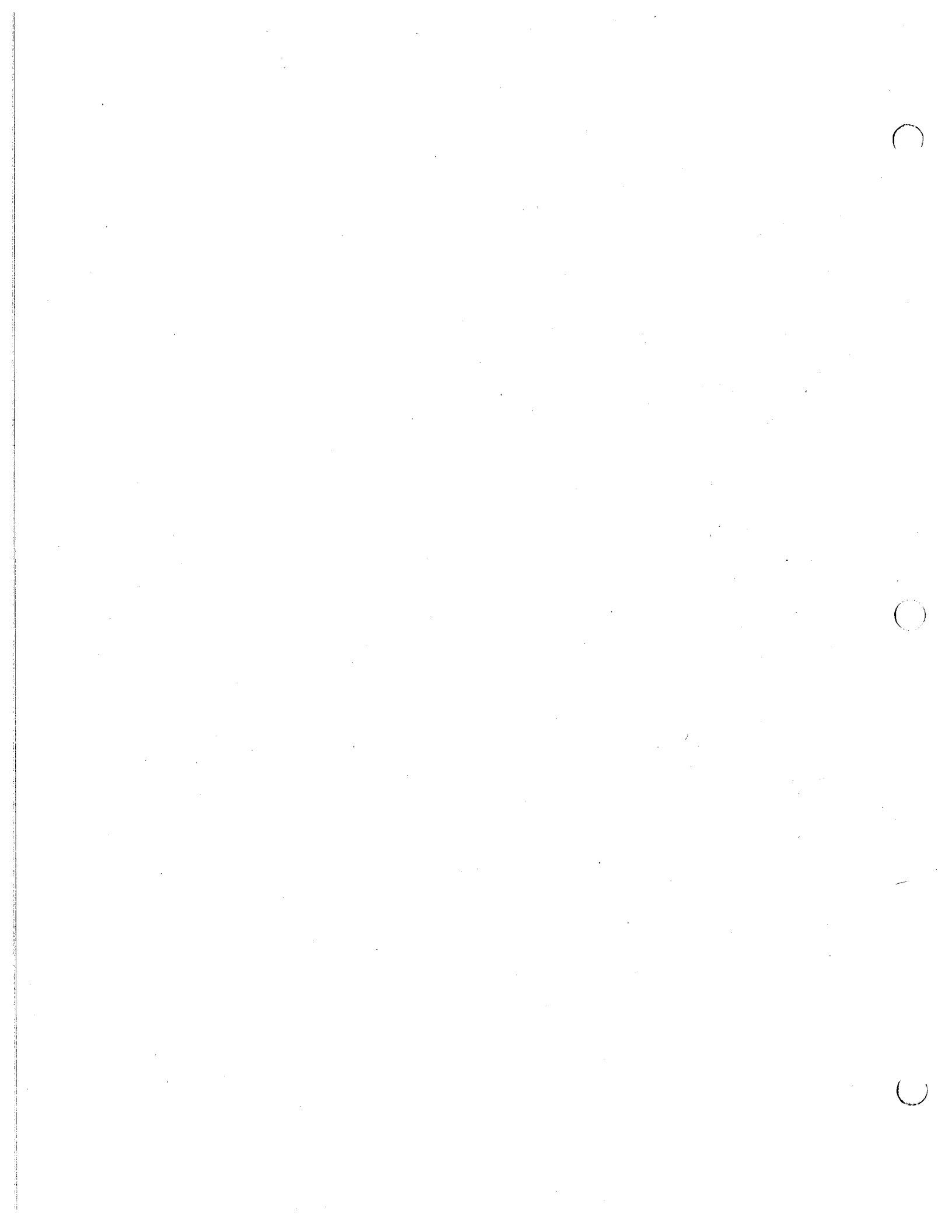


COMPLAINT DEADLINES REPORT

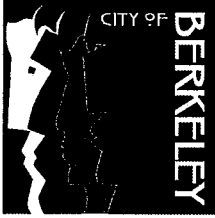
INVESTIGATIONS										
NO.	Complainant	Filed Date	Incident Date	Notice of Allegations Due (20 Bus. Day)	Notice of Allegations Issued	BOI Packet (80 days)	BOI Packet Issued	BOI Findings Report Goal (105 days)	120 Days	STATUS
2418		05/10/17	Apr-17	06/07/17	05/17/17	07/29/17	07/28/17	08/23/17	09/07/17	BOI 11-17 (copntinued)
2419		06/14/17	Jun-17	07/12/17	06/19/17	09/02/17		09/27/17	10/12/17	subject ofc. out to 11/1
2422		07/12/17	Jun-17	08/09/17	07/31/17	09/30/17	10/05/17	10/25/17	11/09/17	Findings Due 11-8
2424		08/07/17	Jul-17	09/04/17	08/09/17	10/26/17		11/20/17	12/05/17	investigation
2426		09/05/17	Jun-17		10/02/17					Admin. Closure?
2428		10/11/17	Mar-17	11/08/17		12/30/17		01/24/18	02/08/18	Interview/Allegations Due
2429		10/20/17	Aug-17	11/17/17		01/08/18		02/02/18	02/17/18	Allegations Due
2430		10/20/17	Aug-17	11/17/17		01/08/18		02/02/18	02/17/18	Interview/Allegations Due



PROPOSAL:
GOOD GOVERNANCE POLICE
ACCOUNTABILITY PLAN

1. The Police Chief will be responsible for creating annual goals for the department with input from the community that are measurable and related to reducing crime and improving the safety situation in Berkeley.
2. The Police Chief will create an annual training and professional development plan for the department that supports the achievement of the annual goals. This plan will be submitted by the start of each fiscal year.
3. The BPD will create a budget plan that supports the achievement of these identified goals.
4. The Police Chief will **work to** identify data sources, **metrics** and measures that will assist the police department, the City Council, the Police Review Commission and the public in evaluating the effectiveness of the department. Departmental effectiveness will be evaluated annually based on the measures and reported to the PRC, the City Council and the public.
5. The BPD will hire a full time data analyst to work with staff to improve data collection and analysis and to assist in the creation of credible, reliable data that can be used for evaluation of departmental effectiveness, allocation of funds, and the focus of trainings and professional development.
6. The Berkeley Police Department shall commence regular annual or bi-annual departmental audits of assets and expenses





Kate Harrison
Councilmember District 4

REVISED AGENDA MATERIAL

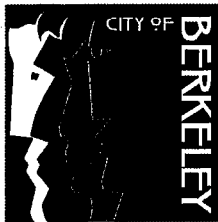
Meeting Date: October 31, 2017

Item Number: 26

Item Description: Direct the City Manager and the Berkeley Police Department Regarding the Berkeley Police Department's Use of Force Policy

Submitted by: Councilmember Kate Harrison

1. Clarified that the item directs the City Manager and not the Berkeley Police Department.
2. Clarified that the City Manager shall present to the Council by February 27, 2018 a final version of General Order U-2.
3. Specified that prior to implementation, the revised General Order U-2 shall be submitted to the PRC.
4. Clarified that the item does not require adoption of the proposed amendments to General Order U-2 included in Attachment 1.
5. Simplified Attachment 1.



Kate Harrison
Councilmember District 4

ACTION CALENDAR
October 31, 2017

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 Berkeley Police Department ("BPD" or "the Department") 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 ("PRC") and Council.
2. Direct that the City Manager report to the Council by December 12, 2017 on the progress to date and present to the Council by February 27, 2018 a final version of General Order U-2.
- 2.3. Prior to implementation, the revised General Order U-2 shall be submitted to the PRC in accordance with BMC 3.32.090(B).

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 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. The Council, deferring to the expertise of the BPD, is not requiring that the Department adopt the proposed amendments to General Order U-2 included in Attachment 1 of this item. Instead, Attachment 1 should serve as a template for accomplishing the broader goals of the Council and the recommendations outlined in item 1.

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~~ PRC 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

Direct the City Manager and the Berkeley Police Department Regarding the
Berkeley Police Department's Use of Force Policy

CONSENT CALENDAR
October 31, 2017

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

BERKELEY POLICE DEPARTMENT

DATE ISSUED: ~~September 20, 2017~~

GENERAL ORDER U-2

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, and de-escalation tactics before resorting to force, whenever feasible.
- 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. 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 are required to de-escalate the force when the officer 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).
- 7 - 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.
- 8 - Use of force against vulnerable populations (such as 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.
- 9 - 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

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- punishment.
- 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.
- 211 - 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.
- 312 - 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.
- 414 - Lethal Force: Any use of force that creates a substantial risk of causing death or serious bodily injury.
- 515 - 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.
- 616 - Non-Lethal Force: Any use of force other than lethal force or less-than-

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lethal force.

- 717 - Officer (or) Police Officer: Any sworn peace officer.
- 818 - 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.
- 919 - Employee: Any non-sworn employee of the Berkeley Police Department, including those deemed "authorized employees."
- 4020 - 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.
- 4121 - 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

- 4222 - 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:

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- (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.

4323 - Officers shall not discharge firearms or use other lethal force in connection with police duty, except in the following circumstances:

Use of Vehicles

4424 - 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

4525 - Less-than-lethal munitions shall only be deployed and used by trained officers authorized by the Chief of Police.

4626 - 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.

4727 - 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;

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- (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.
- 1828 - 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.
- 1929 - 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

- 2030 - When lethal force and less-than-lethal force are not authorized, officers and authorized employees may use reasonable approved non-lethal force techniques

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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

2431 - 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) On Sept. 12, 2017, the Berkeley City Council re-affirmed and further amended the Council's policy regarding the use of pepper spray as such use relates to crowd control, expression of First Amendment speech, and addressing acts of violence by specific individuals within a crowd.
 - (1) Officers shall not use pepper spray as a crowd control technique to disperse or move a crowd. Oleoresin Capsicum (pepper spray) shall not be directed against a person or persons who are engaged in legal speech or other expression that is protected by the First Amendment, nor upon those committing unlawful acts by non-violent or passive resistant means, (e.g. sitting or lying down to block a street or doorway).
- (c) Deployment of less-than-lethal munitions from a shotgun is prohibited.

Provision of Medical Attention

2232 - 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

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A-17).

Unauthorized Use of Force / Intervention and Reporting

2333 - 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

34 - 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.

35 - 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

36 - 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.

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(d) Officer used lesser levels of force.¹

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

Use of Force / Level 2

38 - 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

39 - 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

40 - Level 3 Incident Parameters:

(a) Use of firearm, officer involved shooting

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

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

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- (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

41 - 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).

2442 - 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:

- (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 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)
- (d) 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

2543 - The officer or employee must also complete a police or incident report in any of the above four situations.

2644 - 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).

Use of Force / Supervisor Responsibilities

45 - 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.

2746 - 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

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DATE ISSUED: ~~September 20, 2017~~

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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 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)
- (d) 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.

2847 - A supervisor shall complete a Use of Force Report in any of the above four situations.

- (a) 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.
- (b) 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)

48 - 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

2949 - 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.

3050 - 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.

3151 - 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.

52 - 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

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revision or additional training.

- 53 - Use of Force Reports shall be made available internally in a digital format.
- 54 - 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 details of the race and ethnicity of the individual impacted, 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
- 55 - Officers will receive annual (at a minimum) training on the policy outlined in General Order U-2 and demonstrate their knowledge and understanding.
- 3256 - 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

- 3357 - 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: *Tennessee v. Garner* (1986) 471 U.S. 1
Graham v. Connor (1989) 490 U.S. 386

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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”
National Tactical Officers Association, General Policy Statement
for Less-Than-Lethal Impact Projectiles (11/22/2002)

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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.; or (4) Use of any force meeting the parameters of a Level 1, Level 2 or Level 3 use of force.

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

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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)