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USE OF FORCE[1]

The San Francisco Police Department's highest priority is the safety of the residents and visitors to San Francisco and the men and women who protect them. Officers shall demonstrate this principle in their daily interactions with the community they are sworn to serve. The Department is committed to using communication and de-escalation principles before resorting to the use of force, whenever appropriate. The Law Enforcement Code of Ethics requires all sworn law enforcement officers to carry out their duties with courtesy, respect, professionalism, and to never employ unreasonable force. These are key factors in keeping the public safe and safeguarding the public's trust. The purpose of the policy is not to restrict officers from using reasonable force to protect themselves or others but to provide general guidelines that may assist the Department in achieving its highest priority.[2]

I. GENERAL USE OF FORCE POLICY

Peace officers are authorized by the U.S. Constitution and the laws of the State of California to use **reasonable force** to effect an arrest, to prevent escape, to overcome resistance, in self-defense, or in defense of others while acting in the lawful performance of their duties.

Reasonable force is a legal term for how much and what kind of force a peace officer may use in a given circumstance. The proper objective for the use of force by a peace officer in any enforcement situation is to ultimately gain and maintain control of the situation or individual(s) encountered.

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[1] The following policy proposal includes language from the Peace Officer Standards and Training (P.O.S.T.) learning domain (LD) #20 (Use of Force) that was last revised in October 2015. It includes SFPD (both current and draft policy) and POA proposed language. Unless footnoted, all material derives from P.O.S.T. LD #20.

[2] POA

1. Fourth Amendment "objective reasonableness" standard

The United States Supreme Court decided *Graham v. Connor*, 490 U.S. 386 (1989), which established that a peace officer's use of force would be judged under the Fourth Amendment using an "objective reasonableness" standard.

The Supreme Court balanced a subject's Fourth Amendment right to remain free from unreasonable seizure against the government's interest in maintaining order through effective law enforcement.

The Court's determination of the objective reasonableness of a use of force is fact specific and based on the totality of circumstances confronting the officer at the time force was used. The determination of reasonableness recognizes that peace officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving. The reasonableness of a particular use of force is judged from the perspective of a reasonable officer on the scene, not with 20/20 hindsight, and without regard to the officer's underlying intent or motivation.

When a use of force intrudes upon an individual's liberty interest, it is measured by the type and amount of force employed. The type of force used and foreseeable injury resulting from it must be **objectively reasonable** in light of the facts and circumstances confronting the officer.

An officer is not required to choose the "best" or "most" reasonable action as long as the officer's conduct falls within the range of conduct that is reasonable under the circumstances.

Officers may use the degree of force reasonable and necessary to protect others or themselves, but no more. If exceptional circumstances occur which are not contemplated by this order, officers should use any force reasonably necessary to protect themselves or others; however, they must be able to articulate the reasons for employing such force.[3]

A. Graham Factors

When balanced against the type and amount of force used, the Graham factors used to determine whether an officer's use of force is objectively reasonable are:

- the severity of the crime at issue
- whether the suspect posed an immediate threat to the safety of the officers or others
- whether the suspect was actively resisting arrest
- whether the suspect was attempting to evade arrest by flight

Of these factors, the most important is whether the individual poses an immediate threat to the officer or public.

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[3] This last paragraph is SFPD current policy

B. Other Factors to be Considered

The reasonableness inquiry is not limited to the consideration of those factors alone. Other factors which may determine reasonableness in a use of force incident may include:

- availability of other reasonable force options[4]
- number of officers/subjects
- age, size, gender, and relative strength of officers/subjects
- specialized knowledge, skills, or abilities of subjects
- prior contact
- injury or exhaustion of officers
- access to potential weapons
- environmental factors, including but not limited to lighting, footing, sound conditions, crowds, traffic, and other hazards
- whether the officer has reason to believe that the subject is mentally ill, emotionally disturbed, or under the influence of alcohol or drugs
- whether there was an opportunity to warn about the use of force prior to force being used, and, if so, was such a warning given
- whether there was any assessment by the officer of the subject's ability to cease resistance and/or comply with the officer's commands

C. Reasonable Officer Standard asks:

- would another officer
- with like or similar training and experience,
- facing like or similar circumstance,
- act in the same way or use similar judgment?

2. Sufficiency of Fear

An officer's subjective fear alone does not justify the use of force. A simple statement of fear for your safety is not enough; there must be objective factors to justify your concern.

- It must be objectively reasonable.
- It must be based on the facts and circumstances known to the officer at the time.

3. The Use of Force Should Be Proportional

The level of force applied must reflect the totality of circumstances known or perceived by the officer at the time force is applied, including imminent danger to officers or others.

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[4] Not in same listed order as POST. This was moved to the top of list. *See Bryan v McPherson* , 608 F.3d 614 (9th Cir. 2010)

Proportional force, however, does not require officers to use the same type or amount of force as the subject. The more immediate the threat and the more likely that the threat will result in death or serious physical injury, the greater the level of force that may be objectively reasonable and necessary to counter it.[5]

4. California Law Regarding Use of Force

California Penal Code section 835a states that: "Any officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect an arrest, to prevent escape or to overcome resistance.

A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance."

II. IMPORTANCE OF EFFECTIVE COMMUNICATION AND DE-ESCALATION

1. EFFECTIVE COMMUNICATION[6]

A major goal of law enforcement is to gain voluntary compliance without resorting to physical force, and effective communication can be the key to gaining voluntary compliance. Communication involves both command presence and words resulting in improved safety and professionalism. In fact, vast majority of law enforcement responsibilities involve effective communication. Effective communication is the most basic element of the use of force. In particular, effective communication may enable a peace officer to gain cooperation and voluntary compliance in stressful situations (e.g., confronting a hostile subject). Communication with non-compliant subjects can be very effective when officers are able to establish a rapport, use the proper voice intonation, ask questions and /or provide advice to defuse conflict and achieve voluntary compliance before resorting to force options.

2. DE-ESCALATION[7]

If a subject is not endangering the safety of the public or an officer, fleeing, or destroying evidence, officers should, when feasible, employ de-escalation techniques to decrease the likelihood of the need to use force during an incident and to increase

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[5] Edited are based on Seattle's Use of Force Policy.

[6] This section is a combination of POST and SF proposed revisions.

[7] This section is a combination of POST and SF proposed revisions.

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

III. COMMUNITY POLICING

Community members want police officers to possess the skills necessary to subdue violent and dangerous subjects. Officers should use these skills to apply only the amount of force that is objectively reasonable under the totality of circumstances known to the officer. Force should never be used to punish subjects. In the American criminal justice system, punishment in the form of judgment is the sole responsibility of the courts.

IV. DUTY TO RENDER FIRST AID/NOTIFICATION OF EMERGENCY MEDICAL PERSONNEL[8]

If trained to do so, officers shall render first aid when a subject is injured or claims injury caused by an officer's use of force *unless* first aid is declined, the scene is unsafe, or emergency medical personnel are available to render first aid.

Officers shall arrange for a medical *assessment* by emergency medical personnel when a subject is injured or complains of injury caused by an officer's use of force, or complains of pain that persists beyond the use of a physical control hold, and the scene is safe. If the subject requires medical *evaluation*, the subject shall be transported to a medical facility.

V. PERMISSIBLE CIRCUMSTANCES FOR USE OF FORCE

1. Officers May Use Reasonable Force Options In The Performance Of Their Duties In The Following Circumstances:[9]

A. To prevent the commission of a public offense.

B. To effect a lawful arrest or detention and/or to prevent escape.

C. In self-defense or in the defense of another person.

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[8] SFPD draft language

[9] POA and SFPD language

D. To prevent a person from injuring himself/herself. However, an officer is prohibited from using deadly force against a person who presents only a danger to himself/herself and does not pose an imminent threat of death or serious bodily injury to another person or officer.

2. An Officer's Force Options Are Largely Dictated by The Subject's Actions

Force options are choices available to a peace officer to overcome resistance, to effect arrest, to prevent escape, to defend self or others, and to gain control of a particular situation. What constitutes reasonable force is in large part dependent on the subject's actions.

A. Categories of Subject's Actions

Situations confronting peace officers may change rapidly. Therefore, officers must continually reevaluate the subject's action and must be prepared to escalate or deescalate as needed. But, in general, as subject's actions can be broken down into five categories:

- **Compliant**: Subject offers no resistance.
- **Passive Non-Compliance:** Does not respond to verbal commands but also offers no physical form of resistance.
- **Active Resistance:** Physically evasive movements to defeat an officer's attempt at control, including bracing, tensing, running away, verbally, or physically signaling an intention to avoid or prevent being taken into or retained in custody.
- **Assaultive:** Aggressive or combative; attempting to assault the officer or another person, verbally or physically displays an intention to assault the officer or another person.
- **Life-Threatening:** Any action likely to result in serious bodily injury or death of the officer or another person.

B. Types of Force:

Types of force include: non-deadly force; non-deadly intermediate force; and deadly force.

- **Non-deadly force:** force that poses a minimal risk of injury or harm.
- **Intermediate force:** force that poses a foreseeable risk of significant injury or harm.

Case law decisions have specifically identified and established that certain force options such as pepper spray, probe deployment with a TASER, impact projectiles, canine bites and baton strikes are classified as intermediate force likely to result in significant injury. Intermediate force will typically only be acceptable when officers are confronted with active resistance and a threat to the safety of officers or others.

- **Deadly force:** force with a substantial risk of causing serious bodily injury or death.

The circumstances in which deadly force may be used is discussed in detail below. The following force options, including but not limited to vehicle intervention (Deflection)[10] and the use of firearms, are considered deadly force.

C. Tools and Techniques for Force Options

The following tools and techniques are not in a particular order nor are they all inclusive.

- Verbal Commands/Instructions/Command Presence
- Control Holds/Takedowns
- Impact Weapons
- Electronic Weapons (Tasers, Stun Guns, etc.)
- Chemical Agents (Pepper Spray, OC, etc.)
- Police Canine
- Vehicle Intervention (Deflection)
- Firearms
- Personal Body Weapons
- Impact Projectile
- Carotid Restraint Control Hold

D. Force Options Chart

The following chart illustrates how a subject's resistance/actions can correlate to the force applied by an officer:

Subject's Actions	Description	Possible Force Option
Compliance	Subject offers no resistance	• Mere professional appearance • Nonverbal actions • Verbal requests and commands • Handcuffing and control

[10] SFPD, not POST. Specifically, DGO 5.05

Subject's Actions	Description	Possible Force Option
		holds
Passive non-compliance	Does not respond to verbal commands but also offers no physical form of resistance	• Officer's strength to take physical control, including lifting/carrying • Pain compliance control holds, takedowns and techniques to direct movement or immobilize
Active resistance	Physically evasive movements to defeat an officer's attempt at control, including bracing, tensing, running away, verbally, or physically signaling an intention to avoid or prevent being taken into or retained in custody	• Use of personal body weapons to gain advantage over the subject • Pain compliance control holds, takedowns and techniques to direct movement or immobilize a subject
Assaultive	Aggressive or combative; attempting to assault the officer or another person, verbally or physically displays an intention to assault the officer or another person	• Use of devices and/or techniques to ultimately gain control of the situation • Use of personal body weapons to gain advantage over the subject • Carotid restraint
Life-threatening	Any action likely to result in serious bodily injury or death of the officer or another person	• Utilizing firearms or any other available weapon or action in defense of self and others to stop the threat • Vehicle intervention (Deflection)

3. Verbal Warning

If feasible, and if doing so would not increase the danger to the officer or others, an officer shall give a verbal warning to submit to the authority of the officer before using any intermediate or deadly force option.[11]

VI. DEADLY FORCE

The use of deadly force is the most serious decision a peace officer may ever make. Such a decision should be guided by reverence for human life (including the officer's life and others that may be in imminent danger) and used only when other means of control are unreasonable or have been exhausted.

Deadly force is force applied by a peace officer that poses a substantial risk of serious bodily injury or death.

Reverence for all life is the foundation on which the use of deadly force rests. The authority to use deadly force is a serious responsibility given to peace officers by the people who expect them to exercise that authority judiciously.

1. When an Officer May Use Deadly Force

A. To Protect Self or Life

An officer may use deadly force when the officer has the objective and reasonable belief that the subject's actions pose an **imminent threat** of death or **serious bodily injury** to the officer or another person, based upon the totality of the facts and circumstances known to the officer at the time.

Imminent threat: means a significant threat that peace officers reasonably believe will result in death or serious bodily injury to themselves or to other persons. Imminent danger is not limited to "immediate" or "instantaneous." A person may pose an imminent danger even if they are not at the very moment pointing a weapon at another person.

Serious bodily injury: means 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. (California Penal Code section 243(f)(4).)

B. Use of Deadly Force on Fleeing Subject

Deadly force may be used on a fleeing subject only where:

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[11] POA

1) The officer has reasonable cause to believe that the person has committed or has attempted to commit a violent felony involving the use or threatened use of deadly force;

2) The suspect poses a threat of serious physical harm to the officer or to others if the subject's apprehension is delayed

3) The use of deadly force is reasonably necessary to prevent escape;

4) Where feasible, some warning should be given before deadly force is used under these circumstances.

VII. DISCHARGE OF FIREARMS: PERMISSIBLE CIRCUMSTANCES[12]

1. When An Officer May Discharge A Firearm:

An officer may discharge a firearm in any of the following circumstances:

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

B. In defense of another person when the officer has reasonable cause to believe that the person is in imminent danger of death or serious bodily injury. However, an officer may not discharge a firearm at a person who presents a danger only to him or herself, and there is no reasonable cause to believe that the person poses an imminent danger of death or serious bodily injury to the officer or any other person.

C. To apprehend a person when both of the following circumstances exist:

(1) The officer has reasonable cause to believe that the person has committed or has attempted to commit a violent felony involving the use or threatened use of deadly force; AND

(2) The officer has reasonable cause to believe that a substantial risk exists that the person will cause death or serious bodily injury to officers or others if the person's apprehension is delayed.

D. To kill a dangerous animal. To kill an animal that is so badly injured that humanity requires its removal from further suffering where other alternatives are impractical and the owner, if present, gives permission.

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[12] This section is current SFPD policy

E. To signal for help for an urgent purpose when no other reasonable means can be used.

An officer may generally not discharge a firearm as a warning.

2. Reasonable Care

To the extent practical, an officer shall take reasonable care when discharging his or her firearm so as not to jeopardize the safety of innocent members of the public.

3. Moving Vehicles

The following policies shall govern the discharge of firearms at or from a moving vehicle or at the operator or occupant of a moving vehicle:

A. At a Moving Vehicle. An officer shall not discharge a firearm at a moving vehicle with the intent to disable the vehicle.

B. From a Moving Vehicle. An officer shall not discharge a firearm from a moving vehicle unless the officer has reasonable cause to believe there is an imminent danger of death or serious bodily injury to the officer or to others.

C. At the Operator or Occupant of a Moving Vehicle. Discharging a firearm at the operator or occupant of a moving vehicle is inherently dangerous to officers and the public. Disabling the operator will not necessarily eliminate an imminent danger of death or serious bodily injury. Further, a moving vehicle with a disabled operator may crash and cause injury to innocent members of the public or officers. Accordingly, it is the policy of the Department that **officers are prohibited from discharging their firearm at the operator or occupant of a moving vehicle except in the narrow circumstances set in this subsection.** An officer shall not discharge a firearm at the operator or occupant of a moving vehicle except under the following circumstances:

(a) If the operator or occupant of a moving vehicle is threatening the officer with imminent danger of death or serious bodily injury by means other than the vehicle itself.

(b) If the operator of the moving vehicle is threatening the officer with imminent danger of death or serious bodily injury by means of the vehicle, and the officer has no reasonable and apparent way to retreat or otherwise move to a place of safety.

(c) In defense of another person when the officer has reasonable cause to believe that the person is in imminent danger of death or serious bodily injury.

(d) To apprehend a person when both of the following circumstances exist:

(i) The officer has reasonable cause to believe that the person has committed or has attempted to commit a violent felony involving the use or threatened use of deadly force; AND

(ii) The officer has reasonable cause to believe that a substantial risk exists that the person will cause death or serious bodily injury to officers or others if the person's apprehension is delayed.

It is understood that this policy in regards to discharging a weapon at or from a moving vehicle may not cover every situation that may arise. Department members are expected to act with intelligence and exercise sound judgment, attending to the spirit of this policy and to the Department's use-of-force principles. Any deviation from the provisions of this policy shall be examined rigorously on a case-by-case basis. The involved officers must be able to articulate clearly the reason for any deviation from this policy.[13]

VIII. UNREASONABLE FORCE

Unreasonable force occurs when the type, degree, or duration of force employed was not objectively reasonable under the totality of the circumstances as evaluated using the standards and authorities described in the previous chapters.

Malicious assaults and batteries committed by peace officers constitute unlawful conduct. (California Penal Code section 149.) When the force used is objectively unreasonable, the officer can face criminal and civil liability, and disciplinary action.

IX. DUTY TO INTERVENE[14]

Where an officers have a reasonable opportunity to do so, officers shall intercede when they know, or have reason to know, that another officer is about to use, or is using, unreasonable force under color of state law. Officers shall promptly report any use of unreasonable force and the efforts made to intercede to a supervisor.

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[13] This last paragraph edited by POA, not in current policy

[14] SFPD draft language