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MEMORANDUM

DATE: May 2, 2016
TO: San Francisco Police Commission
FROM: San Francisco Police Officers' Association
RE: **San Francisco Police Officers Association's
Evaluation of Proposed General Order 5.01, as revised on 3/21/2016.**

The following is a discussion of the revised, proposed General Order 5.01 submitted by the San Francisco Police Department on March 21, 2016. The Department's proposed language appears in black *italics* text and the comments of the San Francisco Police Officers' Association ("SFPOA") appear in blue text. **The SFPOA offers these comments only in its capacity as a stakeholders and these comments do not substitute for, and are not a waiver of, its right to meet and confer over any changes to policy that are within the scope of bargaining or otherwise impact the working conditions of San Francisco police officers.**

INTRODUCTION

The San Francisco Police Department's highest priority is safeguarding the sanctity of all human life. 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 feasible. 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 maintaining legitimacy with the community 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.

SFPOA'S PROPOSED CHANGE:

1. The Department should acknowledge that the highest priority should be

protecting the people of San Francisco.

While the SFPOA believes that the Department should emphasize the importance of all human life in the use of force general orders, failing to acknowledge that the primary purpose of any police force is to help protect its citizens sends a confusing message. We believe that the SFPOA proposed mission statement¹ is preferable because it combines the two concepts and better captures what truly is the highest priority of the Department. Unfortunately, in our society, there are occasions in which a suspect fails to share this reverence for human life and threatens civilians and officers. When that happens, an officer's "highest duty" is to protect the innocent from the suspect. Were this not the case, an officer would never be justified in using deadly force. As stated, this mission statement appears to place the "sanctity" of a suspect threatening to kill an innocent civilian or officer on par with the "sanctity" of the civilian or officer being threatened. This is contrary to the remainder of this general order, which authorizes an officer to use deadly force to protect him or herself or others.

2. Substitute the word "sanctity" for "reverence," or some other synonym for importance.

The term "sanctity" has a religious connotation inappropriate for a San Francisco general order. For example, the Wikipedia definition of the phrase "sanctity of human life," is as follows:

"The phrase **sanctity** of **life** refers to the idea that **human life** is sacred and holy and precious, argued mainly by the pro-**life** side in political and moral debates over such controversial issues as abortion, contraception, euthanasia, embryonic stem-cell research, and the "right to die."

Accordingly, the SFPOA suggest that the Department substitute the word "reverence," which is defined as "a deep respect for something," which is the term used by P.O.S.T. and in SFPOA'S proposal.

3. Change the statement that the Law Enforcement Code of Ethics "requires" anything, to indicate only what it "states."

The Law Enforcement Code of Ethics represents ideals to be strived towards for officers. It does not represent requirements. Although our initial proposal also uses the word "requires" in this context, it would be more accurate to use the word "states," so as to avoid confusion.

I. POLICY

- A. SANCTITY OF HUMAN LIFE.** *The Department is committed to the sanctity and preservation of all human life, human rights, and human dignity.*

¹ On April 6, 2016, the SFPOA submitted to the San Francisco Police Commission an alternative revision to the San Francisco Police Department General Orders 5.01 and 5.02, which is attached.

SFPOA'S PROPOSED CHANGE

1. Change the word “sanctity” to “reverence” and consider moving any non-repetitive language to the introduction.

The SFPOA has the same concern with use of term “sanctity” as mentioned above. Moreover, the introduction is a better-suited section for addressing such general principles, and in any event, there is no reason to repeat them twice within the first page of the general order. A general order must be clear and concise. Unnecessary repetition creates confusion.

- B. *ESTABLISH COMMUNICATION.*** *Communication with non-compliant subjects is most effective when officers establish rapport, use the proper voice intonation, ask questions and provide advice to defuse conflict and achieve voluntary compliance before resorting to force options.*

SFPOA'S PROPOSED CHANGE:

1. The SFPOA suggests that this language be removed, or significantly altered, as suggested in SFPOA'S proposed model policy.

First, any street officer would reject the categorical statement that “communication with a non-compliant subjects *is* most effective when officers establish rapport....” For example, is “establishing rapport” with a bank robber who just exited a bank with a gun in his hand the “most effective” means of communication in that circumstance? No. The most effective communication at that point would be for the officer to order to say “Police, drop the gun!” while the officer draws his or her weapon.

The main problem with the proposed language is that it crams all communications with all non-compliant suspects into one bag. Policing is not a one-size-fits-all proposition. This concern illustrates a recurring problem with much of the Department's proposed language. It seems as though the drafters had one specific scenario in mind, but drafted broad language that covers many situation that were never considered. A chief concern of the SFPOA is that the use of broad sweeping language to address a specific scenario will have unintended and harmful consequences. It may be appropriate in many situations for an officer to establish rapport with a suspect and speak in a calm tone—that already frequently happens—but it is not appropriate in *all* circumstances. The proposed language erroneously mandates one specific communication approach regardless of the circumstances. That is dangerous, counter-productive and ineffective.

- C. *DE-ESCALATION.*** *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 the likelihood of voluntary compliance. 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.

SFPOA'S PROPOSED CHANGE:

1. The SFPOA supports giving greater emphasis to de-escalation in the general orders. But this language must be redrafted to avoid unintended harmful consequences.

As drafted, there will be practically no actual circumstances facing officers in the field where de-escalation techniques will be required. Contrary to P.O.S.T. and the SFPOA's proposed revisions to the general orders, the language in this proposed policy *drastically limits* the situations in which officers should use de-escalation techniques. Specifically, this policy states that de-escalation should only be attempted where "a subject is not endangering the safety of the public or an officer, fleeing, or destroying evidence." P.O.S.T. and the SFPOA disagree. De-escalation is an important tool that officers should have available even where the suspect *is* endangering the public. For example, in a hostage situation where a suspect has a gun to a civilian's head, appropriate de-escalation techniques might be the only thing that could save the civilian's life. This portion of the Department's proposed general order illustrates again the problem of drafting a "general" order with only a specific situation in mind. Here, apparently attempting to expand the use of de-escalation techniques, this policy actually limits them.

Members should use the following de-escalation tactics, when safe and feasible under the totality of the circumstances known to the officer:

1. *Attempt to isolate and contain the subject;*
2. *Create time and distance from the subject by establishing a buffer zone ("reaction gap") and utilize cover to avoid creating an immediate threat that may require the use of force;*
3. *Request additional resources, such as Crisis Intervention Team (CIT) trained officers, Crisis/Hostage Negotiation Team, Conducted Energy Devices, or Extended Range Impact Weapon;*
4. *Designate an officer to establish rapport and engage in communication with the subject without time constraint;*
5. *Tactically re-position as often as necessary to maintain the reaction gap, protect the public, and preserve officer safety;*
6. *Continue de-escalation techniques and take as much time as necessary to resolve the incident, without having to use force, if feasible.*

Other options, not listed above, may be available to assist in de-escalating the situation.

Supervisors who become aware of a situation where an officer is using de-escalation techniques should monitor the radio communications and evaluate the need to respond to the scene.

SFPOA'S PROPOSED CHANGE:

1. The attempt to list appropriate de-escalation techniques further confuses an almost incomprehensible policy and needs to be re-considered, placed in a separate policy or, better yet, left to training.

This policy makes no sense. First, it says that de-escalation should be used to “decrease the likelihood of the need to use force.” The first de-escalation technique noted is that the officer should “isolate and contain” the suspect. *How is an officer expected to isolate and contain a suspect without using any force – especially since under this policy pointing a firearm is considered a use of force?*

Next, officers are told to create time and distance from the suspect, which sounds a lot like retreating. This reads as if the officer is supposed to use an unidentified non-forceful technique to isolate and contain the suspect while simultaneously retreating. *If that occurred, what would keep the suspect isolated and contained?* It is contrary to P.O.S.T., academy training and common sense to suggest that an officer can keep a subject isolated and contained, while at the same time retreating and not using any force. Then, under this policy, the officer must request additional assistance, and designate an officer to establish rapport without time constraints while continuing to re-position (retreat) in order to maintain a reaction gap. Presumably this means that if the suspect advances on the officer, the officer must continue to retreat, call for assistance, and try to designate one of the other retreating officers who are not using any force (which would preclude any officer pointing a weapon) to establish rapport with the advancing suspect. And this would only occur if the suspect was not threatening anyone – if he was, then this policy makes de-escalation inappropriate.

As with other poorly drafted proposals being advanced by the Department, it appears that the drafters had one specific scenario in mind – albeit one which rarely if ever presents itself. As a result, the current policy language will not offer officers or the public meaningful guidance as to when or how to use de-escalation techniques. A lack of effective guidance will endanger officers and the public. SFPOA consulted with noted police procedures expert Don Cameron – who has personally trained over 45,000 officers in California – as to how he would train on this policy and he responded that it would be impossible because it is incomprehensible. We owe the public and our officers better.

This portion of the proposed policy tries to do too much and end up doing nothing. Methods of appropriate de-escalation should be taught in an academy setting, not parsed in contradictory general order language. It is a mistake to attempt to teach something as situation-specific as de-escalation through a general order, as the hypothetical above illustrates. For example, the requirement that officers “use cover to avoid creating an immediate threat” is confusing and nonsensical. Cover, as it is generally understood by officers, is used to protect *the officers* from a threat, not the suspect from the officers. If the Department intends to require officers to hide from suspects so that the suspects do not feel threatened – if that is what is in fact intended by the language – officers will need additional training on how to properly hide, while at the same time protecting civilians and isolating and containing a dangerous suspect – which seems like an impossible task. In addition, officers will need additional training on how to be non-threatening while pointing a deadly weapon at a suspect, which also seems contradictory.

Alternatively, the Department should develop an entire general order dedicated to the very complex and important topic of de-escalation, with the assistance of an experienced tactical instructor such as Don Cameron.

- D. *PROPORTIONALITY.*** *The Department requires that officers use only the degree of force that is reasonable for the purpose of accomplishing their duties. The degree and kind of force used should be proportional to the severity of the offense committed or the threat posed to human life; however, the principle of proportionality does not require officers to refrain from using reasonable force to overcome a threat to the safety of the public or officers or to overcome resistance.*

SFPOA'S PROPOSED CHANGE:

1. The proportionality requirement should be clarified or eliminated.

Proportionality, as it relates to use of force, is not a well-defined term in case law or P.O.S.T. Therefore, if the San Francisco Police Department wishes to use this term, it is important to clearly explain *exactly* what it means. The proposed policy fails to do that in several respects. First, the definition seems to suggest three different ways to measure whether force is proportional – but then states that none of that matters anyway, so long as the force was reasonable. Specifically, the definition states that (1) proportionality relates to that force necessary for an officer to accomplish their duties. Then it states that (2) proportionality is measured by the severity of the offense **or** (3) the threat posed to human life. Next, the definition states that regardless of what are considered proportional under any of the three proposed tests for proportionality, the officer can still use reasonable force to overcome a threat or resistance, which has always been the requirement before anyone suggested anything about proportionality. The proposed definition of this term is so muddled that it effectively lacks any meaning, which will only lead to confusion and endanger the public and officers. The SFPOA suggests that, if San Francisco insists on using the term “proportionality” in its general order, it adopt the definition used by Seattle:

“Proportional Force: 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. 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.”

The better approach, however, is to eliminate any reference to proportionality entirely. SFPD’s proposed general orders contain a detailed description of when force can be used and how it should be evaluated. It will only lead to confusion if the proportionality test is different from the other test described in the general orders. If the proportionality tests is meant to be synonymous with the other use of force directives in the general orders, it is unnecessarily redundant and, yet, potentially harmful due to the resulting likelihood of confusion. A general order that has multiple and possibly conflicting directives gives either no guidance at all, or

worse, inconsistent and/or unpredictable guidance. Such an outcome is precisely what a general order is intended to avoid.

- E. ***DUTY TO INTERVENE.*** *Officers shall intervene when they reasonably believe another officer is about to use, or is using, unreasonable force. Officers shall promptly report any use of unreasonable force and the efforts made to intervene to a supervisor.*

SFPOA'S PROPOSED CHANGE:

1. The duty to intervene language should include a requirement that the officer have a reasonable opportunity to do so.

An officer's duty to intervene can be found in Ninth Circuit case law regardless of whether it is in a department's general orders, so the SFPOA believes it is appropriate to add this requirement. Consistent with case law, however, the Department should clarify that officers are required to intervene only when they have a reasonable opportunity to do so.

II. CONSIDERATIONS GOVERNING ALL USES OF FORCE.

- A. ***USE OF FORCE MUST BE FOR A LAWFUL PURPOSE.*** *Under the Fourth Amendment of the United States Constitution and the California Penal Code section 835a, officers may use reasonable force in the performance of their duties, for the following purposes:*
1. *To effect a lawful arrest, detention, or search.*
 2. *To overcome resistance or to prevent escape.*
 3. *To prevent the commission of a public offense.*
 4. *In defense of others or in self-defense.*
 5. *To gain compliance with a lawful order.*
 6. *To prevent a person from injuring himself/herself. However, an officer is prohibited from using lethal 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. See DGO 5.02, Use of Firearms and Lethal Force.*

SFPOA'S PROPOSED CHANGE: None.

- B. ***USE OF FORCE MUST BE REASONABLE.*** *Under the Fourth Amendment of the United States Constitution an officer's decision to use force, and to use a particular type and degree of force, must be objectively reasonable under the totality of the circumstances known to the officer. Furthermore, California Penal Code section 835a states, in part, that 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 of the person being arrested; nor shall such officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest, or to prevent escape, or to overcome resistance. An officer must be able to clearly articulate the objective reasons, based on the information available to the officer at the time, why a particular force option was used. Relevant factors include but are not limited to:

1. *Whether the subject poses an immediate threat to the safety of the public or officers, and the degree of that threat;*
2. *Proximity, access to and type of weapons available to the subject;*
3. *Time available to an officer to make a decision;*
4. *Availability of additional officers or resources to de-escalate the situation;*
5. *Any force should be proportional to the severity of the offense committed for which the officer is taking action;*
6. *Environmental factors and/or other exigent circumstances;*
7. *Severity of the crime(s) at issue;*
8. *Whether the subject is attempting to evade arrest by flight or is actively resisting, and the degree of that resistance;*
9. *Whether the subject's escape could pose a future safety risk.*

Not all of the above factors may be present or relevant in a particular situation, and there may be additional factors not listed.

SFPOA'S PROPOSED CHANGE:

1. The Department should remove "proportionality" as a factor and /or provide a consistent and reasonable definition of the term.

Of the nine "factors" listed in the Department's proposal that officers should consider when analyzing the totality of the circumstances, only number 5, the "proportionality" factor is problematic and should be removed. Proportionality should not be listed as one of the factors for several reasons.

First, it is not a "factor." As that term is used in case law, it is merely a different term for "reasonable." Listing a synonym for reasonable as a "factor" is confusing and muddles the point being made with the list of appropriate factors an officer should consider.

Second, because the previous definition proposed by the Department for proportionality is so confusing, it would be harmful for the Department to include proportionality as a factor (even though it is not a factor) without better defining that term.

Third, proportionality in this section of the proposed general order appears to be defined differently from before. Earlier, the proposed general orders suggests that proportionality is measured either by: (1) the force necessary for an officer to accomplish their duties; (2) the severity of the offense; or (3) the threat posed to human life. Here, in contrast, proportionality appears to be measured only by the "severity of the offense." Having different definitions for the same concept in the same general order is confusing and counter-productive.

Fourth, because proportional force is not well-defined in the proposed general orders, it is unclear whether its inclusion requires officers to meet like force with like force. According to Webster's Dictionary "proportional" means "corresponding in size, degree, or intensity." Under this definition, if an officer is threatened by a suspect brandishing a knife, must that officer resort to using a knife as well in order to defend him or herself? If that is not what the Department intends, it should clarify precisely what proportional force does mean in the proposed general orders. If, however, the Department does intend to require officers to meet like force with like force, this creates a host of additional problems. Currently, officers are trained to use a higher level of force than their attacker so that they and the civilians they might be trying to help are not seriously injured or killed. If the Department wishes to usher in a new era of law enforcement in which Officers must meet like force with like force, all officers must be re-trained, San Francisco may lose its P.O.S.T. certification and the Department will endanger its officers and the public. In addition, the re-training that is necessary will be difficult to accomplish and expensive. It will be difficult to find any certified instructors to do the training, or an equipment belt large enough to hold all of the possible weapons an officer might encounter in the field.²

2. The Department should specifically include the requirement that an officer's use of force is not to be evaluated by 20/20 hindsight.

Probably the single most important criterion in evaluating an officer's use of force, is the prohibition on using 20/20 hindsight. Although the proposed general order does not expressly advocate using 20/20 hindsight – indeed no reasonable commentators make that suggestion – this criterion is of such vital importance that it should be explicitly included in the use of force general orders, as is the case for almost every other police department in the county.

- C. ***UNLAWFUL PURPOSES. Penal Code Section 149 provides criminal penalties for every public officer who "under color of authority, without lawful necessity, assaults or beats any person." Any assaults and batteries committed by officers constitute gross and unlawful misconduct and will be criminally investigated.***

SFPOA'S PROPOSED CHANGE: None.

- D. ***DUTY TO RENDER FIRST AID. 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.***

SFPOA'S PROPOSED CHANGE:

1. This provision should be changed to require officers to render first aid only to

² Don Cameron has stated that he knows of no certified instructors who could train San Francisco police officers in gladiator-style fighting techniques, where the police officers must be equipped with knives, bottles, rocks and chains depending on the specific weapons expected to be used by the subjects they encounter.

the extent they are trained to do so.

Officers are not medical doctors, EMT's or paramedics. Their first-aid training is mostly limited to CPR. To require officers to render first-aid that they are unqualified to perform, is irresponsible, dangerous and would create potential liability for officers and the City. Furthermore, patrol vehicles are equipped with only very small medical kits, while officers on foot patrol do not carry any medical equipment at all. If the Department is going to require officers to render first aid, it needs to provide officers with the appropriate medical training, certification and equipment. Under current case law, an officer has fulfilled his or her obligation to render first aid if they call for medical aid to respond to the scene. The Department should not change this rule until and unless officers are provided with appropriate medical training and equipment. Alternatively, the Department should require officers to render first-aid only to the extent of their first aid training, and only to the extent they have the proper equipment to do so. If the Department wishes to make the provision of "first-aid" by officers a requirement, it must also define what exactly is meant by first-aid. For example, if a suspect complains that he has a severe neck injury as a result of a struggle with an officer, *does this rule require the officer attempt to provide first-aid, which if done improperly could cause paralysis?*

2. If officers are going to be trained in providing first-aid and provided with appropriate medical equipment, it does not make sense to limit the circumstances in which they provide first-aid to suspects complaining of injury from an officer.

If the Department is going to invest in training all officers as EMT's so that they can provide appropriate first-aid after a use of force, it does not make sense to limit their medical services to only those individuals complaining of injury from a use of force by the officer. Officers frequently encounter civilians in need of first-aid. The SFPOA cannot think of a justification for why an individual who is injured by a use of force is entitled to different medical treatment than a civilian who is injured by another. For example, under the proposed policy, if an officer arrives on a scene in which a suspect has just stabbed an individual, and the officer uses force to detain that suspect, causing the suspect to scrape his knee, the officer would be required to attend to the suspect's scrapped knee while leaving the stabbing victim unattended. Again, this proposal seems to have been written with one particular circumstance in mind without considering the possible ramifications when the general order is applied to other circumstances. This is short-sighted and dangerous.

- E. ***DUTY TO PROVIDE MEDICAL ASSESSMENT. Officers shall arrange for a medical assessment by emergency medical personnel when a subject is injured or complains of injury caused by a 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. If the emergency medical response is excessively delayed under the circumstances, officers should contact a supervisor to coordinate and expedite the medical assessment or evaluation of the subject, e.g., transport subject to nearest medical facility by SFPD. See DGO 5.18. Prisoner Handling and Transportation.***

SFPOA'S PROPOSED CHANGE:

1. This provision should be changed to require only that officers call for medical assistance when appropriate and that they should make repeated efforts to obtain medical assistance if emergency personnel appear to be delayed. Officers should not be required to ensure prompt medical care to individuals injured by a use of force and should never be required to provide transportation to a medical facility where someone is seriously injured.

Even though officers have no control over whether emergency medical personnel will respond to a scene after being requested, or how long they will take, this proposal appears to hold officers responsible for ensuring that citizens receive appropriate medical treatment in a timely manner – but only if the individual was injured by an officer. This is not only unfair, but could lead to bizarre and unintended results. For example, if a suspect shot a civilian and then was shot by an officer before the suspect could shoot another civilian, the officer would be responsible for ensuring that the suspect receives prompt medical attention, but would not have a similar obligation toward the civilian. If the ambulance did not arrive promptly, the officer would be required to load the suspect into his or her police vehicle and drive to a hospital, but would have no such obligation to further assist the injured civilian. Although an officer should not be required to drive anyone to a hospital – especially in San Francisco with an area of only 7x7 miles – it makes no sense to elevate the physical wellbeing of a suspect over that of the civilian(s) or officers they may have injured.

2. Officers should not be required to provide transportation in an SFPD vehicle even if an ambulance is delayed.

This proposal will place citizens in danger, expose the City to unnecessary liability and place an unfair burden on officers. Ambulances and trained medical personnel are not only intended to provide rapid transportation, but they can provide immediate medical attention at the scene and medical attention during transport (in a sterile environment) that might be necessary to save the patient's life. SFPD vehicles are not equipped with the tools necessary to provide anything remotely close to comparable care. If untrained officers are required to provide emergency transportation in an unequipped, unhygienic SFPD vehicle because an ambulance is delayed, citizens could die who might otherwise have been saved because they will have been denied appropriate medical attention. Moreover, the back seats of SFPD vehicles are cramped and not sterile. *Is the Department proposing that a suspect with a gunshot wound is better served by being loaded into the back of an SFPD patrol vehicle instead of waiting a few minutes for an ambulance?* It would be unwise and dangerous for the Department to require officers to transport seriously injured individuals to a hospital in the back of a patrol vehicle. No other department in the country has such a requirement. And, San Francisco already has numerous emergency vehicles at the ready to provide exactly this service – ambulances.

Before interfering with the manner in which citizens in San Francisco receive first-aid and emergency transportation to a medical facility, the Department should consult with appropriate healthcare providers to make sure that the proposed policy will not endanger the public, as this proposed policy unquestionably does.

F. SUBJECT ARMED WITH A WEAPON — NOTIFICATION AND COMMAND. *In situations where a subject is armed with a weapon, officers and supervisors shall comply with the following:*

1. *OFFICER'S RESPONSIBILITY. Upon being dispatched to or on-viewing a subject with a weapon, an officer shall call a supervisor immediately, or as soon as feasible. When safe and feasible under the totality of the circumstances, officers should consider the principles listed in Section I. A-E.*
2. *SUPERVISORS' RESPONSIBILITIES. When notified that officers are dispatched to or on-view a subject armed with a weapon, a supervisor shall immediately, or as soon as feasible:*
 - (a) *Notify DEM, monitor radio communications, respond to the incident (e.g., "3X100, I'm monitoring the incident and responding");*
 - (b) *Remind responding officers, while en-route, absent a "Code 33" or other articulable reasons why it would be unsafe to do so, to protect life, isolate and contain the subject, maintain distance, find cover, build rapport, engage in communication without time constraint, and call for appropriate resources;*
 - (c) *Upon arrival, assume command, and ensure appropriate resources are on-scene or are responding.*

SFPOA'S PROPOSED CHANGE:

1. The requirement that supervisors read a *Miranda*-type admonition over the air each time there is a call or on-view of a suspect with a weapon should be eliminated.

This requirement is dangerous, makes no sense, and will not in any way encourage de-escalation, for many reasons. First, although the revised proposal has an exception for Code 33 situations, this does not solve the safety problem. In many situations, a call that an individual has a weapon is not immediately a Code 33 – but it can become a Code 33 in the 10-15 seconds that a supervisor would spend reading this admonition over the air. If this policy is in place, valuable time will be lost during the 10-15 second admonition which could cost civilians and officers their lives.

Second, this admonition will be ineffective at best and dangerous at worst, even if it does not interfere with valuable air-time. This proposal requires that, *regardless of the circumstances*, a supervisor who is not on the scene and does not know anything about the situation, must go over the air and give advice to the on-scene officer about how to handle the call. This is nuts. Suppose, for example, that an on-scene officer arrives to a weapons call and finds a suspect about to shoot a child: *Should that officer heed his supervisor's canned advice to "build*

rapport,” or should the officer make an appropriate decision based on what he or she observes based on the totality of circumstances known to him or her? The obvious answer is that the on-scene officer should ignore any advice that does not apply to that particular situation. If the on-scene officer does not ignore the canned advice, however, but treats the admonition as a directive from a supervisor, this could endanger the public and officers. Officers might be taking cover when it is unsafe to do so, maintaining distance when they should be advancing on the suspect and trying to establish a rapport when they should be quiet – all because they believe they are following a supervisor’s orders.

Third, almost none of this advice would apply to the great majority of the routine calls officers receive about individuals armed with weapons. For any of these admonitions to be appropriate, the following circumstances must apply: (1) the call is for an armed suspect; (2) but, the suspect is not immediately threatening anyone; (3) the suspect is sufficiently far from any possible victims that the officer can maintain distance, build rapport, call for additional resources, take cover and engage in communications without time restraints and without jeopardizing anyone’s safety; and, (4) the scene is sufficiently secure and controlled that command of the scene can be transferred from the on-scene officer to the later arriving supervisor. The only scenario in which this would be applicable is a very rare critical incident situation (such as a barricaded suspect situation), which is addressed by other general orders. Therefore, if this proposal is approved, the Department would be requiring that, regardless of the situation, supervisors must dispense advice that is almost never going to be applicable.

Moreover, the blanket application of these de-escalation principles would turn many routine weapons calls into dangerous critical incidents. Situations that might be resolved merely by the officer ordering a suspect to drop a weapon will now require the officer to retreat, call for backup and obtain cover. For example, in response to our survey, one officer recounted the following scenario: The officer responded to a weapons call and found a mentally unstable woman lying on her bed saying that she wanted to kill herself. The officer approached. The woman moved her leg and revealed a knife under her leg (which she was not holding – yet). Without saying another word, the officers grabbed the woman, and moved her away from the knife. The woman struggled, spat, and was held for a 5150. If the officer had instead backed off to establish rapport, with no time constraint, called a supervisor, took cover and created a “reaction gap,” this situation could have turned disastrous. The quick action by the officer resolved the situation and probably saved the woman’s life.

Fourth, if the Department believes that officers should be instructed about de-escalation and the “sanctity” of human life, the worst, most dangerous and least effective means of achieving this is for supervisors to repeat those words over the air 20 times a day in situations where the admonitions do not apply and officers are responding to a potentially dangerous situation. Instead, the Department should provide additional training and draft appropriate general orders.

Fifth, the Department does not have the resources for a supervisor to be dispatched to every weapons call. The Mission district receives dozens of similar calls a day, but only has a limited number of patrol sergeants at any given time. The SFPOA suggests that if the Department still believes that some variation of this policy is appropriate, it should study the practical effect of this policy before implementation to avoid the possible chaos that might

follow.

No police department in the entire country has a policy like this. San Francisco should not be the first.

III. FORCE OPTIONS

The force options authorized by the Department are physical controls, personal body weapons, chemical agents, impact weapons, extended range impact weapons, vehicle interventions, conducted energy devices, and firearms.

SFPOA'S PROPOSED CHANGE: None.

- A. PHYSICAL CONTROLS/PERSONAL BODY WEAPONS.** *Physical controls, such as control holds, takedowns, strikes with "personal body weapons" (i.e., body parts such as a hand, foot, knee, elbow, head butt, etc.) and other weaponless techniques are designed to incapacitate and subdue subjects.*
1. *PURPOSE. Officers should consider the relative size and possible physical capabilities of the subject compared to the size, physical capabilities, skills, and experience of the officer. When faced with a situation that may necessitate the use of physical controls, officers should consider requesting additional resources to the scene prior to making contact with the subject, if feasible. Different physical controls involve different levels of force and risk of injury to a subject or to an officer. Some physical controls may actually involve a greater risk of injury or pain to a subject than other force options.*

SFPOA'S PROPOSED CHANGE: None.

2. **USE.** When a subject offers some degree of passive or active resistance to a lawful order, in addition to thoughtful communication, officers may use physical controls to gain compliance, consistent with Department training. A subject's level of resistance and the threat posed by the subject are important factors in determining what type of physical controls or personal body weapons should be used.

SFPOA'S PROPOSED CHANGE:

1. The SFPOA believes that this provision should be revised, consistent with P.O.S.T. and the SFPOA's proposal to explain the various force options available to officers given various levels of threat.

While this requirement is not harmful, it is incomplete and fails to properly explain the various factors that an officer should consider before using physical controls or personal body

weapons. P.O.S.T. training, which is reflected in the SFPOA's proposal, has carefully considered these issues and provides a far more comprehensive analysis than the Department's proposal.

3. *PROHIBITED USE OF CONTROL HOLDS. Officers are prohibited from using choke holds, i.e., choking by means of pressure to the subject's trachea.*
4. *MANDATORY MEDICAL ASSESSMENT. Any subject who has been injured, complains of an injury in the presence of officers, or complains of pain that persists beyond the use of the physical control hold shall be medically assessed by emergency medical personnel. (See Section II.E.)*
5. *REPORTING. Use of physical controls is a reportable use of force when the subject is injured, complains of injury in the presence of officers, or complains of pain that persists beyond the use of a physical control hold. Striking a subject with a personal body weapon (i.e., body parts such as a hand, foot, knee, elbow, head butt, etc.) is a reportable use of force. (See DGO 5.01.1)*

SFPOA'S PROPOSED CHANGE: None, specifically, although the SFPOA's proposal provides clearer guidance to officers.

- B. *CHEMICAL AGENTS.*** *Chemical agents, such as Oleoresin Capsicum (OC) Spray, are designed to cause irritation and temporarily incapacitate a subject.*
1. ***PURPOSE.** Chemical agents can be used to subdue an unarmed attacker or to overcome active resistance (unarmed or armed with a weapon other than a firearm) that is likely to result in injury to either the subject or the officer. In many instances, chemical agents can reduce or eliminate the necessity to use other force options to gain compliance, consistent with Department training*
 2. ***WARNING.** Officers shall provide a warning prior to deploying a chemical agent, if feasible:*
 - (a) *Announce a warning to the subject and other officers of the intent to deploy the chemical agent if the subject does not comply with officer commands; and*
 - (b) *Give the subject a reasonable opportunity to voluntarily comply unless it would pose a risk to the community- or the officer, or permit the subject to undermine the deployment of the chemical agent.*
 3. ***MANDATORY FIRST AID.** At the scene or as soon as possible, officers shall administer first aid by:*

Seating the subject or other person(s) exposed to a chemical agent in an upright position, and Flushing his/her eyes out with clean water and ventilate with fresh air.

4. *MANDATORY MEDICAL ASSESSMENT. Any person exposed to a chemical agent shall be medically assessed by emergency medical personnel. (See Section II.E.) Any exposed person shall be kept under direct visual observation until he/she has been medically assessed. If an exposed person loses consciousness or has difficulty breathing, that information shall be provided to dispatch to expedite emergency medical personnel.*
5. *TRANSPORTATION. Subjects in custody exposed to a chemical agent must be transported in an upright position by two officers. The passenger officer shall closely monitor the subject for any signs of distress. If the subject loses consciousness or has difficulty breathing, officers shall immediately seek emergency medical attention. Hobble cords or similar types of restraints shall only be used to secure a subject's legs together. They shall not be used to connect the subject's legs to his/her waist or hands in a "trussed" manner or to a fixed object.*
6. *BOOKING FORM. Officers shall note on the booking form that the subject has been exposed to a chemical agent.*
7. *REPORTING. If an officer deploys a chemical agent on or near someone, it is a reportable use of force. (See DGO 5.01.1)*

SFPOA'S PROPOSED CHANGE: None.

C. *IMPACT WEAPON.* *Impact weapons, such as a baton, are designed to temporarily incapacitate a subject.*

1. *PURPOSE. An impact weapon may be used to administer strikes to non-vital areas of the body, which can subdue an aggressive subject in accordance with Department training Only Department issued or authorized impact weapons shall be used. If under unusual circumstances, officers need to resort to the use of other objects as impact weapons, such as a flashlight or police radio, officers shall articulate the reason for doing so.*
2. *WARNING. When using an impact weapon, an officer shall, if feasible:*
 - (a) *Announce a warning to the subject of the intent to use the impact weapon if the subject does not comply with officer's commands; and*

SFPOA'S PROPOSED CHANGE: None.

- (b) *Give the subject a reasonable opportunity to voluntarily comply, except that officers need not do so where it would pose a risk to the community or the officer or permit the subject to undermine the use of the impact weapon.*
- 3. *RESTRICTED USES. Unless exceptional circumstances exist, officers should not:*
 - (a) *raise an impact weapon above the head to strike a subject, or*
 - (b) *Strike vital areas, including the head, neck, face, throat, spine, groin or kidney.*

SFPOA'S PROPOSED CHANGE:

- 1. The policy should restrict strikes to inappropriate parts of the body, not overhead strikes.

Policies that reduce inappropriate baton strikes are commendable. But a ban on overhead strikes does nothing to accomplish that goal. SF policies, academy, and P.O.S.T. training already focus on the appropriate areas of the body to strike an individual with impact weapons, not whether the blow is delivered with a forehand swing, a backhand or an overhead strike. Because it is the part of the individual being struck that matters (head versus thigh), a restriction on how the strike is delivered is nonsensical. Specifically, an over-hand strike may not be any more likely to result in an inappropriate strike than a side-arm strike. Nor is an overhead strike likely to deliver more force than a sidearm strike. In addition, what constitutes an overhead strike is not always clear. *If the officer is bent over, is a strike over the officer's head an overhead strike? If the officer is on the ground, would any strike be prohibited as "over-head"? If the suspect is above the officer, is an officer prohibited from reaching up to strike the individual on the thigh?* The likely unintended consequence of this ban on overhead strikes is that officers will be less likely to use this non-lethal option, even when appropriate to do so. Such an outcome will not increase safety.

- 4. **PROHIBITED USES.** Officers shall not:
 - (a) Use the impact weapon to intimidate a subject or person, such as slapping the palm of their hand with an impact weapon or;
 - (b) Strike a handcuffed prisoner with an impact weapon

SFPOA'S PROPOSED CHANGE:

- 1. The policy should not categorically prohibit striking a handcuffed prisoner with an impact weapon.

It is well documented that someone in handcuffs can still be dangerous – even deadly. To prevent officers from using an impact weapon against a dangerous individual, whether handcuffed or otherwise, only increases the risk of injury to the officer and the individual. Impact weapons are a non-lethal alternative use of force. The more non-lethal options that are removed from an officer's arsenal, the more likely the incident will escalate to the point where the officer's only option is deadly force. Proper use of force guidelines and corresponding disciplinary consequences are the appropriate means of addressing the risk that an officer will use an impact weapon on an individual who is not posing a threat, whether they are handcuffed or not. Therefore, there is no value in having a blanket prohibition against use of impact weapons on individuals who are handcuffed, and dangerous to do so.

5. *MANDATORY MEDICAL ASSESSMENT. Any officer who strikes a subject with an impact weapon shall ensure the subject is medically assessed. (See Section II.E.)*
6. *REPORTING. If an officer strikes a subject with an impact weapon, it is a reportable use of force. (See DGO 5.01.1)*

SFPOA'S PROPOSED CHANGE: None.

- D. EXTENDED RANGE IMPACT WEAPON (ERIW).** An Extended Range Impact Weapon (ERIW), such as a beanbag shotgun, is a weapon that fires a bean bag or other projectile designed to temporarily incapacitate a subject. An ERIW is generally not considered to be a lethal weapon when used at a range of 15 feet or more.
1. **PURPOSE.** The ERIW may be used on a subject who is armed with a weapon, other than a firearm, that could cause serious injury or death. This includes, but is not limited to, edged weapons and improvised weapons such as baseball bats, bricks, bottles, or other objects. The ERIW may also be used to subdue an aggressive, unarmed subject who poses an imminent threat of injury to another person or the officer in accordance with Department training.
 2. **USE.** The ERIW shall be properly loaded and locked in the shotgun rack of the passenger compartment of the vehicle. Officers should observe the following guidelines:
 - (a) An ERIW officer shall always have a lethal cover officer. When more than one officer is deploying an ERIW, good tactical judgment in accordance with Department training will dictate the appropriate number of lethal cover officers. In most circumstances, there should be fewer lethal cover officers than the number of ERIWs deployed.

- (b) The ERIW officer's point of aim should be Zone 2 (waist and below). The ERIW officer's point of aim may be Zone 1 (waist and above) if:
 - Zone 2 is unavailable; or
 - The ERIW officer is delivering the round from 60 feet; or
 - Shots to Zone 2 have been ineffective.

Keep in mind that ERIW strikes have the potential to cause serious injury or death if vital areas are struck or if the subject is physically frail.

- (c) The ERIW officer shall assess the effect of the ERIW after each shot. If subsequent ERIW rounds are needed, the officer should aim at a different target area.
3. LIMITED USES. The ERIW should not normally be used in the following circumstances:
- (a) The subject is at the extremes of age (elderly and children) or physically frail.
 - (b) The subject is in an elevated position where a fall is likely to cause serious injury or death.
 - (c) The subject is known to be or appears pregnant.
 - (d) At ranges of less than 15 feet.
4. WARNING. When using the ERIW, an officer shall, if feasible:
- (a) Announce to other officers the intent to use the ERIW by stating "Red Light! Less Lethal! Less Lethal!"
 - (b) All other officers at scene to acknowledge imminent deployment of ERIW by echoing, "Red Light! Less Lethal! Less Lethal!"
 - (c) Announce a warning to the subject that the ERIW will be used if the subject does not comply with officer commands;
 - (d) Give the subject a reasonable opportunity to voluntarily comply unless it would pose a risk to the community or the officer, or permit the subject to undermine the deployment of the ERIW.
5. MANDATORY MEDICAL ASSESSMENT. Any subject who has been struck by an ERIW round shall be medically assessed by emergency medical personnel. (See Section II.E.)

6. **BOOKING FORM.** Persons who have been struck by an ERIW round shall have that noted on the booking form.
7. **REPORTING.** Discharge of an ERIW is a reportable use of force. (See DGO 5.01.1)

SFPOA'S PROPOSED CHANGE:

1. None, although the SFPOA believes that a more helpful way to discuss force options is to analyze them together along with the suspects' actions that might make the force appropriate, as is done by P.O.S.T. , as explained in the SFPOA's proposal.

- E. VEHICLE INTERVENTIONS.** An officer's use of a police vehicle as a "deflection" technique, creation of a roadblock by any means, or deployment of spike strips, or any other interventions resulting in the intentional contact with a noncompliant subject's vehicle for the purpose of making a detention or arrest, are considered a use of force and must be reasonable under the circumstances. The Department's policies concerning such vehicle intervention tactics are set forth in DGO 5.05, Response and Pursuit Driving.

SFPOA'S PROPOSED CHANGE: None.

- F. CAROTID RESTRAINT.** While the carotid restraint is not lethal force, the carotid restraint is an allowable force option only in situations where lethal force would otherwise be justified. The carotid restraint is a control technique in which the carotid arteries on the sides of the neck are compressed, restricting blood flow to the brain, causing the subject to lose consciousness.

1. **WARNING BEFORE USE.** When deploying the carotid restraint, an officer shall, if feasible:
 - (a) Announce a warning to the subject to stop resisting; and
 - (b) Give the subject a reasonable opportunity to voluntarily comply, except that officers need not do so where it would pose a risk to safety or permit the subject to undermine the deployment of the carotid restraint.
2. **MANDATORY MEDICAL ASSESSMENT.** In all cases where the carotid restraint is used, the subject shall be medically assessed and medically evaluated. Officers shall monitor the subject's vital signs closely. Additionally, if the subject has difficulty breathing or does not immediately regain consciousness, officers shall immediately seek medical care by trained personnel. (See Section II.E.)

3. **BOOKING FORM.** Persons who have been the subject of a carotid restraint shall have that noted on the booking form.
4. **REPORTING.** Use of carotid restraint, even if unsuccessful, is a reportable use of force. (See DGO 5.01.1)

SFPOA'S PROPOSED CHANGE:

1. The SFPOA believes that the carotid restraint should be considered intermediate, not deadly force.

The carotid restraint is not a choke-hold, and should not be treated as such. The carotid restraint is an intermediate level of force, which can be used to subdue an actively resisting suspect without any injury to the suspect or the officer. The SFPD has successfully used the carotid restraint for years without incident. As with other non-lethal force options, the more such options at an officer's disposal, the greater the chance the officer will not have to resort to lethal force. Limiting the use of the carotid restraint to only those situations in which lethal force can be used will effectively eliminate this valuable tool from an officer's arsenal, making the use of actual deadly force more likely. Limiting the use of the carotid restraint to lethal force situations helps no one and endangers the public and officers. In response to our survey, one of our officers wrote the following:

"I am a 5'4" female that has rarely used force in my 28 years of law enforcement; however, in the moments where I have been attacked the Carotid Restraint has saved my life. It has saved my life 3 times because the person that attacked me was huge and extremely violent. The carotid restraint was applied correctly (due to training), was perfectly effective, and caused no injury to the suspect. It is a tool that can be effectively used by all officers - small/large/male/female - to safely manage a violent suspect."

- IV. EXCEPTIONAL CIRCUMSTANCES.** If exceptional circumstances occur, an officer's use of force shall be reasonably necessary to protect others or him/herself. The officer shall articulate the reasons for employing such use of force.

SFPOA'S PROPOSED CHANGE:

1. The SFPOA proposes changing this language slightly to give clearer guidance to officers.

As drafted, this language does not make sense. It states that "if exceptional circumstances occur, an officer's use of force *shall* be reasonably necessary to protect others." But, this is not correct. It is not "exceptional circumstances" that make it reasonably necessary for an officer to protect themselves—it is a suspect's violent behavior. Equally, the existence of "exceptional circumstances" does not necessarily make an officer's use of force reasonable, which is what is stated by the use of the mandatory term "shall." It could be that exceptional

circumstances existed, but the officer's use of force was still unreasonable. What this language appears to be trying to express is that if there are circumstances in which an officer deviates from these orders to protect others or him or herself, the Department will carefully consider those circumstances so long as the officer can articulate why the actions taken were necessary and appropriate. The SFPOA suggests the following alternative language in order to better achieve this goal:

"It is understood that this policy 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."