

USE OF FIREARMS AND LETHAL FORCE

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 thoughtful communication, crisis intervention 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 unnecessary 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 sufficient reasonable force to protect themselves or others but to provide general guidelines that may assist the Department in achieving its highest priority.

This order establishes policies and reporting procedures regarding the use of firearms and lethal force. Officers' use of firearms and any other lethal force shall be in accordance with DGO 5.01, Use of Force, and this General Order.

I. POLICY

A. GENERAL. The Department is committed to the sanctity and preservation of all human life, human rights, and human dignity. It is the policy of this Department to use lethal force only when no other reasonable options are available to protect the safety of the public and the safety of police officers. Lethal force is any use of force designed to and likely to cause death or serious physical injury, including but not limited to the discharge of a firearm, the use of impact weapons under some circumstances (see DGO 5.01, Use of Force), and certain interventions to stop a subject's vehicle (see DGO 5.05, Response and Pursuit Driving).

B. ~~PRIOR TO THE DISCHARGE OF FIREARM OR ALTERNATIVES TO LETHAL FORCE.~~ When safe and feasible under the totality of circumstances known to the officer, officers shall consider other force options before discharging a firearm or using other lethal force. Further, officers are reminded to apply the principles outlined in DGO 5.01, I.A. Sanctity of Human Life, I.B. Establish Communications, I.C. De-escalation, I.D. Proportionality, and I.E. Duty to Intervene, to decisions about the use of lethal force.

I. DE-ESCALATION. As stated and more fully described in DGO 5.01, Use of Force, de-escalation techniques are actions used by officers, when safe to do so, that seek to decrease the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance.

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Officers should consider the possible reasons why a subject may not be nonecompliant 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.

2. **PROPORTIONALITY.** Officers should balance the severity of the offense committed or the threat posed to human life against the laws enforcement task to be accomplished when determining the appropriate level of force. Officers may only use the degree of force that is reasonable and necessary to accomplish their lawful duties.

C. SUBJECTS ARMED WITH WEAPONS OTHER THAN FIREARMS.

It is critical officers consider apply the principles of proportionality wWhen encountering a subject who is armed with a weapon other than a firearm, such as an edged weapon, improvised weapon, baseball bat, brick, bottle, or other object, officers shall follow DGO 5.01, II.F. Subject Armed with a Weapon - Notification and Command. Where officers can safely mitigate the immediacy of threat, and there are no exigent circumstances, officers should isolate and contain the subject, call for additional resources and engage in appropriate de-escalation techniques without time constraints. It is far more important to take as much time as needed to resolve the incident in keeping with the Department's highest priority of safeguarding all human life. Except where circumstances make it reasonable for an officer to take action including the use of lethal force to protect human life or prevent serious bodily injury, immediately disarming the subject and taking the subject into custody is a lower priority than preserving the sanctity of human life. Officers who proceed accordingly and delay taking a subject into custody, while keeping the public and officers safe, will not be found to have neglected their duty. They will be found to have fulfilled it.

3. 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:

- a. **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.
- b. **SUPERVISOR'S RESPONSIBILITY.** 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:
 - i. Notify DEM, monitor radio communications, respond to the incident (e.g., "3X100, I'm monitoring the incident and responding.");
 - ii. Remind responding officers, while en-route, absent a "Code 33" or other articulable reasons why it would not be safe to do so, to protect life, isolate and contain the subject, maintain distance, find cover,

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- build rapport, engage in communication without time constraint, and call for appropriate resources; and
- iii. Upon arrival, assume command, and ensure appropriate resources are on-scene or are responding.

C. HANDLING, AND DRAWING AND POINTING FIREARMS.

1. **HANDLING FIREARMS.** An officer shall handle and manipulate a firearm in accordance with Department-approved firearms training. An officer shall not manually cock the hammer of the Department-issued handgun to defeat the first shot double-action feature.
2. **AUTHORIZED USES.** An officer may draw, or exhibit or point a firearm in the line of duty when the officer has reasonable cause to believe it may be necessary for the safety of others or for his or her own safety. When an officer determines that the threat is over, the officer shall holster his or her firearm or shoulder the weapon in the port arms position pointed or slung in a manner consistent with Department-approved firearms training. If an officer points a firearm at a person, the primary officer shall, if feasible, advise the subject the reason why the officer(s) pointed the firearm.
3. **DRAWING OTHERWISE PROHIBITED.** Except for maintenance, safekeeping, inspection by a superior officer, Department-approved training, or as otherwise authorized by this order, an officer shall not draw a Department-issued firearm.
4. **REPORTING.** When an officer intentionally points any firearm at a person, it shall be considered a reportable use of force. Such use of force must be reasonable under the objective facts and circumstances.

D. DISCHARGE OF FIREARMS OR OTHER USE OF LETHAL FORCE.

1. **PERMISSIBLE CIRCUMSTANCES.** Except as limited by Sections D.4 and D.5., an officer may discharge a firearm or use other lethal force 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; or
 - 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, or use lethal force against, 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; or
 - c. To apprehend a person when both of the following circumstances exist:

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- 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 lethal 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; or
- 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; or
- e. To signal for help for an urgent purpose when no other reasonable means can be used.

The above circumstances (D.1 a-e) apply to each and every discharge of a firearm or application of lethal force. Officers should constantly reassess the situation, as feasible, to determine whether the subject continues to pose an active threat.

- 2. **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 discharging a firearm or using other lethal force.
- 3. **REASONABLE CARE FOR THE PUBLIC.** To the extent feasible, an officer shall take reasonable care when discharging his or her firearm so as not to jeopardize the safety of the public or officers.

4.1. PROHIBITED CIRCUMSTANCE. Officers shall not discharge their firearm:

- a. As a warning; or
- b. At a person who presents a danger only to him or herself.

- 5. **MOVING VEHICLES.** An officer shall not discharge a firearm at the operator or occupant of a moving vehicle unless the operator or occupant poses an imminent immediate threat of death or serious bodily injury to the public or an officer by means other than the vehicle. Officers shall not discharge a firearm from his or her moving vehicle.

6. REPORTING.

- a. **DISCHARGE OF FIREARMS.** Except for firearm discharges at an approved range or during lawful recreational activity, an officer who discharges a firearm, either on or off duty, shall report the discharge as required under DGO 8.11, Investigation of Officer Involved Shootings and Discharges. This includes an intentional or unintentional discharge, either within or outside the City and County of San Francisco.
- b. **OTHER LETHAL FORCE.** An officer who applies other force that results in death shall report the force to the officer's supervisor, and it shall be investigated as required under DGO 8.12, In Custody Deaths. An officer who applies other lethal force that results in serious bodily injury shall report the force to the

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officer's supervisor. The supervisor shall, regardless whether possible misconduct occurred, immediately report the force to their superior officer and their commanding officer, who shall determine which unit shall be responsible for further investigation. An officer who applies other lethal force that does not result in serious bodily injury shall report the force as provided in DGO 5.01.1, Reporting and Evaluating Use of Force.

7. EXCEPTIONAL CIRCUMSTANCES. If exceptional circumstances occur, ~~not~~ contemplated by this order, an officer's use of force shall be reasonably necessary to protect others or himself or herself. The officer shall articulate the reasons for employing such use of force.

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References

DGO 5.01, Use of Force

DGO 5.05, Response and Pursuit Driving

DGO 8.11, Investigation of Officer Involved Shootings And Discharges

DGO 8.12, In Custody Deaths

DRAFT

DGO 5.02, Use of Firearms and Lethal Force, corresponding notes (03/17/16 version)

1. SFPD removed “thoughtful” as the term is not defined.
2. SFPD will incorporate this language one the DGO on CIT is adopted and the term “crisis intervention” is defined.
3. OCC and SFBAR want this sentence to read: “The Department is committed to accomplishing the police mission with respect and minimal reliance on the use of force by using thoughtful communication, tactical disengagement – which includes de-escalation principles – and crisis intervention before resorting to use of force, whenever practical.” ACLU also wants a reference to the term “minimal force necessary.” The POA opposes the use of the term “minimal force” as case law does not require officers to use minimal force; the courts require officers to use force that is objectively reasonable. The SFPD opposes using the term “tactical disengagement” which implies that officers will retreat from or not handle an incident.
4. ACLU wants to use the word “unnecessary” instead of “unreasonable. ACLU states that the two terms are different. SFPD is using the term “unreasonable” to be consistent throughout the policies – reasonable and unreasonable.
5. SFPD changed the language based on recommendation from the ACLU that “sufficient” is not defined and is inconsistent with other terms in the policy.
6. ACLU and OCC do not believe this paragraph should be placed here. ACLU does not have a suggestion for placement.
7. OCC recommends adding language based on California Supreme Court case Hayes vs. San Diego in DGO 5.02 if the SFPD does not include the language in DGO 5.01: “The reasonableness of the officer’s use of force includes consideration of the officer’s tactical conduct and decisions leading up to the use of force.”
8. SFPD changed the title and summarized the requirements of DGO 5.01.
9. SFPD changed the language in this section.
10. The POA questions whether the Department believes firearms are the only deadly weapons and has concerns that the Department has created a two-tiered system of response for deadly weapons: 1) firearms and 2) edged and other weapons.
11. The stakeholder group cannot reach consensus on whether to use the term “shall, when practical,” or the term “should, when practical” throughout the entire document. The OCC, SFBAR, Coalition on Homelessness (COH), San Francisco District Attorney/Blue Ribbon Panel (SFDA/BRP) and ACLU want to use the term “shall, when practical.” The POA, OJF, Pride Alliance and APOA had concerns with this term because “shall” is a mandate, but if an officer could not perform the action because of safety, someone might

judge the situation, using 20/20 hindsight, and opine that the officer should have performed the action and discipline the officer. The POA, OFJ, Pride Alliance and APOA want to use the term, "should, when practical." OCC, SFBAR, COH, and ACLU had concerns with that term and discussed the distinction between their understanding of the two terms: "shall, when practical" means an officer will take the action at a time when it is safe, and "should, when practical" means the officer can think about taking action, but does not have to take the action even if it is safe.

12. The POA asks the Department if it expects officers, when faced with imminent threat of death or serious bodily injury to themselves or an innocent member of the public, to attempt de-escalation techniques.
13. SFPD removed this section and referred to its requirement in DGO 5.01, Use of Force.
14. SFBAR recommends an additional section under POLICY, titled Counseling Services and recommends language (taken from Oakland PD) to read: "Members involved in a force incident that results in a person being seriously injured or killed shall attend employee assistance and counseling services provided by the City before his/her return to normal duties. Supervisors shall verify attendance only and document completion. Command officers shall ensure involved members are advised of the services available and shall direct their attendance. As needed, members and employees who witness such incidents may also be referred to counseling services."
15. SFPD added "pointing" to reflect current policy and based on recommendation of OCC.
16. SFPD added "pointing" to reflect current policy and based on recommendation of OCC.
17. See discussion in comment #11.
18. The OCC recommends revising this section and including a section titled "Pointing a Firearm at a Person" and include the following language: "The pointing of a firearm at a person is a seizure and requires legal justification. No officer shall point a firearm at or in the direction of a person unless there is a reasonable perception of a substantial risk that the situation will escalate to justify lethal force."
19. COH wants "dangerous animal" and the situations including them defined. COH is concerned that officers may consider a barking dog who is protecting its owner a "dangerous animal" and then shoot the dog. COH is concerned because many homeless people have dogs for their security and bark to alert their owners that someone is approaching. Although, COH did state that she knows of no instance where SFPD has shot a dog under this circumstance.
20. See discussion in comment 11.
21. See discussion in comment #11.

22. POA, OFJ, APOA would like the policy to be consistent with current 5.02 policy drafted in 2011. The POA lists examples where an officer would have to use his/her firearm to save his/her life or the life of another, but would be out of policy:

- A vehicle is driving toward the officer and the officer has no reasonable means or apparent way to retreat or move out to a place of safety.
- There is a driver on the sidewalk “actively plowing through a crowd of people.”

23. SFBAR suggests adding more specific language: 1) members are prohibited from intentionally positioning themselves in a location vulnerable to vehicle attack, 2) whenever possible, members shall move out of the way of the vehicle, instead of discharging his or her firearm at the operator, and 3) members shall not discharge a firearm at the operator of the vehicle when the vehicle has passed and is attempting to escape.

24. SFPD changed language on recommendation of POA.

25. SFPD added this title and removed some language.

26. ACLU wants this language taken out. POA wants this language to remain and moved to the beginning of the policy. OCC wants a requirement that the exceptional circumstances and the force used by the officer be articulated in writing.