

**JUNE 21, 2017**

**REGULAR MEETING**

The Police Commission of the City and County of San Francisco met in Room 400, City Hall, #1 Dr. Carlton B. Goodlett Place, San Francisco, at 5:53 p.m.

PRESENT: Commissioners Turman, Mazzucco, Marshall, DeJesus, Melara, Hing, Hirsch

**ADOPTION OF MINUTES**

- For the meeting of June 14, 2017

Motion by Commissioner Melara, second by Commissioner Mazzucco.  
Approved 7-0

**PRESENTATION FROM SUBJECT MATTER EXPERTS REGARDING CONDUCTED ENERGY DEVICES**

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Commissioner Turman explained that tonight we are hearing presentations from experts and not for advocacy.

Commissioner Melara explained that subject matter experts have 15 minutes to do their presentation and Q & A by Commissioners will be limited to 10 minutes and public comment limited to two minutes.

Chief Scott explained that the Department is looking at CEDs as an option for non-lethal options. Chief Scott stated the following:

“President Turman, Vice President Mazzucco and Board Members, thank you for allowing me a few minutes to present the department’s objectives and vision. I will start with, in the spirit of what President Turman just said in terms of what we, as a department, are after here.

We’re looking at conductive energy devices as part of an overall strategy of less lethal options. And let me start by saying -- and I’m going to get into this in the few minutes that I have – that we understand that there are risks associated with this and we understand that human beings, people have been impacted by conductive energy devices so my presentation is not meant ... if there’s anybody in the room that has been in that situation or your friends and family ... it’s not meant to minimize or, in any way, disrespect what anybody has gone through in terms of experiences with this device. What we’re looking to do is take objective research, independent research, and try to put before our Police Commission a comprehensive, thoughtful policy so they can vote on whether or not this department will have this piece of equipment as a tool.

So with that, I want to just go through some facts, from the Department’s standpoint, what we have learned so far and what we plan to go by way of vision. San Francisco Police Department is dedicated to the point of best policies and practices to

make sure that we're an effective law enforcement organization and that we conduct our work in the safest possible manner. Now the research, the independent research that we have been able to uncover this time, indicate that conductive energy devices – I'm going to refer to those as CEDs – decrease the risks of injury to parties involved in police encounter when force is used. The Department of Justice and their independent research have found that CEDs, the use of CEDs associated nationally with the decrease in citizens' injuries of 60 percent and that information comes from the study by the Department of Justice from 2011 or the National Institute of Justice from 2011. It also found that CEDs carry with it the risks that are lower than most alternatives.

We believe in the San Francisco Police Department that we need additional intermediate force options and we believe that additional intermediate force options do several things. Number 1, in our vision and our quest to have a tool or piece of equipment that allows us to prevent escalation and the process to de-escalate force we believe that this option accomplishes that. We also believe that there's a duty that we have to reduce both injuries to citizens, residents, and officers when these use of force encounters occur, and all the research that we have been able to acquire, the independent research, indicated that CEDs do accomplish that task. Now that research is fairly overwhelming not only in the United States but Canada, the UK, the reports that we've been able review indicate that there is a significant reduction of injuries when CEDs are used in the respective police departments that were studied.

Now, with that said, we understand and we acknowledge the many concerns from the public. Studies have shown, independent studies, had shown that CEDs are used nationally disproportionately against people of color and those with mental health issues. We understand that and we acknowledge that. We also understand that there's a risk of fatality with the use of CEDs. We understand that sometimes CEDs have not been effective. We understand that many in our community believe that CEDs are incompatible with our de-escalation principles that we have worked so hard to put in place. With that, we believe that those concerns, we'd like to temper them with the data and the research that is available to us and that data and research, we have gone out of our way to make sure that that is from independent sources, not from vendors, not from people on either side of the issue, but from independent sources whose primary objective is to put out a solid scientific body of research.

While CEDs nationally have been found to be used disproportionately against people of color, the Department of Justice review of SFPD found that there were no correlations between the severity of force used and the citizens or their residents whose force is used upon, the race of that person.

We believe that – our vision is that CEDs would be a force option like the other intermediate force options that are already within our use and our policies: OC or pepper spray and batons. Our plan and vision would be to continue to monitor all use of force as we are required to do now and make sure that force is deployed only when appropriate and necessary. In accordance with the Department of Justice recommendations, our Department will work to improve its data collection techniques to ensure that use of force is including, if this is approved and goes through, that CEDs are effectively and vigorously monitored.

I stated before that we acknowledge and very attuned to the fact that CEDs can lead to incident of fatality. However, with that said, the overall body of research out there indicates in overwhelming fashion that this is a piece of equipment that reduces injuries and when used compatible with proper policies, procedures, and training, that evidence is overwhelmingly apparent.

CEDs are force options like batons, pepper spray, and firearm that all come with risks. We understand the risks and we want to make sure that if we are granted permission to adopt CEDs as a piece of equipment for our use that our policy and our training are put in place to do everything possible to mitigate those risks. We attend to address those concerns by a four-pronged or multi-pronged strategy that includes comprehensive policy with public input, robust training, very strong supervision, and extensive oversight and accountability measures. With those four prongs we believe that we will be on par with the best practices among the world's law enforcement agencies in the use of CEDs.

I want to break that down into further detail. Our comprehensive policy objectives include the development of policy that includes extensive research and that includes discussions with medical professionals, subject matter experts across the globe, and best practices from departments that have used this equipment effectively. We also have a vision that our policy will provide clear direction and outline limits constraints in the uses of CEDs. The Department and Police Commission are working with stakeholders to insure community input in policy and we believe that is a very important component as well as the DOJ recommendation that we hold dearly and we want that to be a part of this process and we are working hard to make that happen currently.

The Commission, the Police Commission, has developed a CED website tab for the public to follow as we work through this process. The website includes SFPD draft policies, CED policies from other agencies so we can compare some of the best practices, various CED studies and various CED articles. It also includes the comparison matrix between San Francisco PD proposed policy as we work through it and other law enforcement CED policies. The bottom line on this is we want to be as transparent as possible, as inclusive as possible as we put a policy in front of the Police Commission for them to decide on whether this is the right thing for our police department and our city.

Our CED policy will incorporate the principles from our Department General Order 5.01 including the safe-guarding of life, de-escalation, CIT or Crisis Intervention Team, and the minimal amount of force necessary, and also the duty to intervene if that equipment is used inappropriately.

The next thing is our training. We believe that training is one of the most vital component of a successful implementation and a plan to mitigate the risks associated with CEDs. We're committed to training all sworn members, not only on the use of CEDs, but if, in fact, this request, this vision is carried forward, the vision includes anybody that's issued a CED will be trained on both the use of force and crisis intervention field tactics before that CED is issued to the individual officers. Our

continuing education plan for officers will also incorporate and reinforce the principles of safe guarding life as I said and de-escalation.

SFPD members will conduct policy training and vendors will not be involved in policy training. We plan to do that as a measure to contain costs and we believe that we have to be responsible for training our own employees in the most professional manner and the most efficient manner. Our CED training division is that training will be annual with certification happening on annual basis.

The third component is supervision. As will all use of force they require strict supervision and oversight. All use of force incidents currently that happened within the San Francisco Police Department and the officers of the San Francisco Police Department require a supervisor to respond to the scene to ensure the scene is secure, observe officer's and subject's injuries and locate witnesses, ensure they're interviewed including sharing photographs and other evidence are collected. That will continue in the use of CEDs.

And one of the benefit of CEDs, because of the technology embedded in CEDs, is possibly one of the most accountable pieces of equipment available. The data is collected, data is downloaded from the device as we understand it, and that data is subject to review subject to policy compliance and subject to basically an evaluation of whether each discharge of conductive energy devices are appropriate within the confines of the law and department policy. As it stands, no other equipment has that capability right now. We believe that is a feature in conjunction with the use of body cameras that puts a level of accountability on this particular device that we don't have with any other piece of equipment.

If there happens to be a determination of force or force caused serious bodily injury or death, we have a notification process in place. We have protocols in place and the supervisor must notify superior officers to initiate an investigation immediately. That is a vital part of accountability and a vital part of compliance if we are granted this equipment.

The next component and the fourth that I mentioned is extensive oversight and accountability measures. I've already mentioned some of the features of accountability with CEDs. I'd like to elaborate a little more on what the department would do systemically to ensure oversight and accountability if we're granted use of this equipment. First of all, SFPD have several oversight and accountability tracks on our use of force processes to ensure members comply with policy. That includes providing transparency to the public. I described the public input process. As we work through this process to put before the Police Commission and we also want to provide the Department with an opportunity to review policy trends of CED use, if we're granted use of it, to determine ongoing if there's a need to update policy. Policies should be a living document and I know that the Police Commission has plans in place to robustly and consistently update our policies, and we welcome that because we believe that falls in line with our quest to constantly review and update our policies, as needed, to adjust with the data and the trends.

If we're granted use of this equipment, the initial implementation will have mandatory notifications to commanding officers through our department's Operations Center for each CED activation. I believe it's very important at the onset to have very strict and tight control and accountability and report what we find to the public and the mandatory notifications will help us get there.

We also envisioned convening a quarterly meeting to review all CED activation. The panel will include members from the command staff, the commanding officer of the Risk Management Division, the commanding officer of the Training Division, a representative from the Police Commission, a representative from the Department of Police Accountability, and a community member. We envisioned that to be a very robust way to not only analyze the trends and make adjustments as we need to, if we're granted this equipment, but also to involve the community in this process. Consistent with Department General Order 5.01, we envisioned that all activation of the CEDs will be recorded in the use of force logs that we currently have in place and the supervisory use of force evaluation form. There's current legislation in place, both on the local level to the Board of Supervisors and the State level to collect data involving use of forces and that CEDs will be no exception to that. As a matter of fact, some of the features that we've mentioned, the data and the technology is built into the device actually will help us have a very accurate reporting of some of what's required of us by law.

And lastly, I'd like to re-emphasize two things: the pairing with body worn cameras – the current technology in some of the devices out there that conductive energy devices out there allow us the ability to pair those up with our current body worn cameras where when those devices are activated, it automatically activates the body worn camera so the officers don't have to do anything in order to activate the body worn camera. We believe that is a tremendous accountability factor that we can take advantage of and leverage our current technology to put even an additional accountability lever into the use of CEDs.

The last thing that I will say before my closing conclusion is this, I'm gonna go back to where I started. We and I understand that there are risks associated with any equipment where force is used, and that includes the equipment that we currently have and the equipment that we're asking the Police Commission to consider. I take that as a professional responsibility. I came through the door when I was asked about how I felt about conductive energy devices, of whether or not I thought it was a tool that would be helpful to this department. I said then I believe that it is and I continue to feel that way after the research that our department has put before me. I continue to feel that way after the independent research. I do believe that we can minimize and reduce officer injuries and more importantly injuries to our residents and I think the overall body of work is overwhelming in terms of what it takes to put together a best practice in terms of the use of this device and give us a less lethal option with the spirit of what we're after is preserving life and the sanctity of life.

Thank you for allowing me the time to present my vision and I appreciate it."

Speakers:

1. Mr. Michael Leonesio, Leonesio Consulting, retired OPD.
  - Design own curriculum and have it POST certified
  - New models do not work as good as old model.
  - All research reviewed are based on previous model
  - There is high failure rate with these weapons, meaning mechanical failure which are not always obvious. Failure of device does not mean you have to shoot at individuals.
  - Encourage as much education as possible
  - Approach this with eyes wide open, it can be done.
  - Lack of training can cause failure, along with clothing, and missing target.
  - Trust issue with officers is that they can't rely on it because they don't know if it's going to work or not work. With training and creative training they were able to figure out how to mitigate failures and if it did fail, they have other tools available.
  - De-escalation, CIT, and then tasers down the road.
  - In Oakland, there were 15 different training curriculum for officers, civilians, dispatchers et cetera. 10 hours course, 4 hour scenarios initially and 4 and 8 hours for officers on the streets.
  - Data collection and watch trends is key, sitting down and debrief with officers every time after use of taser to stay on top with training and what is happening out on the street.
  
2. Matt Masters (via telephone), Kansas City, MO Police Officer
  - Corporation is about profit and not about people and they are not cops, they buy cops to do their marketing.
  - Prefers de-escalation tactics, believes distance and cover is cop's best friend
  - Did not have tasers before 2004 and have never used one since having them
  - Talked about his son who was tased in 2014 who was 17 at that time. He was tased in the chest for 23 seconds and was clinically dead for over 8 minutes.
  - Officer who tased his son stated he held the trigger down because he thought the taser was not working or had any effect. Taser shock caused ventricular fibrillation, suffered anoxic brain injury. His son continues to struggle with cognitive disabilities.
  
3. Dr. Zian H. Tseng, MD, M.A.S., UCSF
  - Time to defibrillation is key for survival
  - Risk factors for cardiac arrests: underlying cardiac disease, high adrenaline, illicit drug use, acidosis (diabetics), thin body habitus
  - Recommendations for taser use: policy should be designed taking into account the risks of sudden death and indirect/late health effects; tasers should be considered a potentially lethal weapon; tasers should only be deployed for situations in which subjects are in imminent threat of significant, potentially lethal harm to self or others; trainers and other policy consultants should be independent of Taser, Inc.; avoid vector across chest; avoid use on thin persons, children, pregnant women; avoid repeated shocks if possible; officers should be trained in CPR and carry AEDs to allow for rapid resuscitation if cardiac arrest occurs; continuous observation for up to six hours for medical consequence of Taser; consider evaluation by EMS or MD, especially for high risk persons (drug

use, past cardiac history, diabetics, thin persons, shock across chest, repeated shocks).

4. Mr. John Burton, Law Offices of John Burton
  - Danger of repeated taser firing: muscle contractions, produce lactic acid, increase blood acid, and stops the heart.
  
5. Mr. Michael Braves, Axon Enterprise, Inc., formerly Taser International, primary person most knowledgeable in CEWs, CEW-related science literature, warnings, training, and other areas; Director of Axon Scientific and Medical Research Group; CEW Master Instructor, Legal Advisor to Axon Scientific and Medical Advisory Board and the Axon Training Advisory Board
  - Effectiveness rating is that the device can gain up to 80 percent compliance just by intimidation.
  - Failure rate – there’s three issues (1) mechanical, greatly reduced to one tenth of one percent; (2) effectiveness, more effective at gaining compliance than any other force options available to law enforcement and effective up to 81 percent; (3) studies show that taser devices reduces officer injury between 50 and 70 percent; reduced emergency room visits for hands on physical force by 6.5 times. Studies are independent of Taser and Axon.

Commander Walsh, executive sponsor of Use of Force working group, stated the following:

“I’m up here because I am the executive sponsor of the use of force working group which includes stakeholders who have brought, I think tonight, some thoughtful and deliberative experts to talk about what we need to know about the implementation of CEDs.

So just a couple of things that I get and I have received within our executive sponsor working group is “Why is the SFPD bringing up CEDs now?” I think Chief Scott answered that correctly and I’ll just reiterate.

We are in the middle of the DOJ reform process. In the use of force objective 1, Finding 16 with Recommendation 16.1 and 16.2 asked us to form this group and under the directorship of Commissioner Melara and Commissioner Hing, we have done that. That’s why this is coming up. There is a timeline and a process for the DOJ recommendations. While we have the DOJ, while we have some resources, why we’ve been asked to do this, this is the right time. We have oversight through the DOJ to help us through this process. We can review with them technical assistance. One of the things, if you’ve notice, if you go to Police Commission website, is the matrix that we’ve put together strictly about the policy. That matrix came together with the help of the DOJ, reaching out to other departments, puts us so everybody can see where SFPD, the Commission, and hopefully where our stakeholder groups, if we get to the policy and get to that point, will see where we are.

The SFPD’s other question that we’ve been asked, “What problem are you trying to solve with the introduction of CEDs?” Right now San Francisco police officers have,

short of a firearm, let's exclude deadly force, several options when it comes to using force. The examples I'm gonna – what I'm implying is this is not in lieu of de-escalation. This is not in lieu of time and distance. This is when those fail or the immediacy of the situation does not allow for those tactics to be used. Our policy even says when feasible. So please think in those terms. We will never walk away from the sanctity of life. We will never walk away from training our officers in CIT, and we will always, to the best of our abilities, implement de-escalation, time and distance, and all the other tactics.

There's been a lot said, and I'm learning this, about optimal distances. For instance, one of the issues that has come up is we will be at a tactical disadvantage if we have to deploy at the optimum range a CED, which is 7 to 15 feet. What I'd like to present to you is currently, again in our non-lethal use of force area, we have personal body weapons which are considered our hands, our elbows, our feet, and our legs. That means we are clearly in contact with that person. If I backed away at 6'5" and 240 lbs. with a 26" baton, I am well within 7 feet. Lastly, if I deploy my pepper spray, I will probably be, depending on the type of stream we use, somewhere between 6 and 12 feet. Even if we just said we can only use this device in circumstances that intermediate force calls for, it still produces the farthest distance when we need to use force. What I'd also like to say is optimal distance doesn't necessarily mean effective distance. We brought in Officer Joe Vigil from the Richmond, CA Police Department. Joe and Richmond PD have gone out to effective ranges over 20 feet. We're also assuming in the discussions I've heard, and this is anecdotal and we can have these discussions at the working group that every time we deploy this we are in the street, there's no crowds around, and that we, in fact, always have these distances. We respond to domestic violence calls. We respond to other crimes in progress where we're inside and we are closer. Again, 7 to 15 feet is a much better distance than hands on, if appropriate.

We take this responsibility seriously. We are looking at the studies. We are looking at the independent studies. These studies do show that there is a risk. In reading Dr. Tseng's literature, there's an article that he has after he's quoted in, he believes, in that article, we can mitigate, mitigate the risks. We can't get them to completely disappear but we can mitigate them and one of those things is by using an AED and having them available. We can clearly have them available in vehicles but there will be times where we have maybe a beat officer who comes upon a crime or cannot use de-escalation, but we still have that vehicle, and as Dr. Tseng said, we are generally the first responders to medical emergencies. Those vehicles, the supervisor will be responding on top of it, will be coming.

Another point that we'd like to make is we are training through the use of force policy when we implement any use of force. It doesn't matter that it's the CED. The policy that was thoughtfully developed and that has moved forward is the one that will encapsulate whether or not CEDs are a separate or put into the use of force policy. So the use of force that everybody is mandated, that we use and that we accept, is still the guiding principal. This is not a device that is removed from that but is put into it.

Lastly, we, in the DOJ and under specifically in the use of force, are moving forward with some of the, I want to say best data collection since I've been in the police department. We're continually reviewing our use of force supervisory investigations. We're using that to document when we're using force, how we're using force, and also who are we using force against. So as the executive sponsor, I want you to know how deliberative we're being, that we appreciate all the information that we're receiving, and we will continue to update the Commission. The working group will go through this process and move forward."

Commissioner Melara announced that the next working group is July 17<sup>th</sup> from 3 to 5 p.m. and then two meetings to be scheduled to meet with the community.

#### PUBLIC COMMENT

Jeremy Miller spoke of 2007 incident and the use of taser by Jesse Serna and went on to talk about other incidents with taser and deaths using less-lethal methods.

Yulanda Williams, OFJ President, spoke in regards to tools provided to officers and CEDs and protection of sanctity of life.

Jennifer Friendenbach, Coalition of Homelessness, spoke of homelessness and officer-involved shootings and stated that they entered this process ready to learn and discussed concerns about the working group.

Kevin Carroll, Executive Director Hotel Council of SF, supports Chief Scott and the Department to try to implement CEDs.

Rick Johnson, District 7 resident, spoke in support of the CEDs and spoke of attending the Department Use of Force Simulation training and stated that CEDs cannot replace de-escalation tactics and stated that he would rather see somebody injured than dead.

Unidentified suggested the Commission refine the Use of Force Policy before adding other weapons. He stated that CED is a weapon and that it is an electrocution device and asked the Commission to slow down and get the policy in place first.

Daniel Meyer, Attorney Public Defender's Office Mental Health Unit, spoke of video that shows that tasers are deadly and can be deadly and that the Taser company knows that it can be deadly. He presented video to Commission.

Alan Beets, Borderland Books and Café, spoke of being incarcerated while he was in high school and spoke of the number of people shot and killed while armed with a knife and in an altered mental state and spoke of CEDs as dangerous weapons and can cause death however if that is presented as an alternative to a firearm in situations reference, it will save lives of people who need care and will be saving lives of police officers from the horrible burden of having to shoot someone.

Lucy, Blue Ribbon Panel, thanked the commission for the invitation to work with the working group. She went on to talk about cost and liability being a factor; de-escalation versus deployment of taser and urged the Commission and Department to do data analysis.

Peter Fortune spoke of taking the Police Academy SIM course and recommended the Commission to take the course.

Usuri Peace Green spoke that if she had a choice, she would pick that officers taze instead of shooting someone. She spoke of the use of force policy and cultural competency. She stated that not everything works, there isn't anything that is 100 percent.

Karen Fleshman spoke that DOJ did not mandate implementation of tasers. She spoke of how tasers are not for San Francisco. All officers should not get tasers and stated that she is not satisfied that bias has been removed from the department to such a degree that CEDs are introduced and not see the greater use of it will be against black and brown people.

Tyler Dominguez, POA Attorney, spoke of how he was a police officer prior to going to law school. He sated the POA position is that CED is an appropriate tool in between a firearm and a baton.

Ms. Bryant roll out process to most thoughtful way as possible and to issue CEDS to officers who are qualified to carry it.

Mary Harris, OMI Neighbors in Action, on behalf of Taraval CPAB stated that they hope that tasers be implemented.

Mr. Harris spoke in favor of tasers.

Lawrence Rosefeld, Park CPAB, spoke of attending the Use of Force training at the Academy and spoke of his personal results and spoke of the working group work in a thoughtful way.

Julie Traun, SF Bar Association, spoke of cost of CEDS and that we really need to understand and really examine whether CEDS are appropriate.

Barbara Attard stunned that tasers are still being debated and spoke of how the community are against tasers.

Joelle, Ingleside CPAB, spoke of how tasers are needed and that there needs to be training and that it brings another tool for the officers. She spoke that we need to be supportive of our officers.

#### **PUBLIC COMMENT**

None

#### **PUBLIC COMMENT ON ALL MATTERS PERTAINING TO CLOSED SESSION**

None

#### **VOTE ON WHETHER TO HOLD CLOSED SESSION**

Motion by Commissioner, second by Commissioner. Approved 6-0.

(The Commission recessed at 9:45 p.m. and reconvened at 10:09 p.m.)

#### **CLOSED SESSION** (10:09 p.m. – 10:48 p.m.)

##### **PUBLIC EMPLOYEE PERFORMANCE EVALUATION: Chief of Police**

##### **Pursuant to Government Code Section 54957(b)(1) and San Francisco Administrative Code Section 67.10(b) and Penal Code Section 832.7:**

##### **Review of findings and Chief's decision to return or no return officer to duty following an officer-involved shooting (OIS 17-003)**

(PRESENT: Commissioners Turman, Mazzucco, Marshall, DeJesus, Melara, Hing, Hirsch, Chief Scott, Assistant Chief Sainez, Deputy City Attorney Cabrera, Sgt. Kilshaw, Risa Tom, Sgt. Toomer, Sgt. Campbell)

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**PERSONNEL EXCEPTION: Pursuant Government Code Section 54957(b)(1) and San Francisco Administrative Code Section 67.10(b) and Penal Code Section 832.7: Status and calendaring of pending disciplinary cases**

(PRESENT: Commissioners Turman, Mazzucco, Marshall, DeJesus, Melara, Hing, Hirsch, Chief Scott, Assistant Chief Sainez, Deputy City Attorney Cabrera, Sgt. Kilshaw, Risa Tom)

**OPEN SESSION (10:50 p.m.)**

**VOTE TO ELECT WHETHER TO DISCLOSE ANY OR ALL DISCUSSION HELD IN CLOSED SESSION**

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Motion by Commissioner Melara, second by Commissioner Mazzucco for non-disclosure. Approved 7-0.

**ADJOURNMENT**

Motion by Commissioner Melara, second by Commissioner Marshall. Approved 7-0.

Thereafter, the meeting was adjourned at 10:50 p.m.

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Sergeant Rachael Kilshaw  
Secretary  
San Francisco Police Commission