

The CED Working Group meeting met in Room 1025 at Police Headquarters, 1245 Third Street, San Francisco, at 2:00 p.m.

Attendees: Commissioner Melara, Commissioner Hing, Martin Halloran-POA, Alan Schlosser-ACLU, Samara Marion-DPA, Carl Fabbri-SFPD, Pete Walsh-SFPD, Sneh Rao-Human Rights, Angela Almeida-DPH, Brian Knuecker-APOA, Mary Harris-Community Member, David Rizk-Bar Association, David Vanderpool-Community Member, Dennis Chen-Community Member, Dayton Androns-COH, Sgt Rodriguez (Minutes)

**Introduction: Commissioner Melara**

Commissioner Melara confirmed that everyone had received and looked at the input submitted by the various agencies. After this meeting, she will meet with department and decide on a final draft from the input and discuss the upcoming community meetings.

**Review of draft policy: Discussion**

Kilshaw – Version submitted by Samara Marion (DPA) included other agencies input.

Melara – Same preamble from Use of Force Policy, DPA asking for it to be included in CED policy

Walsh – Stand-alone 5.02, pre-amble

Melara – A lot of strikes in submission, has the department looked at all of this?

Marion – Introduction of what the purpose of the policy is for. Unique components involved for ECW's

Walsh – Department is working off of original draft. Testing and such is part of training, and should not be within this policy.

Walsh – ECW or CEW, not sure which way department wants to go.

Marion – Position of DPA is ECW.

Melara – The body around the table are the ones involved in the discussion and I will open it up to public comment.

Unknown – My understanding is that the working group is to come up with a policy created by the working group. Surprised that Walsh is saying, "This is the policy"

Melara – I said from the beginning we have a policy that we would put our input into.

Unknown – We don't have a decision making role, working group

Melara – Proposed policy that would be put before Commission

Rao – Will this body have a chance to review before the policy goes out to the community?

Melara – Yes, to the working group and the community

Rao – Wants the community to understand the parts that are not agreed upon by the working group as parts of the policy

Melara – There will always be disagreements. Hopes for a policy that will work for the department which incorporates safe guards that the community has pointed to, to ensure the policy reflects a balance between the department and the community

Rao – Can we vote on some of the input?

Melara – No, your proposal will be part of what Commission sees. Reconciled policy with one draft, all documents will be on website. We aren't holding anything back. To make an actual document, we will draft a policy based on the departments and community's needs.

Rao – Even if this working group doesn't sign off on it?

Melara – It will include documents from both

Bar Assoc – It should not be represented that whatever policy the department arrives at is that of the working group. We are not reaching consensus on issues, it sounds like they are being unilaterally determined after we view some views. Shouldn't be described as the working groups.

Melara – It is not, it will be described as consolidation of department's needs and community input in the working group.

Unknown – What I am hearing is that the document submitted to Commission is something that is ultimately developed by department and you after listening to the input.

Melara – Yes

Rao – Even with conflict from people around this table, department's version will be taken 100% of the time. How are we going to reach a balance if there is no further discussion?

Melara – Not really, may have to have another committee within the Commission. Can't continue this discussion because we continue to go around in circles. Brainstorming, once draft policy is created, it can go around to working group again so you can make comments and that will be submitted to Commission.

Unknown – Comparing model of Use of Force working group and this working group. Came together with disagreements which were documented and presented to Commission.

Melara – Good point, we can still have a draft policy that is presented to commission, with notes of who is against which particular section.

Unknown – Don't understand why we aren't going line by line through the policy and voting.

Melara – We keep going around in circles, this is not a voting body. Representation of entities, agencies, and not necessarily the public. If we voted, this body would look very different.

Mary Harris – Guidelines and published documents have been shared with CPAB/Excelsior/OMI. They like the POA version. Would tweak the POA version a little but feel it is most officer user friendly.

Melara – We don't have a lot of the community groups here, that's why we are wanting to come up with a draft policy to the community meetings, then back to the Commission.

API Forum Rep Chen – API would like the taser to be designed to look different than a gun.

### **PUBLIC COMMENT – 2 Minutes**

Uzuri – Problem is the majority of community is for tasers. This group is making it harder for the officers to do their jobs. They should be bright yellow. This is not transparency. Electronic controlled weapon? Just keep it simple, the community knows it as a taser. I'm from Potrero Hill, keep it simple. The community doesn't have access to all of these documents. Go into the community. We want the officers to have tasers.

Bayview CPAB member – Meet with Captain Vaswani often. The harder you make it to understand the policy. We want officers to have a way to diffuse situations without it being lethal. We need something that will give our officers a fair chance. Female Sgt. was pummeled because she didn't have a choice of a non-lethal device.

Unknown – I object Melara’s attempt to shut down this discussion among group members. I also object how Melara is running this working group which allows SFPD to decide public policy. Why does the department even need tasers? What problem is SFPD trying to solve with this weapon has not been sufficiently answered. Community meeting should be held in areas where tasers would affect people. Meetings should be in central locations, facilitated fairly. No pre-set questions. These meetings should be videotaped and uploaded to Commission website and larger meeting room.

### **RESUMED WORKING GROUP**

Melara – I can commit to draft policy, I agree, simpler the better for officers to understand policy. We will put together a document that reflects pros and cons of who was for or against something.

Unknown – Document will show baseline and all input from group

Melara – Not all input, we would somehow or another state that these organizations recommended we input this or take this out.

Unknown – This policy is used to inform and train officers, but it is also a way to train the public the stance of the Commission. Don’t want the policy to be stripped

Halloran – POA does have additional comments and recommendations, based off of draft policy not the proposed policy of DPA. It is (12) pages of additional comments/suggestions/recommendations. Will forward electronic copy to Commission Secretary. Created by Executive Board and Labor Attorney.

Melara – We will take all comments/recommendations to see what policy we come up with

Marion DPA- Want to clarify the policy the department drafted is the one we went thoroughly through. What we provided today is not a different draft. It is annotated. Everyone’s comments should be included and combined into one policy and that we would have agreements for the purpose of the changes.

Walsh – The current draft policy is taken from numerous policies. Department’s policy is not starting from 2016 draft policy. If we go to 2016 policy, that needs to be the input.

Rizk – Commissioner Hing articulated in an affirmative way the need and purpose to introduce this weapon. 5.01 doesn’t address ECW’s. Do you think a purpose statement is needed?

Walsh – First sentence goes back to preamble, lots of redundancy in working group revisions. Hard for officers to digest, way too much information. Think it would be best to start with what is proposed and add. If you follow the draft policy, you will find a lot is answered. We are now working on a policy with a lot of additives that aren’t combining what is said.

Rizk – Is there an equivalent in sfpd’s policy to the final two sentences in part A. That is what articulates what the stakeholders think.

Walsh – Authorized use of CEW is what I would use, for the last line, exceptional circumstances could be added

Knuecker – I am 6’2”, in my law enforcement experience, reading what it says, only when someone has a weapon, it is putting officer’s life in danger.

Unknown male – how would a discrepancy like that be reconciled in the draft.

Melara – It is the best interest to delete that, for the department as the department is the one using the weapon, not the community. In the margin we would say, “These organizations feel that it should only be used in these instances when a firearm is involved”.

Marion – May of 2016, department used different language in the policy. Community needs to know what was approved prior.

Walsh – I am not a taser expert, to take that away as a prohibitive police does not make sense

Melara – There is a new chief in town. What happened this year to what happened last year, is because of a new command staff. Not what department wants now.

Unknown male – Allowing tasers to be used for someone who is running, slightly tensing, etc, is like allowing someone to use their own discretion. This policy has serious flaws.

Melara – You (the group), highlight what is the most important pieces of the current draft. Point to these areas so we know these are the most important and serious issues to you.

Unknown male – I feel the most important area we should talk about is on page 8, restricted use.

Unknown male – Need to also educate the public. We need to go line by line on this policy. There are very serious issues here. A lot of misunderstandings here.

Unknown male – page 9 is contradicting, speaking about not being able to use a taser on someone with a knife. Contradictory language.

Unknown male – which draft are we working off of?

Melara – We wanted to have discussion on DPA's version to discuss with the department. Other ones submitted are not as involved. This isn't the only one we are working from.

Marion – What is the threshold for when a CEW can be used? Can we talk about that? Important to discuss. State of Maryland study shows just what an individual says, or when someone is tensing, should not be a basis for when serious use of force is used. Needs to be a serious threat. Need a standard. Crossed out assaultive because assault doesn't tell the force used. Just touching someone can be considered an assault. Active resistance is not tensing. Need a higher standard based on case law and best practice. Consistent with risks and proportionality. We need to be precise about wording. We need to look at Maryland report from 2009.

Walsh – We are training our officers in de-escalation and time and distance. It is a leap to say our officers are jumping into a car to tase people who say they aren't getting out of a car. More restrictive language is already in the policy.

Kneucker – gave example of incident in which he could have used a taser, and when it would have been better. It's a tough call.

Unknown male – unknown what said

Walsh – gradual roll out of tasers, would have to be CIT trained.

### **PUBLIC COMMENT – 2 Minutes**

Unknown male: Tasers might be called an intermediate use of force, but he calls them instruments of torture.

Tyler Dominguez: spoke about the fact that the comments that were being discussed were not on the SFPD draft policy, making the discussion difficult to follow. Also mentioned that he has experience with Tasers and he believes Tasers save lives, are useful, and can lower the number of deaths. He commented that the courts have stated the Tasers are an intermediate level of force.

Uzuri Pease-Greene: Asked for another meeting to see the policy that the Commission and the Department are going to develop. Commissioner Melara responded that there will be two opportunities for the public to comment on the revised draft policy. Commander Walsh said there will also be opportunities to review the revised draft policy at the month Captains' meetings at the district stations.

### **RESUMED WORKING GROUP DISCUSSION**

Samara Marion stated that the policy should be based on higher thresholds, similar to DGO 5.01. The Department can look to other states and countries and learn where they made some mistakes, and create a policy that implements higher standards to avoid having the mistakes happen in San Francisco. She used her suggested list in "Authorized Uses" as an example of taking items from another agency.

Commander Walsh asked to clarify if items 2 and 3 in the list that Samara read required a weapon, and that was clarified by Samara Marion that those two situation did not. Commander Walsh mentioned that problems can arise from using different definitions in the CED policy than those in DGO 5.01. Commander Walsh said the Department may need to look at the definitions in DGO 5.01.

David Rizk stated the language proposed by Samara Marion is very clear even though it does not use the language in DGO 5.01. There is a problem with the use of DGO 5.01 definitions with the use of Tasers and the Taser policy. He doesn't think that there is "much daylight" between the two versions, and thinks there can be a compromise.

Alan Schlosser stated that similar to DGO 5.01, the group does not have to be limited to case law. DGO 5.01 went above case law and set a higher standard.

Samara Marion stated that the definitions agreed to in DGO 5.01 were developed with Tasers in mind. The chart in DGO 5.01 listing the types of force and levels of resistance are not connected to a specific weapon. There are issues to consider when talking about Tasers: risk, proportionality, making it possible to use definitions just for the Taser policy. She stated that the 3 authorized uses that she proposed do not seem that different that the three authorized uses proposed by the Department.

Carl Fabbri stated that the Department thinks there should be a statement allowing a consideration about the totality of the circumstances when describing authorized uses. He further went on to describe a situation involving a wanted homicide suspect sitting in a car, grabbing the steering wheel,

refusing to get out. He mentioned that OC spray and baton would likely be ineffective. Commissioner Hing stated that the specific language can be added to authorize use #3.

Sneh Roa stated that other key areas that he would like considered are 1) The restricted use section which he thinks should be based on the Taser Warnings. He also is concerned that studies show that Tasers are used disproportionately against people of color and homeless. He understands that the Department did not want to put anything in restricted uses regarding homeless, but he wants people to know that many homeless have mental health issues that are not apparent. In cases many cases where a person has died where a Taser was used, the medical examiner very rarely list the cause of death as Taser. It is most often listed as a contributing factor but rarely the cause. Sometimes in those cases though, excited delirium is listed as the cause of death. He would like officers aware of the potential for death when Tasers are used on people with excited delirium.

Samara Marion noted that the DPH made comments that the SPA did not include but that the DPA thinks are important, documentation involving deployment and activation of Taser. DPA also wants language about data collection and the analysis, review and report out of the date. DPA recommends a person in charge of CEWs to be part of the review process. Regarding the 22 Taser warnings, in 2013 the Company started calling Tasers a weapon and wanted to list the risks involved in using a Taser. Officers should know the risks of using a Taser so they are knowledgeable of what could happen when they use a Taser. They should also be taught that the secondary risks from having a Taser used on a person can be severe.

Commander Walsh stated that the Taser warnings will be incorporated into the training and not included in the policy. He prefaced his comment that he does not downplay that negative consequences can happen with a Taser, but many of the warnings are about product liability, and as reported by Mr. Leonesio, acetaminophen has a higher risk of death per usage than a Taser. If additional warnings come about, the Department can issue a Department Bulletin. There will be oversight to the Taser program, but it will be broadly outlined in the General Order, not detailed in the policy.

Commissioner Melara mentioned that the Commission can dictate to the Department what it wants to see regarding what it wants to see happen for things such as oversight, roll out, data collection – things that need to be done don't necessarily need to be in the policy.

Alan Schlosser asked that if a person is doing something that would require an intermediate level of force, does the officer have the choice of which force option to use (OC, baton, Taser) or will the policy limit the use of the Taser by stating it is a dangerous weapon and limit its usage

Dayton Andrews stated that a recent study shows that the homeless population are physiologically 20 years older than their numerical age. He wants officers to understand the effects that Tasers can have on the homeless population.

Dennis Chew said that he would like officers to be able to do their jobs with the least amount of risk of getting injured. He is hoping that other people on the working group have the same goal of doing as much as the group can to make sure that officers don't get injured. He understands that Tasers are used in a greater number against people of color, but if people of color are committing a crime he does not want to see officers hesitate using a Taser because the person is a person of color.

Sneh Rao responded that Baltimore Sun article and several studies showed that even when comparing the uses of tasers against suspects of crimes, there is a bias against people of color. People of color are less likely to get the warning about Taser use and more likely to get tased

Angelica Almeida mentioned that an area important to the DPH is the concept of cascading effects because of tasers, and the protocols surrounding the use of AEDs. All of her comments are on the document she submitted.

Alan Schlosser stated the ACLU is opposed to the Department getting Tasers, and asked if there will be an opportunity for different agencies to voice their opinions on the revised draft document so that the community will see the opinions. Commissioner Melara said the stakeholders' opinions will be available to the public.

Tyler Dominguez again stated that the document being discussed is not the SFPD draft policy making it difficult to follow. He asked if the revised draft will be based off of the SFPD draft policy. Commissioner Melara said that any changes will be made to the SFPD draft policy.

#### **PUBLIC COMMENT – 2 Minutes**

Tom Meyer asked about the cost analysis by the Commission. Commissioner Melara said the Commission is not doing a cost analysis. Commander Walsh responded that the SFPD is putting together a cost analysis package which will be shared with the group and the public. He said that the 16 million dollar figure is not likely how much implementing Tasers will cost.

Unknown male stated that if the Commission approves Tasers the "horse is out of the barn." There is no accountability with officers in the policy. If an officer kills someone now, there is no accountability and he/she does not go to jail or get criminally charged. It will be the same with Tasers. He stated he is against Tasers because they are a form of torture and there is no reason to use them. If they are

allowed, the consequences will go on forever. He stated that the policy is unenforceable. Officers need to suffer the consequences but if they don't then this whole group is a waste of time.

Commissioner Melara adjourned the meeting at 5:10 pm