

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 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.

Commented [SFPD1]: See corresponding comment #1

Commented [SFPD2]: See corresponding comment #2

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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.

Commented [SFPD5]: See corresponding comment #5

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

Commented [sfpd6]: See corresponding comment #6

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. 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 consider 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.

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C. SUBJECTS ARMED WITH WEAPONS OTHER THAN FIREARMS.

When 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

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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.

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D. HANDLING, 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, 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.

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E. 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:
 - 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 an animal posing an imminent threat. 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. **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 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.

Commented [sfpd12]: See corresponding comment #12

Commented [S13]: See corresponding comment #13

- 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

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.

II. 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.

Commented [sfpd14]: See corresponding comment #14

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

Updated Stakeholder Comments as of 05/02/16 regarding DGO 5.02, Use of Firearms and Lethal Force, (03/21/16 draft date)

1. SFBAR, OCC, Public Defender, ACLU and COH suggest an adjective to describe the type of communication. Some possibilities were “rapport-building,” “effective,” “non-violent, and “positive.” Reference to SFBAR, OCC, ACLU and COH in this comment refers to an earlier comment and it should be updated. Following 3/21/16, and with permission of the Department, SFBAR submitted what is now stated under Comment "3" below.

Refer to Public Defender 05/02/16 email

Refer to SFBAR 05/02/16 email and comments on DGO 5.02

POA, OFJ, LPOA, APOA, and Pride Alliance concur with the current language.

2. SFPD will incorporate the term “crisis intervention” once the DGO on CIT is adopted and the term “crisis intervention” is defined. At this point the CIT DGO is pending. COH and OCC question why the term cannot be included at this time – the Department uses the term “crisis intervention” now on its website, in its training and in a Police Commission resolution.

Refer to SFBAR 04/06/16 letter and attachment

Refer to COH 02/23/16 letter, item 2, pages 1-2

Refer to COH letter 04/06/16, item 4 page 3

3. SFBAR, COH, Public Defender and the OCC recommend the opening paragraph state: “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 accomplishing the police mission with respect and minimal reliance on the use of physical force by using rapport-building 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 force. These are key factors in maintaining the legitimacy with the community and safeguarding the public’s trust.” Joining in SFBAR's proposed introductory paragraph, and copied on the email, and supplied in written format to the Commission on April 6, 2016 were the following stakeholders: SFBAR, OCC, ACLU, PD, BRP and COH. In addition, all of the listed stakeholders included additional commentary as follows: "Stakeholders (BASF, OCC, ACLU, COH, BRP [Blue Ribbon Panel] and PD) feel strongly that this sentence needs to be included in the introductory paragraphs of all Use of Forces DGOs [applicable - 5.01 and 5.02]. This language, committing to minimal force, is consistent with 21st Century policing, PERF's Reengineering Use of Force and mirrors/tracks the language of several departments including Oakland, Seattle and Milwaukee. (It is also consistent with SFPD's current use of force policy (DGO 5.01 which states, "[i]t is the policy of the SFPD to accomplish the police mission as effectively as possible with the highest regard for the

dignity of all persons and with minimal reliance on the use of physical force.") The above referenced stakeholders strongly urge that deleting reference to minimal reliance on the use of physical force is both a step backwards and inconsistent with current practices being urged nationally."

ACLU, SFBAR, OCC, Public Defender, Blue Ribbon Panel and COH recommend the term "minimal force necessary" be incorporated throughout the use of force policies. Police Executive Research Forum (PERF)'s recently released "Guiding Principles On Use of Force (March 2016) recommends that police departments adopt policies that hold themselves to a higher standard than the legal requirements of *Graham v. Connor* (1989) 490 U.S. 386. Several law enforcement agencies across the nation have Use of Force policies that instruct officers to use "minimal force." Departments relying on a standard of minimal force include the New Orleans Police Department, Las Vegas Metropolitan Police Department, Washington, D.C. Metropolitan Police Department, Chicago Police Department, Portland Police Department, Albuquerque Police Department, Seattle Police Department, Oakland Police Department, Milwaukee Police Department, and Police Scotland. By using the term "reasonable force" throughout the policy and removing "minimal force" as stated in the current DGO 5.01, stakeholders are concerned that the Department is taking a step backwards from the current trend in policing nation-wide that seeks a higher standard than the minimum requirement of *Graham v. Connor*. These members of the stakeholder group believe that the Department can and should choose Use of Force policies, training and tactics that are considered best practices in the policing profession and go beyond the minimum requirements of *Graham v. Connor*. They reminded the group that the Mayor, the Chief and the Commission all committed to changing the use of force policy by speaking about the principles in the PERF recommendations. COH also points out that PERF's guiding principles suggest a higher standard than *Graham v. Connor*, and that many law enforcement agencies across the country use "minimal."

Refer to ACLU 02/29/16 letter, item A, pages 1-2

Refer to COH letter 04/06/16, item 1, page 2

Refer to Public Defender email 05/02/16

Refer to SFBAR 02/29/16 letter, item 1, page 3-4

Refer to SFBAR 04/06/16 letter and attachment

Refer to SFBAR email and attachment on DGO 5.01

Refer to SFBAR 05/02/16 letter to the Commission

Refer to OCC 02/29/16 letter, item A, pages 1-2 and item B.1, page 4

Refer to OCC 04/06/16 letter, item A, pages 2-7

The POA, OFJ, Pride Alliance, APOA and LPOA concur with the term "reasonable force" being used throughout the policy and oppose the use of the term "minimal force." Case law does not require officers to use minimal force; the courts require officers to use force that is objectively reasonable. These members of the stakeholder group state that PERF is not the authority on use of force, and is only one of many groups that have opinions on use

of force policies, and point out that there is currently intense criticism regarding some of PERFs recent recommendations on use of force.

Refer to Pride Alliance 02/28/15 email attachment, item 5.01 II A

Refer to POA 02/29/16 letter, page 2, page 10

Refer to POA Subject Matter Expert letter 02/27/16, item 2, pages 3 -5

Refer to POA 05/02/16 letter regarding minimal use of force, pages 1 -5

Refer to POA Subject Matter Expert letter of 02/29/16, pages 3 and 4

Refer to POA draft DGO 5.01 dated 04/06/16, pages 1-3

There is no consensus on this issue throughout the policy. Anytime the term “reasonable force” is written in the policy or the term “minimal” is proposed by a member of the stakeholder group, the positions described above should be considered.

4. ACLU, COH, Public Defender, SFBAR, and the OCC recommend the word “unnecessary” instead of “unreasonable” and “necessary” instead of “reasonable.” ACLU states that un/necessary and un/reasonable mean two different things.

Refer to Public Defender email 05/02/16

Refer to SFBAR letter 04/06/16 letter and attachment

The POA, OFJ, APOA, LPOA and Pride Alliance all want the use the terms “reasonable” and “unreasonable.”

Refer to Pride Alliance 02/28/16 email attachment, item 5.01 II A

Refer to POA 02/22/16 letter, item 2, page 2

Refer to POA letter, page 2 and pages 4-6

Refer to POA Subject Matter Expert 02/29/16 letter, item K. b., pages 4-6

There is no consensus on this issue throughout the policy. Anytime the terms “reasonable” or “unreasonable” are written, the positions described above should be considered.

5. ACLU, SFBAR and OCC do not believe this paragraph should be placed here. ACLU does not have a suggestion for placement.
6. OCC, SFBAR, COH, Public Defender and ACLU recommend 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.”

Refer to OCC 02/29/16 letter, item 4, pages 3-4 and item 5, page 6

Refer to OCC 03/11/16 letter, item 2, page 2

Refer to OCC 03/17/16 letter, item 2, page 2

Refer to SFBAR 05/02/16 letter to the Commission

Refer to Public Defender email 05/02/16

Refer to POA 05/02/16 letter regarding DGO 5.01, item B, pages 7-9

7. ACLU, SFBAR, COH, Public Defender, COH and OCC recommend the policy state “apply” instead of “consider. These members feel there is a distinction between the two terms: 1) apply means taking an action, and 2) consider means only having to think about the concept.
8. 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.

Refer to POA 02/29/16 letter, item 21, page 16

Refer to POA letter dated 04/02/16 regarding 5.02, item 2, pages 3 - 6

9. The stakeholder group cannot reach consensus on whether to use the term “shall, when feasible,” or the term “should, when feasible” throughout the entire document. When the terms “shall, when feasible” or “should, when feasible” are written in the document, the positions described below should be considered.

The OCC, SFBAR, Coalition on Homelessness (COH), San Francisco District Attorney/Blue Ribbon Panel (SFDA/BRP), Public Defender and ACLU recommend using the term “shall, when feasible.” The POA, OJF, Pride Alliance, LPOA and APOA had concerns with this term because “shall” is a mandate, but if an officer cannot perform the action because of safety, someone might judge the situation, using 20/20 hindsight, and opine that the officer would have been able to, and therefore should have, performed the action and discipline the officer.

Refer to SFBAR 02/29/16 letter, item 2, page 8 and item 3, page 5

Refer to SFDA/BRP edits to DGO 5.01

Refer to COH 04/06/16 letter, item 2, page 2

The POA, OFJ, LPOA, Pride Alliance and APOA want to use the term, “should, when feasible.” OCC, SFBAR, COH, SFDA/BRP, Public Defender and ACLU have concerns with that term and discussed the distinction between their understanding of the two terms: “shall, when feasible” means an officer shall take the required action when feasible/safe. “Should, when feasible” means the action is “recommended” and thus, the officer can think about the recommendation to take action, but the officer does not have to take the action even if it is feasible/safe. DGO 3.02, Terms and Definitions, defines both terms:

- 1) Shall/Will/Must: mandatory
- 2) Should: permissive, but recommended

Refer to Pride Alliance 02/28/16 email attachment, item 5.01 II F

10. 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.
11. The OCC, Public Defender, COH and SFBAR recommend 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."

Refer to SFBAR 02/29/16 letter, item A, page 10

Refer to SFBAR 05/02/16 letter to the Commission

Refer to OCC 02/29/16 letter, item 4, page 5

Refer to OCC 04/06/16 letter, item C, pages 11 – 12

POA, OFJ, LPOA, APOA and Pride Alliance are opposed to the recommended language and state the law does not support the statement that the situation will escalate to lethal force in order for an officer to point a firearm. The POA also state that while they know the pointing of a firearm is a use of force, they question why the Department has made it a reportable use of force.

12. POA, OFJ, APOA, LPOA, and Pride Alliance 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."

Refer to POA 02/22/16 letter, page 6

Refer to POA letter 02/29/16, item 22, pages 16-17

Refer to POA Subject Matter Expert 02/27/16 letter, item K, pages 12-13

Refer to POA Subject Matter Expert letter, item h, pages 9-10

Refer to POA 05/02/16 letter on 5.02, item 5, pages 9 - 11

From the OCC: New York Police Department, Boston Police Department, Chicago Police Department, Cincinnati Police Department, Denver Police Department, Philadelphia Police Department, and Washington, DC Metropolitan Police Department restrict the shooting at or from a moving vehicle. For more than 40 years the NYPD has restricted officers from shooting at or from a moving vehicle. After adopting its restrictive policy in 1972, NYPD's shootings at cars dramatically reduced from nearly 1,000 to 665 the following year to fewer than a 100 per year today with no indication that officer safety was in any way jeopardized by the change in policy. PERF's Guiding Principle #8 provides that law enforcement agencies should adopt a strict prohibition

against shooting at or from a moving vehicle unless someone in the vehicle is using or threatening deadly force by means other than the moving vehicle itself.

Refer to SFBAR 02/29/16 letter, item 6, pages 10-11

Refer to SFBAR 05/02/16 letter to the Commission

13. 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. This language mirror's Oakland's policy on vehicle pursuit of 2014 which Oakland PD reports has resulted in decreases in shooting/deaths

Refer to SFBAR 02/29/16 letter, item 6, page 10

Refer to SFBAR 05/02/16 letter to the Commission

14. ACLU and SFBAR want this language taken out. POA wants this language to remain and moved to the beginning of the policy. OCC and SFBAR (if the language remains) want a requirement that the exceptional circumstances and the force used by the officer be articulated in writing.

Refer to POA Subject Matter Expert letter 2/29/16, item 1, page 10

Refer to POA 02/29/16 letter, item 15, pages 12-13

Refer to POA Subject Matter Expert letter 02/27/16, item 2, page 5

Refer to POA 05/02/16 letter on DGO 5.02, item II, page 12