

San Francisco Police Department

DGO 5.01

USE OF FORCE



DGO 5.01

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- December 9, 2016 Commission Meeting
 - Commission President Suzy Loftus directed the Department to draft an updated use of force policy to present to the Commission in February 2016.
- January 6, 2016 Commission Meeting
 - Commission President Loftus directed the Department to attend a series of community meetings at Third Baptist Church, Bayview YMCA, Saint Ignatius High School, and Boedekker Park, organized by the Commission and youth from the Community Safety Initiative, to obtain recommendations for the draft use of force policy.



DGO 5.01

USE OF FORCE

- **February 10, 2016 Commission Meeting**
 - SFPD presented three separate draft policies:
 - Draft DGO 5.01, Use of Force
 - Draft DGO 5.01.1, Use of Force Reporting
 - Draft DGO 5.02, Use of Firearms and Lethal Force
- **February 23, 2016**
 - Stakeholder group created and met three times to provide written and verbal recommendations to the Department on the three use of force draft policies.



DGO 5.01

USE OF FORCE

The Stakeholder working group included representatives from:

- SFPD
- Office of Citizen Complaints
- Public Defender's Office
- District Attorney's Office/Blue Ribbon Panel
- SF Bar Association
- ACLU
- Department of Human Resources
- Community Representative
- Crisis Intervention Team working group member
- Coalition on Homelessness
- Human Rights Commission
- Community Safety Initiative
- SF Police Officers Association
- Officers for Justice
- SF Pride Alliance
- National Latino Peace Officers Association
- Asian Peace Officers Association
- Women Police Officers Association



DGO 5.01

USE OF FORCE

May 4, 2016 Commission Meeting (cont'd)

- The Commission agreed to draft a second version of the Use of Force policies that included:
 - Incorporating the language proposed by community stakeholders for the opening paragraph.
 - Using the term “minimal use of force” instead of “reasonable force.”
 - Using the term “shall, when feasible” instead of “should, when feasible.”
 - Using the community stakeholder’s version of the paragraph regarding “Proportionality.”
 - Incorporating language proposed by the community stakeholders in the section regarding the pointing of a firearm.
 - Adding four additional factors to the list of factors that determine whether force was reasonable.
 - Adding a section on Crisis Intervention Team in the policy.
 - Including language to resolve issues about supervisory responsibilities when dealing with weapons other than firearms.
- Adding the community stakeholder suggested language about data collection requirements.



DGO 5.01

USE OF FORCE

May 6, 2016

- The DOJ provided a memorandum and Subject Matter Expert (SME) comments on the three Use of Force policies.
- The memorandum contained “overall comments” on the Use of Force policies and suggested:
 - Combining the DGO 5.01, DGO 5.01.1 and DGO 5.02 into one policy
 - Including a “Definition” section in the policy
 - Including a description of the levels of force
 - Including a list of authorized impact weapons
 - Adding information and guidance related to the role of the supervisor
 - Including language about use of physical controls against vulnerable populations
 - Including cross-references in DGO 5.01 to other policies to provide adequate information
 - Recommending that the Department review certain sections of the *Final Report of the President’s Task Force on 21st Century Policing*



DGO 5.01

USE OF FORCE

May 6, 2016 (cont'd)

- The DOJ memorandum also included a comment that individual SMEs made suggestions on the three separate policies. The SME recommendations came from various members in law enforcement and were summarized for the Commission by a member of the DOJ – COPs Office. The memorandum and SME's comments were posted to the Commission's webpage for the public to review.



DGO 5.01

USE OF FORCE

May 11, 2016 Commission Meeting

- Commission discussed the DOJ memorandum and SME's suggestions.
- Commission President Loftus announced a Use of Force subcommittee.



DGO 5.01

USE OF FORCE

May 30, 2016

- The Commission drafted two versions of DGO 5.01 for consideration based on the discussions at the May 4, 2016 Commission Meeting and the DOJ memorandum and SME suggestions. The two draft versions consolidated the draft versions of DGO 5.01, Use of Force; DGO 5.01.1, Use of Force Reporting; and DGO 5.02, Use of Firearms and Lethal Force.



DGO 5.01

Use of Force

Draft DGO 5.01 version 1:

- At various places throughout the document, the terms “should” or “should, when feasible,” are used. The term “should” means “permissive, but recommended,” and allows officers more discretion when taking action.
- At various places throughout the document, the terms “imminent,” and “imminent threat” are used. “Imminent” means “impending” and implies that something is about to occur.
- At various places throughout the documents, the term “reasonable force” is used. Reasonable force is an objective standard of force from the perspective of a reasonable officer. This definition comes from a Supreme Court decision and is the “lawful standard.”



DGO 5.01

USE OF FORCE

Draft DGO 5.01 version 1:

- Opening paragraph:

“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.”



DGO 5.01

USE OF FORCE

DGO 5.01 version 1:

- Proportionality:

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

This definition is consistent with the definition of reasonable force.



DGO 5.01

USE OF FORCE

DGO 5.01 version 1:

- In section III, B. 3, the list of “other factors” that may determine reasonableness includes additional factors not included in version 2:
 - number of officers/subjects
 - Age, size and relative strength of the officers/subjects
 - specialized knowledge, skills or abilities of the subjects
 - prior contact
 - injury or exhaustion of the officers
 - proximity, access to and type of weapons available to the subject
 - time available to an officer to make a decision



DGO 5.01

USE OF FORCE

DGO 5.01 version 1:

- Section IV, C includes two circumstances when it is objectively reasonable to use lethal force:
 1. Protect him/herself or others from what is reasonably believed to be an imminent threat of death or serious bodily injury; or
 2. Prevent the escape of a fleeing felon when:
 - a. The officer has reasonable cause to believe that the subject has committed or has attempted to commit a violent felony involving the use of threatened use of deadly force;
 - b. The subject poses a threat of serious physical harm to the public or the officer if the subject's apprehension is delayed;
 - c. The use of lethal force is reasonably necessary to prevent escape;
 - d. When feasible, some warning should be given before the lethal force is used under these circumstances.



DGO 5.01

USE OF FORCE

DGO 5.01 version 1:

- Section V, G allows the Carotid Restraint as force option.



DGO 5.01

Use of Force

Draft DGO 5.01 version 2:

- At various places throughout the document, the terms “shall” or “shall, when feasible,” are used. The term “shall” means “mandatory.” This language requires officers to take the action as directed in the policy, with no discretion.
- At various places throughout the document, the terms “immediate,” and “immediate threat” are used. “Immediate” means “happening or existing now” and implies that something is occurring at that moment.
- At various places throughout the documents, the term “minimal force” is used. Minimum force is the least amount of force needed to bring a situation or subject under control and is the standard that many in the community and community stakeholders want to use as the “community standard.”



DGO 5.01

USE OF FORCE

Draft DGO 5.01 version 2:

- Opening paragraph:

“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 force by using rapport-building, communication, crisis intervention and de-escalation principles before resorting to 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 legitimacy with the community and safeguarding the public’s trust.”



DGO 5.01

USE OF FORCE

DGO 5.01 version 2:

- Proportionality:

“It is important that an officer’s level of force be proportional to the severity of the offense committed or the threat posed to human life for which the officer is taking action. It is critical officers apply the principles of proportionality 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 may only use the degree of force that is reasonable and necessary to accomplish their lawful duties.”



DGO 5.01

USE OF FORCE

DGO 5.01 version 2:

- **In section III, B. 3, the list of “other factors” that may determine reasonableness does not includes the below additional factors that are included in version 1:**
 - number of officers/subjects
 - Age, size and relative strength of the officers/subjects
 - specialized knowledge, skills or abilities of the subjects
 - prior contact
 - injury or exhaustion of the officers
 - proximity, access to and type of weapons available to the subject
 - time available to an officer to make a decision



DGO 5.01

USE OF FORCE

DGO 5.01 version 2:

- Section IV, C adds an additional requirement to determine if it is objectively reasonable to use lethal force:
 1. Protect him/herself or others from what is reasonably believed to be an imminent threat of death or serious bodily injury; or
 2. Prevent the escape of a fleeing felon when:
 - a. The officer has reasonable cause to believe that the subject has committed or has attempted to commit a violent felony involving the use of threatened use of deadly force;
 - b. The subject poses a threat of serious physical harm to the public or the officer if the subject's apprehension is delayed;
 - c. The use of lethal force is reasonably necessary to prevent escape;
 - d. When feasible, some warning should be given before the lethal force is used under these circumstances.
 3. **Lethal force shall only be exercised when all reasonable alternatives have been exhausted or appear impracticable.**



DGO 5.01

USE OF FORCE

DGO 5.01 version 2:

- Section V, A prohibits the Carotid Restraint as force option.



DGO 5.01

USE OF FORCE

Items still open for discussion by the Commission

- Whether California Penal Code Section 835a should be included in the policy; it is currently in both versions. Some of the DOJ SMEs commented they did not see an issue with leaving it in; no comments from DOJ SMEs about taking it out.
- Whether the list of sergeant's requirements for subjects armed with a weapon should be listed in the policy or handled in training; currently the list of requirements is in both versions. Some DOJ SMEs felt this list is better addressed in training while others made recommendations to clarify the language in this section.
- Whether to use the term "un/reasonable" or "un/necessary." The POA and Employee groups recommend using "un/reasonable," and the community stakeholders recommend using "un/necessary."
- Some DOJ SMEs recommend reporting all physical control over individual as a use of force, (or alternatively reporting all uses of force that exceed un-resisted handcuffing) whether or not there is an injury or complaint of pain; currently neither of those recommendations are included in version 1 or version 2.
- Department Use of Force SME recommends taking out the restriction against an officer raising an impact weapon over the officer's head; the current training technically teaches officers to hold the impact weapon at an angle that is raised over the officer's head. This restriction is outdated based on current training. This restriction is currently in both versions 1 and 2.



DGO 5.01

USE OF FORCE

June 1, 2016 Commission Meeting

- Presented and discussed two draft versions of DGO 5.01, Use of Force.
- Announced community meetings to hear public comment on Use of Force policy – scheduled for June 8th and June 15th

