



**SPECIAL MEETING AGENDA
ANTIOCH CITY COUNCIL MEETING AS
THE POLICE OVERSIGHT STANDING COMMITTEE
TUESDAY, SEPTEMBER 28, 2021, AT 4:00 PM**

Pursuant to Governor Gavin Newsom's Executive Order N-29-20,
this meeting will be held as a teleconference/virtual meeting.
Observers may view the meeting livestreamed at <https://www.antiochca.gov/>

In February of 2021, the Antioch City Council convened a special meeting to consider several dimensions of Police Reform. On April 13, 2021, the City Council then established the Police Reform Standing Committee of the Whole City Council, subsequently renamed the Police Oversight Standing Committee.

The City of Antioch Police Oversight Standing Committee is an entity intended to operate on an interim basis prior to the formation of an independent review body. Responsibilities of the Police Oversight Standing Committee are defined by Antioch City Council Resolution No. 2021/67 and are described as follows:

1. To review and recommend modifications to Antioch Police Department policy that integrate community input and expertise.
2. To review and audit on duty police officer complaints and the resolution of said complaints.
3. To review Antioch Police Department, use of force policies and provide community updates.
4. To guide the future formation of an Antioch Police Department Civilian Oversight Commission for On Duty Officer Complaints.

Notice of Opportunity to Address the Standing Committee

Members of the public wishing to provide public comment may do so in the following way:

- 1) Prior to 3PM the Day of the Meeting - Written comments may be submitted electronically to the following email address: policeoversight@antiochca.gov. All comments received before 3PM the day of the meeting will be provided to the Police Oversight Standing Committee at the meeting. Please indicate the agenda item and title in your email subject line.
- 2) After 3PM the Day of the Meeting and During the Meeting: Oral comments can be submitted to the Police Reform Oversight Committee during the meeting with advance

registration. You may register and attend the webinar by visiting https://us02web.zoom.us/webinar/register/WN_Qfj08tzhQg2lOh01zllM4w

- You will be asked to enter an email address and a name. Your email address will not be disclosed to the public. After registering, you will receive an email with instructions on how to connect to the meeting.
- When the public comments are announced, click the "raise hand" feature in Zoom. For instructions on using the "raise hand" feature in Zoom, visit: https://www.antiochca.gov/raise_hand.
- When calling into the meeting using the Zoom Webinar telephone number, press *9 on your telephone keypad to "raise your hand". Please ensure your Zoom client is updated so staff can enable your microphone when it is your turn to speak.

Please be advised that the City cannot guarantee that its network and/or the site will be uninterrupted. To ensure that the Standing Committee receives your comments, you are strongly encouraged to submit your comments in writing in advance of the meeting.

After hearing from the public, the agenda item will be closed. Deliberations will then be limited to members of the Standing Committee.

Notice of Availability of Reports

This agenda is a summary of the discussion items/actions proposed to be taken by the Standing Committee. The Agenda, including Staff Reports, will be posted on the City's Website. To view the agenda information, please visit <https://www.antiochca.gov/government/agendas-and-minutes/posc/>

CHAIR, Tamisha Torres Walker, Council Member - D1

VICE CHAIR, Lori Ogorchock, Council Member - D3

Lamar A. Thorpe, Mayor

Monica E. Wilson, Mayor Pro Tem, Council Member - D4

Michael Barbanica, Council Member – D2

Ron Bernal, City Manager

Thomas Lloyd Smith, City Attorney

1. ROLL CALL

2. PUBLIC COMMENT ON UNAGENDIZED ITEMS

3. POLICE OVERSIGHT STANDING COMMITTEE MINUTES OF JULY 13, 2021

Recommended Action: Motion to approve the minutes.

4. POLICE OVERSIGHT STANDING COMMITTEE MINUTES OF JULY 27, 2021

Recommended Action: Motion to approve the minutes.

5. REVIEW AND DISCUSS ANTIOCH POLICE DEPARTMENT DRAFT POLICY BANNING RESTRAINTS, HOLDS, TACTICS AND MANEUVERS THAT POSE A SUBSTANTIAL RISK OF POSITIONAL ASPHYXIA

Recommended Action: It is recommended that the Police Oversight Standing Committee

- Motion to recommend that the City Council approve a policy by formal action at a regular meeting of the Antioch City Council.

OR

- Provide direction to staff to revise the policy in accordance with the standing committee's instructions.

6. REVIEW AND DISCUSS POLICE CHIEF RECRUITMENT AND HIRING PROCESS

Recommended Action: It is recommended that the Police Oversight Standing Committee

- Motion to recommend that the City Council approve a policy by formal action at a regular meeting of the Antioch City Council.

OR

- Provide direction to staff in accordance with the standing committee's instructions.

7. REVIEW OF ANTIOCH POLICE DEPARTMENT POLICY NO. 300: USE OF FORCE

Recommended Action: It is recommended that the Police Oversight Standing Committee accept the presentation.

8. FUTURE AGENDA TOPICS

Recommended Action: Motion to establish the meeting schedule as proposed.

9. **ADJOURNMENT:** *Committee Member will make a motion to adjourn the meeting. A second of the motion is required, and then a majority vote is required to adjourn the meeting.*

In accordance with the **Americans with Disabilities Act and California law**, it is the policy of the City of Antioch to offer its public programs, services and meetings in a manner that is readily accessible to everyone, including individuals with disabilities. If you are a person with a disability and require information or materials in an appropriate alternative format; or if you require any other accommodation, please contact the ADA Coordinator at the number or email address below at least 72 hours prior to the meeting or when you desire to receive services. Advance notification within this guideline will enable the City to make reasonable arrangements to ensure accessibility. The City's ADA Coordinator can be reached at (925) 779-6950 or via e-mail: publicworks@ci.antioch.ca.us.



**SPECIAL MEETING MINUTES
ANTIOCH CITY COUNCIL MEETING AS
THE POLICE OVERSIGHT STANDING COMMITTEE
TUESDAY, JULY 13, 2021, AT 7:00 P.M.**

The City of Antioch, in response to the Executive Order of the Governor and the Order of the Health Officer of Contra Costa County concerning the Novel Coronavirus Disease (COVID-19), held the Police Oversight Standing Committee meeting live stream (at www.antiochca.gov/). The Police Oversight Standing Committee meeting was conducted utilizing Zoom Audio/Video Technology.

1. ROLL CALL

Council/Committee Chair Torres-Walker called the meeting to order at 7:00 p.m. Assistant City Manager Rosanna Bayon Moore called the roll.

Present: Council Member/Committee Chair (District 1) Torres-Walker, Council Member/Vice Chair (District 3) Ogorchock, Council Member (District 2) Barbanica, Mayor Pro Tem (District 4) Wilson, and Mayor Thorpe.

Staff: City Manager, Ron Bernal
Assistant City Manager, Rosanna Bayon Moore
City Attorney, Thomas Lloyd Smith

2. PLEDGE OF ALLEGIANCE

Mayor Pro Tem Wilson led the Council and audience in the Pledge of Allegiance.

3. PUBLIC COMMENTS ON UNAGENDIZED ITEMS

The following public comments were read into the record by Assistant City Manager Rosanna Bayon Moore:

- Samantha Calamari, asked for the immediate ban of the knee to the neck restraint and positional asphyxia.
- Maria Reynos expressed deep sadness and anger over the manner her grandson Angelo Quinto died with a knee to the neck and asked this practice stop now.
- Christina Ortega asked for the immediate ban of the knee to the neck restraint and positional asphyxia.

- Robert Collins asked for the immediate ban of the knee to the neck restraint and positional asphyxia.
- Bella Quinto Collins urged the City Council to vote for an immediate ban of the knee to the neck restraint and positional asphyxia.

The following comments were made by individuals utilizing Zoom/Audio/Video technology:

- Diana Collins Puente urged the City Council to vote for an immediate ban of the knee to the neck restraints and positional asphyxia.
- Frank Sterling asked for the immediate ban of the knee to the neck restraint and positional asphyxia and urged City Council to listen to the family of Mr. Quinto and people calling in.
- Patricia Granados asked for the immediate ban of the knee to the neck restraint and positional asphyxia and asked for a Federal investigation of the APD.
- Cassandra Quinto Collins urged the City Council to vote for an immediate ban of the knee to the neck restraints and positional asphyxia and a support of AB490.

4. ANTIOCH POLICE DEPARTMENT POLICY NO. 423: BODY-WORN CAMERAS AND POLICY NO. 427: MOBILE VIDEO/AUDIO RECORDER

City Manager Ron Bernal reported reasons for establishing the Police Reform Standing Committee and asked for the Committee to review and recommend policy.

Chief Tammany Brooks reported on the APD committee that was established to put together a policy for each program. The group met numerous times and researched other departments' policies, federal and state laws, and industry best practices before putting together the policies submitted. The Body Worn Cameras have been received and assigned to the officers. Axon the selected vendor for the Body Worn Cameras will begin to conduct in-house departmental training for officers, supervisors, administrators, and professional staff July 20-23, 2021. In-car cameras have not yet been received. The APD's desire is for the policy for Body Worn Cameras to be adopted so that the equipment is not left idle.

PUBLIC COMMENTS

The following public comments were read into the record by Assistant City Manager Rosanna Bayon Moore:

- Alejandra Megoza provided written comment expressing a vote against passing the policy for Body Worn Cameras until there is community input.
- Robert Collins provided written comment expressing a vote against passing the policy for Body Worn Cameras until there is community input.
- Destiny W. Briscow requested the ACLU model of Body Worn Cameras be adopted and video from

cameras be retained for 4-5 years.

- Bella Quinto Collins provided written comment expressing a vote against passing the policy for Body Worn Cameras.
- Amy Hayes provided written comment expressing a vote against passing the policy for Body Worn Cameras until there is community input.
- Samantha Calamari provided written comment expressing a vote against passing the policy for Body Worn Cameras.

The following public comments were made by individuals utilizing Zoom Audi/Video Technology:

- Destiny Briscow expressed a vote against passing the policy for Body Worn Cameras and requested the ACLU model be adopted.
- Patsy Kyles asked for a vote not to move forward with the policy for Body Worn Cameras and for funding for cameras to come from the APD budget.
- Deana Collins Fuentes urged the City Council not to move forward with the policy for Body Worn Cameras until there is community input.
- Frank Sterling urged the City Council not to move forward with the policy for Body Worn Cameras until there is community input and a look at other models.

DISCUSSION

Council Member/Vice Chair Ogorchock asked Chief Brooks how the policies were developed.

Chief Brooks explained it was a joint effort with employees, members of the union, supervisors, professional staff along and others who had worked in previous agencies. He also explained how the ACLU had been consulted, in addition to following best practices from around the state.

Council Member Barbanica asked if the Body Worn Cameras will be filming during the normal course of the Police Officers' duties.

Chief Brooks confirmed it would.

Council Member Barbanica asked if Chief Brooks could confirm if when the Police Officer turns on their overhead lights if video recording as well as the car automatically engages.

Chief Brooks confirmed it would.

Chief Brooks also shared if an Officer draws his/her firearm the camera activates as well, and this will be the same with Tasers when that technology becomes available.

Mayor Pro Tem Wilson asked for a clarification on the verbiage regarding reasonable efforts and subjective language.

Chief Brooks explained the vagueness is necessary based on the number of variables that can come up including many mitigating factors and circumstances.

Mayor Thorpe agreed that there is vagueness in the policy and the desire to move forward with this initial draft and expand to work in protections and officer accountability. Mayor Thorpe also asked for clarity as to when a sworn officer should, or should not wear a camera.

Chief Brooks explained the cameras are not designed for use when a sworn officer is working undercover.

Council Member Barbanica stated a desire to move forward with approving the policy and have the cameras out on the streets. He further stated that the language around the policy be amended through the Police Oversight Standing Committee or a City Council Meeting.

Council Member/Vice Chair Ogorchock stated she would like to move forward with the policy.

Council Member/Chair Torres-Walker expressed she would like to see Chief Brooks work with the City Attorney to address the language in the policy that is unclear. She also asked for an expansion of the length of the video retention to 3-5 years and a desire to take the policy to the community for input. She further stated she could not support the policy as it stands currently.

Chief Brooks addressed the storage issues by explaining video that is tagged as related to a particular case can be saved and held indefinitely. The two-year storage purge mark is only for items that have not been requested.

A motion was made by Council Member/Vice Chair Ogorchock and seconded by Council Member Barbanica to approve Antioch Police Department Policy No. 423: Body Worn Cameras and Policy No. Mobile Video Audio Recorder.

Roll Call Vote:

Ayes: Ogorchock, Barbanica

Noes: Torres-Walker, Wilson, Thorpe

Motion fails.

On a motion by Mayor Pro Tem Wilson and seconded by Mayor Thorpe the City Council unanimously agreed to have Council Member/Chair Torres-Walker work with Attorney Lloyd Smith and Chief Brooks on the policy and bring back for one last review by the City Council.

Council Member/Chair Torres-Walker offered a suggestion to schedule a meeting to review policy changes before the next meeting on 7/27/21.

Roll Call Vote:

Ayes: Ogorchock, Barbanica, Torres-Walker, Wilson, Thorpe

Noes: None

Motion carries.

5. POLICE OVERSIGHT STANDING COMMITTEE'S SCOPE OF POLICY REVIEW FOR ANTIOCH POLICE DEPARTMENT POLICIES

City Manager Bernal asked for the committee to provide direction to staff and define and the scope of policies the committee seeks to review.

Chief Brooks explained the Police Department Policy Manual has 150 different policies contained within ten different chapters. The policy is available for all to view online. The Antioch Police Department utilizes a company called Lexipol as the base product for the manual with specific policies that are regularly updated in response to changing best practices, new state, and federal guidelines, as well as court decisions. Policies are reviewed and updated on an ongoing basis to stay in legal compliance.

PUBLIC COMMENTS

The following public comment was made by individuals utilizing Zoom Audi/Video Technology:

- Francisco Torres expressed Lexipol uses wrong policy and is designed to protect the Police Department and not the community. The Police Department should draw from multiple sources.
- Mayor Thorpe recommended the Standing Committee look at Police policy and include community review and input.
- Council Member Barbanica stated he was concerned too much time would be spent looking over every policy
- Mayor Thorpe clarified not every policy would be reviewed but as updates occur.
- Council Member Barbanica agreed the entire manual would not need to be reviewed.
- Council Member/Chair Torres-Walker expressed a desire to have the community join and give input on the specific areas of concern in the policies.

6. FUTURE STANDING COMMITTEE MEETING SCHEDULE AND AGENDA TOPICS

City Manager Bernal asked when the committee would like to have the next meeting.

NO PUBLIC COMMENT

DISCUSSION

Mayor Pro Tem Wilson suggested the meeting be added just prior to the second Council Meeting of the month.

Council Member Barbanica agreed with a once-a-month meeting prior to the second Council Meeting of the month.

Mayor Thorpe also agreed with a once-a-month meeting prior to the second Council Meeting of the month.

Council Member/Vice Chair Ogorchock asked if it is the norm to have all members of the City Council meet on a Standing Committee.

Attorney Lloyd-Smith stated it is not the norm, but that the committee is flexible enough to do this.

Mayor Thorpe stated he asked for the entire City Council to attend, and it will be temporary.

Council Member/Chair Torres-Walker recommended to continue to move forward with meeting once per month and asked if the meeting can be cancelled with proper notification.

Attorney Lloyd Smith stated you may cancel with proper public notice.

ADJOURNMENT

On motion by Council Member Barbanica, seconded by Mayor Thorpe, the Standing Committee unanimously adjourned the meeting at 8:39 p.m.



**SPECIAL MEETING MINUTES
ANTIOCH CITY COUNCIL MEETING AS
THE POLICE OVERSIGHT STANDING COMMITTEE
TUESDAY, JULY 27, 2021, AT 4:00 P.M.**

The City of Antioch, in response to the Executive Order of the Governor and the Order of the Health Officer of Contra Costa County concerning the Novel Coronavirus Disease (COVID-19), held the Police Oversight Standing Committee meeting live stream (at www.antiochca.gov/). The Police Oversight Standing Committee meeting was conducted utilizing Zoom Audio/Video Technology.

1. ROLL CALL

Council/Committee Chair Torres-Walker called the meeting to order at 7:00 p.m. Assistant City Manager Rosanna Bayon Moore called the roll.

Present: Council Member/Committee Chair (District 1) Torres-Walker, Council Member/Vice Chair (District 3) Ogorchock, Council Member (District 2) Barbanica, Mayor Pro Tem (District 4) Wilson, and Mayor Thorpe.

Staff: City Manager Ron Bernal
Assistant City Manager Rosanna Bayon Moore
City Attorney Thomas Lloyd Smith
Police Chief Tammany Brooks
Lieutenant Joe Vigil

2. PUBLIC COMMENT

Public comments were read into the record by Assistant City Manager Rosanna Bayon Moore from Destiny W. Briscoe. Francisco Torres provided oral comments.

3. ANTIOCH POLICE DEPARTMENT POLICY NO. 423: BODY-WORN CAMERAS AND POLICY NO. 427: MOBILE VIDEO/AUDIO RECORDER

Motion by Council Member/Vice Chair Ogorchock and seconded by Council Member Barbanica to approve Antioch Police Department Policy No. 423: Body Worn Cameras and Policy No. Mobile Video Audio Recorder.

Roll Call Vote:

Ayes: Ogorchock, Barbanica, Torres-Walker, Wilson, Thorpe

Noes: None

Motion carries.

4. FUTURE AGENDA TOPICS

Equipment and Equipment Use Policy

Council Member Barbanica – Review of Taser Technology

Mayor Pro Tem Wilson – Referred to prior items proposed

5. ADJOURNMENT

On motion by Council Member/Vice Chair Ogorchock, seconded by Council Member Barbanica, the Standing Committee unanimously adjourned the meeting at approximately 4:15 p.m.



**STAFF REPORT TO THE CITY COUNCIL MEETING AS
THE POLICE OVERSIGHT STANDING COMMITTEE**

DATE: Meeting of September 28, 2021
TO: Honorable Mayor and Members of the City Council
SUBMITTED BY: Anthony Morefield, Police Captain
APPROVED BY: Tammany Brooks, Chief of Police
SUBJECT: Positional Asphyxia Policy

RECOMMENDED ACTION

It is recommended that this committee accept this report and attached Positional Asphyxia Policy for review.

FISCAL IMPACT

There is no fiscal impact in accepting this report.

DISCUSSION

During the Regular Council Meeting on August 24, 2021, the City Council directed the City Manager and the City Attorney to work with the Chair and Vice-Chair of the Police Oversight Standing Committee and the Antioch Police Department to develop a new policy. The new policy's intent is to protect members of the public involved in law enforcement incidents by identifying and prohibiting the use of Police Officer restraints, holds, tactics and maneuvers that pose a substantial risk of positional asphyxiation, potentially resulting in unconsciousness or death.

Command Staff and subject matter experts from the Antioch Police Department researched existing Positional Asphyxia policies from around the world, including medical expert opinions on the matter. In addition, the City team examined federal and state laws which guide law enforcement use of force along with reports on industry best practices.

On September 7, 2021, staff met with the Chair and Vice-Chair of the Police Oversight Standing Committee to review the gathered materials and receive further guidance. A draft Positional Asphyxia Policy was created and underwent further revision by Police Department staff.

The Police Department contracts with a company called Lexipol which designs web based policy manuals and training for law enforcement agencies all over the United States. Lexipol further provides a full library of customizable, state-specific law enforcement policies that are updated in response to new state and federal laws and court decisions. Through multiple meetings, the consensus of the City team was that this policy should exist as a stand-alone policy. The (attached) Positional Asphyxia Policy was drafted in Lexipol and is consistent with federal and state guidance as well as industry best practices.

ATTACHMENTS

A. APD Positional Asphyxia Policy

Positional Asphyxia

XXX.X PURPOSE AND SCOPE

This policy provides guidelines concerning positional asphyxia. It applies anytime there is a use of force or restraint applied to a person. Positional asphyxiation is insufficient intake of oxygen as a result of body position that interferes with the person's ability to breathe. It can occur during the process of subduing and restraining a person by placing the person in a posture that prevents or impedes the process of normal breathing. Restraint in the prone position presents a significant risk of asphyxia, particularly when a person is handcuffed and left in a facedown position. People may die from positional asphyxia, when the mouth and nose are blocked or where the chest may be unable to fully expand.

XXX.1 DEFINITIONS

Definitions related to this policy include:

Positional Asphyxia - Occurs when the position of the body interferes with respiration and results in asphyxia (a condition arising when the body is deprived of oxygen).

Recovery Position - Position used to situate an unconscious/passive person (typically on their side) in a manner to help keep their airway open and clear to ease breathing and avoid positional asphyxia.

XXX.2 MEDICAL CONSIDERATIONS

Once it is reasonably safe to do so, properly trained officers should promptly provide or procure medical assistance for any person injured or claiming to have been injured in a use of force incident (Government Code § 7286(b)).

Prior to booking or release, medical assistance shall be obtained for any person who exhibits signs of physical distress, who has sustained visible injury, expresses a complaint of injury or continuing pain, or who was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until he/she can be medically assessed.

Based upon the officer's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff, or medical staff at the jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another

officer and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible.

The on-scene supervisor or, if the on-scene supervisor is not available, the primary handling officer shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force. This notification shall include a description of the force used and any other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

XXX.3 POSITIONAL ASPHYXIA REQUIREMENTS

Officers shall comply with the following conduct concerning positional asphyxia:

- a) A person lying on their stomach in a face-down position may have difficulty breathing. An officer shall only physically force a person to a face down position when reasonably necessary to do so to protect the safety of the person, the officer, or pedestrians.
- b) Immediately following the application of force or restraint of a person, and as soon as it is safe to do so, officers shall position a person in a recovery or seated position to allow for free breathing and to avoid positional asphyxia.
- c) Any body-to-body contact or officers' placement of weight on a person must be transitory. Officers shall not forcibly hold down or place weight on a prone person any longer than reasonably necessary to safely restrain the person. As soon as practicable, an officer's weight on a person shall be removed. Officers shall be aware of the amount and duration of any weight placed on a person.
- d) If officers hold a person down while restraining them, officers shall avoid placing weight on the person's neck or head which can fracture the hyoid bone or cervical spine. No more than two officers shall place weight on a person's upper body or torso. If additional assistance is needed, an additional officer or officers may restrain a person's limbs to restrict their movement.
- e) Once officers safely restrain a person, officers shall not sit, kneel, stand, or place their weight on a person's chest, back, stomach, or shoulders.
- f) Officers must inquire about a restrained person's well-being, including, but not limited to, that person's recent use of drugs, any cardiac condition, or any respiratory conditions or diseases. Officers shall recognize and respond to risks such as the person saying that they "can't breathe", gurgling or gasping sounds, panic, prolonged resistance, the lack of resistance, etc. Officers must be aware of environmental factors, including the nature and temperature of the surface on which they are restraining a person. For example, holding a person down on a hot surface, or in mud or water, can cause other injury or impair breathing.
- g) If a person continues to resist after being restrained, officers must check if any resistance is related to a person's difficulty breathing. When a person has their breathing restricted, the person may struggle more. What officers perceive as resistance may be an indication that the person is struggling to breathe.
- h) Officers shall share any relevant information regarding a person's condition, medical condition, what has transpired during their interaction, or any information about drug or alcohol use, which might be medically relevant, to other officers, personnel, or individuals administering medical aid. If there has been any restriction to a person's breathing, such information is medically relevant and shall be shared at the first practical opportunity.

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse

sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain, may be experiencing a serious medical condition and at risk of sudden death. Calls involving these persons should be considered medical emergencies. Officers who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage away if appropriate.

**STAFF REPORT TO THE CITY COUNCIL
MEETING AS THE POLICE OVERSIGHT STANDING COMMITTEE**

DATE: Meeting of September 28, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Rosanna Bayon Moore, Assistant City Manager

APPROVED BY: Ron Bernal, City Manager

SUBJECT: Police Chief Recruitment and Hiring Process

RECOMMENDED ACTION

It is recommended that the Standing Committee recommend a policy to be approved by formal action at a regular meeting of the City Council.

FISCAL IMPACT

There is no fiscal impact at this time.

DISCUSSION

The Chair of the Police Oversight Standing Committee requested that this item be placed on the agenda for review and discussion. As background information, staff prepared a description of the City Manager's recruitment and hiring process for the Chief of Police. The steps are described as follows:

1. Work in tandem with the Human Resources Department to review and update the job description and salary for the position as appropriate. Any changes to either would require City Council approval.
2. If an in-house candidate(s) exists, determine whether an internal or external recruitment best serves City goals and agency needs.
3. If an internal recruitment is the selected pathway, publish minimum qualifications, open the application process and establish the candidate pool. Review applications and invite qualifying applicants to the interview process.
4. If an external recruitment is the selected pathway, initiate the RFP process to solicit and select an executive search firm to conduct the recruitment. Once a firm is selected, contribute to brochure content and work with firm to establish the

overall timeline and approach. Once adequate applicant pool is achieved, review applications and identify candidates for interview.

5. Utilize a panel interview format comprised of different audiences - city managers, public safety executives, department heads, police department personnel and community members.
6. Once the panel interview process informs the ranking of candidates, City Manager interviews the top candidate(s).
7. Conditional offer of employment is made to the top candidate.
8. Conduct a thorough background check which includes, credit history, criminal background, professional and personal references, neighbors. If an external candidate is selected, may visit finalist's current / last place of employment to gather additional information.
9. Upon clearance of all conditions, make and announce appointment.

**STAFF REPORT TO THE CITY COUNCIL
MEETING AS THE POLICE OVERSIGHT STANDING COMMITTEE**

DATE: Meeting of September 28, 2021
TO: Honorable Mayor and Members of the City Council
SUBMITTED BY: Rosanna Bayon Moore, Assistant City Manager
APPROVED BY: Ron Bernal, City Manager
SUBJECT: Use of Force Policy Review

RECOMMENDED ACTION

It is recommended that the committee accept this report and attached Use of Force Policy for review.

FISCAL IMPACT

There is no fiscal impact in accepting this report.

DISCUSSION

The Chair of the Police Oversight Standing Committee requested a presentation and review of the Antioch Police Department's current Use of Force Policy.

The Police Department has contracted with a company called Lexipol for 6 years which designs web based policy manuals and training for law enforcement agencies all over the United States. Lexipol further provides a full library of customizable, state-specific law enforcement policies that are updated in response to new state and federal laws and court decisions. The (attached) Use of Force Policy was drafted in Lexipol and is consistent with federal and state guidance as well as industry best practices.

ATTACHMENTS

A. APD Use of Force Policy 300

Use of Force

300.1 PURPOSE AND SCOPE

This policy provides guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this department is expected to use these guidelines to make such decisions in a professional, impartial, and reasonable manner (Government Code § 7286).

In addition to those methods, techniques, and tools set forth below, the guidelines for the reasonable application of force contained in this policy shall apply to all policies addressing the potential use of force, including but not limited to the Control Devices and Techniques and Conducted Electrical Weapon policies.

300.1.1 DEFINITIONS

Definitions related to this policy include:

Deadly force - Any use of force that creates a substantial risk of causing death or serious bodily injury, including but not limited to the discharge of a firearm (Penal Code § 835a).

Feasible - Reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person (Government Code § 7286(a)).

Force - The application of physical techniques or tactics, chemical agents, or weapons to another person. It is not a use of force when a person allows him/herself to be searched, escorted, handcuffed, or restrained.

Serious bodily injury - A serious impairment of physical condition, including but not limited to the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement (Penal Code § 243(f)(4)).

Totality of the circumstances - All facts known to the officer at the time, including the conduct of the officer and the subject leading up to the use of force (Penal Code § 835a).

300.2 POLICY

The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.

Officers must have an understanding of, and true appreciation for, their authority and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties.

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation and a careful balancing of all interests.

Antioch Police Department

Antioch PD Policy Manual

Use of Force

300.2.1 DUTY TO INTERCEDE

Any officer present and observing another law enforcement officer or an employee using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, shall, when in a position to do so, intercede to prevent the use of unreasonable force.

When observing force used by a law enforcement officer, each officer should take into account the totality of the circumstances and the possibility that other law enforcement officers may have additional information regarding the threat posed by the subject (Government Code § 7286(b)).

300.2.2 FAIR AND UNBIASED USE OF FORCE

Officers are expected to carry out their duties, including the use of force, in a manner that is fair and unbiased (Government Code § 7286(b)). See the Bias-Based Policing Policy for additional guidance.

300.2.3 DUTY TO REPORT EXCESSIVE FORCE

Any officer who observes a law enforcement officer or an employee use force that potentially exceeds what the officer reasonably believes to be necessary shall promptly report these observations to a supervisor as soon as feasible (Government Code § 7286(b)).

300.3 USE OF FORCE

Officers shall use only that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to or perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose (Penal Code § 835a).

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain, and rapidly evolving.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident. Officers may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance (Government Code § 7286(b)).

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the approved tools, weapons, or methods provided by the Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be objectively reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

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While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

300.3.1 DE-ESCALATION REQUIREMENT

Officers shall, when feasible and while considering officer and public safety, employ de-escalation techniques to decrease the likelihood of the need to use force during an incident and to increase the likelihood of voluntary compliance and/or peaceful resolution.

300.3.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit (Government Code § 7286(b)). These factors include but are not limited to:

- (a) The apparent immediacy and severity of the threat to officers or others (Penal Code § 835a).
- (b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time (Penal Code § 835a).
- (c) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (d) The conduct of the involved officer leading up to the use of force (Penal Code § 835a).
- (e) The effects of suspected drugs or alcohol.
- (f) The individual's apparent mental state or capacity (Penal Code § 835a).
- (g) The individual's apparent ability to understand and comply with officer commands (Penal Code § 835a).
- (h) Proximity of weapons or dangerous improvised devices.
- (i) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (j) The availability of other reasonable and feasible options and their possible effectiveness (Penal Code § 835a).
- (k) Seriousness of the suspected offense or reason for contact with the individual prior to and at the time force is used.
- (l) Training and experience of the officer.
- (m) Potential for injury to officers, suspects, bystanders, and others.
- (n) Whether the person appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.
- (o) The risk and reasonably foreseeable consequences of escape.
- (p) The apparent need for immediate control of the subject or a prompt resolution of the situation.

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- (q) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- (r) Prior contacts with the subject or awareness of any propensity for violence.
- (s) Any other exigent circumstances.

300.3.3 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be effective in controlling a physically or actively resisting individual. Officers may only apply those pain compliance techniques for which they have successfully completed [department/office]-approved training. Officers utilizing any pain compliance technique should consider:

- (a) The degree to which the application of the technique may be controlled given the level of resistance.
- (b) Whether the person can comply with the direction or orders of the officer.
- (c) Whether the person has been given sufficient opportunity to comply.

The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved.

300.3.4 ALTERNATIVE TACTICS - DE-ESCALATION

As time and circumstances reasonably permit, and when community and officer safety would not be compromised, officers should consider actions that may increase officer safety and may decrease the need for using force:

- (a) Summoning additional resources that are able to respond in a reasonably timely manner.
- (b) Formulating a plan with responding officers before entering an unstable situation that does not reasonably appear to require immediate intervention.
- (c) Employing other tactics that do not unreasonably increase officer jeopardy.

In addition, when reasonable, officers should evaluate the totality of circumstances presented at the time in each situation and, when feasible, consider and utilize reasonably available alternative tactics and techniques that may persuade an individual to voluntarily comply or may mitigate the need to use a higher level of force to resolve the situation before applying force (Government Code § 7286(b)). Such alternatives may include but are not limited to:

- (a) Attempts to de-escalate a situation.
- (b) If reasonably available, the use of crisis intervention techniques by properly trained personnel.

300.4 DEADLY FORCE APPLICATIONS

Where feasible, the officer shall, prior to the use of deadly force, make reasonable efforts to identify him/herself as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts (Penal Code 835a).

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If an objectively reasonable officer would consider it safe and feasible to do so under the totality of the circumstances, officers shall evaluate and use other reasonably available resources and techniques when determining whether to use deadly force. To the extent that it is reasonably practical, officers should consider their surroundings and any potential risks to bystanders prior to discharging a firearm (Government Code § 7286(b)).

The use of deadly force is only justified when the officer reasonably believes it is necessary in the following circumstances (Penal Code § 835a):

- (a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes is an imminent threat of death or serious bodily injury to the officer or another person.
- (b) An officer may use deadly force to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.

Officers shall not use deadly force against a person based on the danger that person poses to him/herself, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or to another person (Penal Code § 835a).

An “imminent” threat of death or serious bodily injury exists when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. An officer’s subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention (Penal Code § 835a).

300.4.1 SHOOTING AT OR FROM MOVING VEHICLES

Shots fired at or from a moving vehicle are rarely effective and may involve additional considerations and risks. When feasible, officers should take reasonable steps to move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants. An officer should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the imminent threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others (Government Code § 7286(b)).

Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle.

300.4.2 DISPLAYING OF FIREARMS

Given that individuals might perceive the display of a firearm as a potential application of force, officers should carefully evaluate each tactical situation and use sound discretion when drawing a firearm in public by considering the following guidelines (Government Code § 7286(b)):

- (a) If the officer does not initially perceive a threat but reasonably believes that the potential for such threat exists, firearms should generally be kept in the low-ready or other position not directed toward an individual.

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- (b) If the officer reasonably believes that a threat exists based on the totality of circumstances presented at the time (e.g., high-risk stop, tactical entry, armed encounter), firearms may be directed toward such threat until the officer no longer perceives such threat.

Once it is reasonably safe to do so, officers should carefully secure all firearms.

300.5 REPORTING THE USE OF FORCE

Any use of force by a member of this department shall be documented promptly, completely, and accurately in an appropriate report, depending on the nature of the incident. The officer should articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances. To collect data for purposes of training, resource allocation, analysis, and related purposes, the Department may require the completion of additional report forms, as specified in department policy, procedure, or law. See the Report Preparation Policy for additional circumstances that may require documentation.

300.5.1 NOTIFICATION TO SUPERVISORS

Supervisory notification shall be made as soon as practicable following the application of force in any of the following circumstances:

- (a) The application caused a visible injury.
- (b) The application would lead a reasonable officer to conclude that the individual may have experienced more than momentary discomfort.
- (c) The individual subjected to the force complained of injury or continuing pain.
- (d) The individual indicates intent to pursue litigation.
- (e) Any application of a TASER device or control device.
- (f) Any application of a restraint device other than handcuffs, shackles, or belly chains.
- (g) The individual subjected to the force was rendered unconscious.
- (h) An individual was struck or kicked.
- (i) An officer points a firearm at a person.
- (j) An individual alleges unreasonable force was used or that any of the above has occurred.

300.5.2 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

Statistical data regarding all officer-involved shootings and incidents involving use of force resulting in serious bodily injury is to be reported to the California Department of Justice as required by Government Code § 12525.2. See the Records Bureau Policy.

300.6 MEDICAL CONSIDERATION

Once it is reasonably safe to do so, properly trained officers should promptly provide or procure medical assistance for any person injured or claiming to have been injured in a use of force incident (Government Code § 7286(b)).

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Prior to booking or release, medical assistance shall be obtained for any person who exhibits signs of physical distress, who has sustained visible injury, expresses a complaint of injury or continuing pain, or who was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until he/she can be medically assessed.

Based upon the officer's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff, or medical staff at the jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another officer and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible.

The on-scene supervisor or, if the on-scene supervisor is not available, the primary handling officer shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force. This notification shall include a description of the force used and any other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain (sometimes called "excited delirium"), or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Officers who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage away if appropriate.

300.7 SUPERVISOR RESPONSIBILITY

A supervisor should respond to any reported use of force, if reasonably available. The responding supervisor is expected to (Government Code § 7286(b)):

- (a) Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- (b) Ensure that any injured parties are examined and treated.
- (c) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.
- (d) Ensure the case is thoroughly investigated, documented and follows department procedures and guidelines.
- (e) Review all related BWC/MVAR recordings.
- (f) Review and approve all related police reports.

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- (g) Review all Blue Team entries along with any attached reports, photos, and/or recordings for accuracy, completeness, and to ensure officer(s) compliance with policy. Write a brief synopsis of the use of force incident including an analysis and recommendation for disposition. Forward the Blue Team entry to the Watch Commander or appropriate Bureau Commander for further review and final disposition. This should be completed by the end of the shift unless an exception has been approved by the Watch Commander or appropriate Bureau Commander.
- (h) Evaluate the circumstances surrounding the incident and initiate an administrative investigation if there is a question of policy non-compliance or if for any reason further investigation may be appropriate.

In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

300.7.1 WATCH COMMANDER / BUREAU COMMANDER RESPONSIBILITY

The Watch Commander shall review each use of force by any personnel within his/her command to ensure compliance with this policy and to address any training issues.

- (a) If the officer using force is not assigned to the Community Policing Bureau, the appropriate Bureau Commander shall assume this responsibility.

The Blue Team Report shall be reviewed and a final disposition determined by the Watch Commander or appropriate Bureau Commander. An appropriate disposition should be one of the following:

- (a) No Action - The Use of Force observed was consistent with agency best practices and policy.
- (b) Commend - The Use of Force observed exceeded expectations and is worthy of consideration for a commendation.
- (c) Counseling - The Use of Force was inconsistent with agency best practices resulting in a need for a counseling session.
- (d) Training - The Use of Force incident identified a specific training deficiency within the department or the subject officer(s) that could be corrected by additional training.
- (e) Internal Affairs - The Use of Force observed requires further review and/or appears to violate department policy, federal, state, or local law, policy or rule and should be investigated by the Internal Affairs Unit.

The Blue Team report should then be forwarded to the Division Commander for final review.

300.8 TRAINING

Officers, investigators, and supervisors will receive periodic training on this policy and demonstrate their knowledge and understanding (Government Code § 7286(b)).

Subject to available resources, the Training Manager should ensure that officers receive periodic training on de-escalation tactics, including alternatives to force.

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Training should also include (Government Code § 7286(b)):

- (a) Guidelines regarding vulnerable populations, including but not limited to children, elderly persons, pregnant individuals, and individuals with physical, mental, and developmental disabilities.
- (b) Training courses required by and consistent with POST guidelines set forth in Penal Code § 13519.10.

300.9 POLICY AVAILABILITY

The Chief of Police or the authorized designee should ensure this policy is accessible to the public (Government Code § 7286(c)).