PROVISIONAL

OFFICE OF THE CHIEF OF POLICE

SEE SPECIAL ORDER 4 - 2020

SPECIAL ORDER NO. 1 January 2, 2020

APPROVED BY THE BOARD OF POLICE COMMISSIONERS ON December 17, 2019

SUBJECT: POLICY ON THE USE OF FORCE – REVISED

PURPOSE: On August 19, 2019, Assembly Bill 392 was signed into law by California Governor, Gavin Newsom. This new law redefines the circumstances under which a homicide by a peace officer is deemed justifiable. The law also affirmatively prescribes the circumstances under which a peace officer is authorized **under California law** to use deadly force to effect an arrest, to prevent escape, or to overcome resistance. This Order revises Department Manual Section 1/556.10, *Policy on the Use of Force* in order to conform to this new law.

PROCEDURE:

I. PREAMBLE TO USE OF FORCE. The use of force by members of law enforcement is a matter of critical concern both to the public and the law enforcement community. It is recognized that some individuals will not comply with the law or submit to control unless compelled to do so by the use of force; therefore, law enforcement officers are sometimes called upon to use force in the performance of their duties. It is also recognized that members of law enforcement derive their authority from the public and therefore must be ever mindful that they are not only the guardians but also the servants of the public.

The Department's guiding *principle* when using force shall be reverence for human life. Officers shall attempt to control an incident by using time, distance, communication, and available resources in an effort to de-escalate the situation, whenever it is safe and reasonable to do so. When warranted, Department personnel may *use* objectively reasonable force to carry out their duties. Officers who use unreasonable force degrade the confidence of the community we serve, expose fellow officers to physical hazards, violate the *Constitutional* rights of individuals upon whom unreasonable force is used, *and subject the Department and themselves to potential civil and criminal liability.* Conversely, officers who fail to use force when warranted may endanger themselves, the community and fellow officers.

II. POLICY.

Use of Force – General. It is the policy of this Department that personnel may use only that force which is "objectively reasonable" to:

- Defend themselves;
- Defend others;
- Effect an arrest or detention;
- Prevent escape; or,

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- Overcome Resistance.

Factors Used To Determine *Objective* Reasonableness. The Department examines reasonableness using *Graham v. Connor* and the articulated facts from the perspective of a Los Angeles Police Officer with similar training and experience, *in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight. The totality of the circumstances shall account for occasions when officers may be forced to make quick judgements about using force.*

In determining the appropriate level of force, officers shall evaluate each situation in light of facts and circumstances of each particular case. Those factors may include, but are not limited to:

- The seriousness of the crime or suspected offense;
- The level of threat or resistance presented by the subject;
- Whether the subject was posing an immediate threat to officers or a danger to the community;
- The potential for injury to citizens, officers or subjects;
- The risk or apparent attempt by the subject to escape;
- The conduct of the subject being confronted (as reasonably perceived by the officer at the time);
- The amount of time and any changing circumstances during which the officer had to determine the type and amount of force that appeared to be reasonable;
- The availability of other resources;
- The training and experience of the officer;
- The proximity or access of weapons to the subject;
- Officer versus subject factors such as age, size relative strength, skill level, injury/exhaustion and number of officers versus subjects; and,
- The environmental factors and/or other exigent circumstances.

Use of Force – Deadly. It is the policy of this Department that deadly force shall be used only when necessary in defense of human life. Specifically, deadly force shall be used only to:

- Defend against an imminent threat of death or serious bodily injury to the officer or to another person; or
- 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. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves 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.

An officer shall not use deadly force against a person based on the danger that person poses to themselves, 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 another person.

Factors Used to Determine Whether Deadly Force Was Necessary. The Department examines the necessity of deadly force by evaluating each situation in light of the particular circumstances of each case, and whether other available resources and techniques were reasonably safe and feasible to an objectively reasonable officer.

The Department shall also consider the totality of the circumstances, including the officer's tactics and decisions leading up to the use of deadly force.

Warning Shots: It is the policy of this Department that warning shots shall only be used in exceptional circumstances where it might reasonably be expected to avoid the need to use deadly force. Generally, warning shots shall be directed in a manner that minimizes the risk of injury to innocent persons, ricochet dangers and property damage.

Shooting *At* or From Moving Vehicles. It is the policy of this Department that firearms shall not be discharged at a moving vehicle unless a person in the vehicle is immediately threatening the officer or another person with deadly force by means other than the vehicle. The moving vehicle itself shall not presumptively constitute a threat that justifies an officer's use of deadly force. An officer threatened by an oncoming vehicle shall move out of its path instead of discharging a firearm at it or any of its occupants. Firearms shall not be discharged from a moving vehicle, except in exigent circumstances and in the immediate defense of life.

Note: It is understood that the policy in regards to discharging a firearm at or from a moving vehicle may not cover every situation that may arise. In all situations, Department members are expected to act with intelligence and exercise sound judgment, attending to the spirit of this policy. Any deviations from the provisions of this policy shall be examined rigorously on a case by case basis. The involved officer must be able to articulate clearly the reasons for the use of deadly force. Factors that may be considered include whether the officer's life or the lives of others were in immediate peril and there was no reasonable or apparent means of escape.

III. DEFINITIONS.

Deadly Force. *Deadly force is defined as 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.*

Imminent. *Pursuant to California Penal Code Section 835a(e)(2), "[A] threat of death or serious bodily injury is "imminent" 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 peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed."

Objectively Reasonable. The legal standard used to determine the lawfulness of a use of force is *based on* the Fourth Amendment to the United States Constitution. See Graham v. Connor, 490 U.S. 386 (1989). Graham states, in part, "The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain and rapidly evolving – about the amount of force that is necessary in a particular situation. The test of reasonableness is not capable of precise definition or mechanical application."

The force must be reasonable under the circumstances known to *or reasonably believed by* the officer at the time the force was used. Therefore, the Department examines all uses of force from an objective standard rather than a subjective standard.

Serious Bodily Injury. *Pursuant to* California Penal Code Section 243(f)(4) Serious Bodily Injury *includes but is not* limited to:

- 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.

Totality of the Circumstances: *All facts known to or reasonably believed by the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.*

Warning Shots. The intentional discharge of a firearm off target not intended to hit a person, to warn others that deadly force is imminent.

AMENDMENT: This Order amends section 1/556.10 of the Department Manual.

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AUDIT RESPONSIBILITY: The Commanding Officer, Audit Division, shall review this directive and determine whether an audit or inspection shall be conducted in accordance with Department Manual Section 0/080.30.

MICHEL R. MOORE
Chief of Police

DISTRIBUTION "D"