



Administrative Report

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Meeting Date: 8/18/2020

To: MAYOR AND CITY COUNCIL
From: KEITH KAUFFMAN, CHIEF OF POLICE

TITLE

DISCUSSION AND POSSIBLE ACTION ON THE USE OF FORCE POLICY OF THE REDONDO BEACH POLICE DEPARTMENT

EXECUTIVE SUMMARY

Recent events across the U.S. have sparked a renewed community interest and examination of police use of force and use of force policies. Use of force is one of the most critical aspects of policing and its reasonable application is the foundation for the safety of the community, the safe enforcement of the law, and our ability to maintain a high level of trust between our citizens and the police. The laws and policies surrounding police use of force are extremely complex, ever changing, and under continual examination by the Courts. Tactics and training are often adjusted to conform with state mandates or added technologies and having a philosophy of constant improvement increases the safety and effectiveness of our force applications. RBPD Policy Section 300 - Use of Force (attached) includes seven detailed pages that describe when and how force should be used in the course and scope of our duties as police officers.

BACKGROUND

To enter into a proper discussion on police use of force, it is important to understand the laws that have formed the basis for our policy, and subsequently, our tactics and training. State laws regarding use of force may vary and oftentimes, as is the case in California, reach beyond the standards set forth by federal law.

In the case of *Graham v. Conner* (490 U.S. 386, 1989), the United States Supreme Court established that the standard for the application of force by a peace officer must be “objectively reasonable” based on the totality of the circumstances and judged from the “perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” The Court also outlined a list of factors for determining if an officer’s level of force was objectively reasonable. We commonly refer to those as the ‘Graham Factors’ which include things like the immediacy of the threat, the seriousness of the crime or the suspect’s actions of active resistance or attempt to evade arrest. Refer to RBPD Policy 300.3.2 (a) - (s).

In the case of *Tennessee v. Garner* (471 U.S. 1, 1985), the United States Supreme Court decided that a police officer may use deadly force to prevent a fleeing felony suspect from escaping if the officer has probable cause to believe that the suspect poses as significant threat of death or serious

physical injury to the officer or others.

In any discussion on police use of force, including deadly force, the aforementioned cases prevail in how our policies are written. The Courts have often recognized that an officer's decision to use force is often made in split second and during circumstances that are tense, uncertain, and rapidly evolving. There have been numerous high-profile cases across the U.S. where the public has expressed disdain for the criminal justice system when a District Attorney declines to prosecute an officer after a case involving deadly force. Ultimately, the disconnect is generally based on the fact that these cases are judged for their objective reasonableness given the totality of the circumstances, and not if the action of the officer was actually necessary given the benefit of 20/20 hindsight.

As technology advances and laws mandate the release of body worn camera footage, major use of force cases become more prevalent to the public. Although what is seen in a video may not appear to be necessary, the totality of the circumstances known to and experienced by the officer at the time of the incident could be deemed objectively reasonable when weighed against how a reasonable officer put into the same set of circumstances would have acted at that scene. This does not negate the fact that RBPd and all police agencies have a duty to inform their communities about how and when they use force and then strive for the best practices in transparency and open communication. Technology like the Firearms Automated Training (FATS) machine can help recreate some of the more common scenarios officers face, and allow the user to experience the stress and split-second decision making that we ask of our officers. Much like a body worn camera, we can replay the life size video on the screen and see exactly what happened. The benefit of the FATS machine is the ability to make a mistake and learn from that mistake.

When it comes to policy, we have to be careful not to create an impossible standard for our police officers given that it is impossible to recreate every circumstance they will face. We balance this against insuring that we are adhering to the absolute best practices in policing and then we train to the highest standard. Suggested changes to force policies that strictly prohibit things in every instance, like shooting at a moving vehicle, or to always require de-escalation or warnings prior to the use of force are just not feasible or practical given what our officers will sometimes face.

The RBPd use of force policy includes the Duty to Intercede (300.2.1) where "any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstance shall, when in a position to do so, intercede to prevent the use of unreasonable force." We also train for de-escalation and include (300.3.2) (j) "the availability of other reasonable and feasible options and their possible effectiveness."

No policy can anticipate every conceivable situation or exceptional circumstance. Changes to a use of force policy or to the law, must provide for adequate time to train to the desired standard. We should not expect police officers to adhere to a new standard overnight, when we have spent years training them to a different standard and then expect everything to work when they are placed in a life or death situation and have to act instantaneously.

In August 2019, the California Legislature passed Assembly Bill (AB) 392 - Use of Force Standards (attached) and it went into effect on January 1st, 2020. AB 392 has amended the law and therefore

our policy to now include additional language regarding the serious responsibility of using force, the conduct of the officer, and how individuals with disabilities may be affected in their ability to understand or comply with commands. Also, recently passed in California was Senate Bill (SB) 230 (attached) which goes into effect on January 1st, 2021 and provides for additional policy guidelines and training standards for police use of force. This bill mandates that our certification authority, the Commission on Peace Officers Standards and Training (POST), shall implement various updated guidelines for basic and ongoing training of police officers in the state. The new training guidelines will stress that use of force by police is of important concern to the community and to law enforcement, and that law enforcement should safeguard life, dignity, and liberty of all persons, without prejudice to anyone.

So how often is force used by police officers in Redondo Beach? Taking the average of 2017, 2018, and 2019, RBPD used force about 180 times a year. This would include all force to overcome resistance or prevent escape with as little as a minor control hold, all the way up to deadly force. To put that into perspective, we average 67,000 calls for service a year, and make 2,300 arrests a year. Ultimately, this means that we use force .27% of the time. While making an arrest, we use force 7.8% of the time.

The RBPD has a very detailed force reporting requirement that mandates the documentation and supervisory review (all the way up to the Captain) of every force incident. In each case we will review the reports and body worn camera footage and decide if the force was justified and within policy, if it was out of policy, or if it requires additional training for the officer. Over the past three years, RBPD has had one use of force that was out of policy, and 5 that required additional training. There were two instances where deadly force was used, resulting in one fatality. It is important to note that in the last 5 years, 3 of 6 of our officer involved shootings did not occur in the city of Redondo Beach. Unlike many police agencies, RBPD posts all of use of force statistics on our website, as well as all officer involved shootings, and our entire policy manual. This is not a new practice based on recent events, but rather an ongoing dedication to transparency that has been in place for at least four years. Additionally, RBPD requires and independent outside investigation of all officer involved shootings. All information can be found at https://www.redondo.org/depts/police/police_transparency/default.asp .

COORDINATION

This report and presentation were coordinated with the City Attorney.

FISCAL IMPACT

None

APPROVED BY:

Joe Hoefgen, City Manager

ATTACHMENTS

RBPD Policy 300 - Use of Force

AB 392

SB 230