MEMORANDUM

DATE: June 17, 2016
TO: San Francisco Police Commission
FROM: San Francisco Police Officers' Association
RE: **SFPOA's Proposed General Order 5.01**

USE OF FORCE

The San Francisco Police Department's highest priority is ~~is~~ keeping the people of San Francisco safe. In performing their duties, officers should be guided by reverence for all human life (including the officer's life), ~~safeguarding the sanctity of all human life.~~ Officers shall demonstrate these~~is~~ principles in their daily interactions with the community they are sworn to protect and serve. The Department is committed to accomplishing this~~e 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 states~~requires~~ that all sworn law enforcement officers should ~~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.

This order establishes policies and reporting procedures regarding the use of force, use of firearms and use of ~~lethal~~deadly force. The purpose of the policy is to guide an officer's decisions regarding the use and application of force to ensure such applications are used only to effect arrest or lawful detentions or to bring a situation under legitimate control and provide guidelines that may assist the Department in achieving its highest priority. No policy can predict every situation. Officers are expected to exercise sound judgment when using force options. ~~and shall adhere to the Department's highest priority of safeguarding the sanctity of all human life~~.

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SFPOA'S PROPOSED CHANGE:

1. **The Department should acknowledge that the highest priority of police officers is to protect the people of San Francisco.**

While the SFPOA believes that the Department should emphasize the importance of all human life in the use of force general orders, failing to acknowledge that the

primary purpose of any police department is to help protect its citizens sends a confusing message. We believe that the SFPOA proposed mission statement is more appropriate because it combines the two concepts and better captures the highest priority of the Department.[1] Unfortunately, in our society, there are occasions in which a suspect fails to share this reverence for human life and threatens civilians and officers. When this happens, an officer's "highest duty" is to protect the innocent from the suspect. If this is not the case, an officer will never be justified in using deadly force. As stated, this mission statement appears to place the "sanctity" of the life of a suspect threatening to kill an innocent civilian or officer on par with the "sanctity" of the life of the civilian or officer being threatened. This is contrary to common sense and the remainder of this general order, which authorizes an officer to use deadly force to protect him or herself or others.

2. Substitute the word "reverence," or some other synonym for importance, for the word "sanctity."

The term "sanctity" has a religious connotation inappropriate for a San Francisco Police Department general order. For example, the Wikipedia definition of the phrase "sanctity of life,"' is as follows:

> "The phrase sanctity of life refers to the idea that human life is sacred and holy and precious, argued mainly by the pro-life side in political and moral debates over such controversial issues as abortion, contraception, euthanasia, embryonic stem-cell research, and the "right to die"….

Accordingly, the SFPOA suggests that the Department substitute the word "reverence," which is defined as "a deep respect for something" and is the term used by the California Commission for Police Officers Standards and Training ("P.O.S.T."). (*See* P.O.S.T. Learning Domain 20: 3-3).[2] P.O.S.T. establishes all of the criteria for training and certification for law enforcement professionals in California. P.O.S.T. guidelines are overseen and approved by Governor Jerry Brown and California Attorney General Kamala Harris.

3. Correct the statement that the Law Enforcement Code of Ethics

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[1] On April 6, 2016, the SFPOA submitted to the San Francisco Police Commission one document that contains an alternative to the current San Francisco Police Department General Orders 5.01 and 5.02., which is attached as Exhibit A.

[2] The most recent version of P.O.S.T. Learning Domain 20, which relates to use of force, is attached as Exhibit B.

"requires" anything, to indicate only what it "states."

The Law Enforcement Code of Ethics represents ideals for officers to strive towards, not requirements. Therefore, it would be more appropriate to use the word "states," so as to avoid confusion.

I. POLICY

A. REVERANCE FOR ~~SANCTITY OF~~ **HUMAN LIFE.** ~~The Department is committed to the~~ In performing their duties, officer should guided by reverence for all human life (including the officer's life) ~~sanctity and preservation of all human life,~~ human rights, and human dignity.

SFPOA'S PROPOSED CHANGE:

1. Change the word "sanctity" to "reverence" and consider removing this section as it unnecessarily repeats the introduction.

The SFPOA has the same concern with use of term "sanctity" as discussed above. Moreover, the introduction is better-suited for addressing general principles. In any event, there is no reason to repeat this general principle twice within the very first page of the general order. A good general order is clear and concise. Unnecessary repetition creates confusion.

B. ESTABLISH COMMUNICATION. Communication with non-compliant subjects can often be ~~is~~ most effective when officers establish rapport, use the proper voice intonation, ask questions and provide advice to defuse conflict and achieve voluntary compliance before resorting to force options.

SFPOA'S PROPOSED CHANGE:

1. The SFPOA suggests that this language be removed, or significantly altered, as suggested in SFPOA's proposed model policy.

First, the categorical statement that "communication with a non-compliant subjects ***is*** most effective when officers establish rapport . . ." is simply untrue. For example, is "establishing rapport" with a bank robber who just exited a bank with a gun in his hand the "most effective" means of communication in that circumstance? Of course not. The most effective communication at that point would be for the officer to say "Police! Drop the gun!," while the officer draws his or her own weapon.

The main problem with the proposed language is that it crams all communications with all non-compliant suspects into one bag, into which they won't all fit. It may be appropriate in many situations for an officer to establish rapport with a suspect and speak in a calm tone, but it is not appropriate in ***all*** circumstances. Yet, the proposed language mandates one specific communication approach regardless of the circumstances. This is dangerous, counter-productive, and ineffective.

C. **DE-ESCALATION.** Officers shall, when feasible, 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. When feasible, Officers should ~~shall~~ consider the possible reasons why a subject may be noncompliant or resisting arrest. A subject may not be capable of understanding the situation because of a medical condition; mental, physical, or hearing impairment; language barrier; drug interaction; or emotional crisis, and have no criminal intent. These situations may not make the subject any less dangerous, but understanding a subject's situation may enable officers to calm the subject and allow officers to use de-escalation techniques while maintaining public safety and officer safety. Officers who act to de-escalate an incident, which can 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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SFPOA'S PROPOSED CHANGE:

1. **The SFPOA suggests adding the phrase "when feasible," to the second sentence and substituting "should" for "shall."**

As written, this policy would ***require*** officers to consider the possible reasons for non-compliance in ***every*** situation. Although officers generally should consider the possible reasons for non-compliance, there are circumstances in which there isn't sufficient time, and to do so would be dangerous. For example, suppose an individual ran out of a bank holding a gun and pointed it at an officer, and the officer ordered the suspect to drop the gun. If the suspect failed to comply, it would be inappropriate and dangerous to require an officer to consider a long list of possible reasons why the suspect was failing to comply before the officer takes action. This drafting problem is easily remedied by merely adding the phrase "when feasible," as was done in the preceding sentence, and substituting the word "should" for "shall."

D. ~~**PROPORTIONALITY.**~~ **PROPORTIONAL FORCE:** The level of force applied must reflect the totality of circumstances known or perceived by the officer at the time force is applied, including imminent danger to officers or others. ***Proportional force, however, does not require officers***

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to use the same type or amount of force as the subject. The more immediate the threat and ~~the more likely~~likelihood ~~that the threat~~it will result in death or serious physical injury, the greater the level of force that may be objectively reasonable and necessary to counter it. ~~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.~~

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SFPOA'S PROPOSED CHANGE:

1. The proportionality requirement should be clarified or eliminated.

Proportionality is not well-defined in case law or by P.O.S.T. Therefore, if the Department wants to use this test for the application of force, it is critical that it provide a clear description of ***exactly*** what it means. The Department's proposed definition fails to do so.

First, the Department's description of proportionality suggests that officers should use force based on the crime that a suspect may have committed as opposed to the resistance offered by the suspect – which is at odds with every other description of appropriate force that the SFPOA has found. Specifically, the Department's definition states that it is important that an officer use force "proportional to the offense committed." According to Webster's Dictionary, "proportional" means "corresponding in size, degree, or intensity." The "offense committed," appears to refer to the offense for which the suspect is being detained or arrested. It follows under this description that the force used by an officer is not dictated by the suspect's resistance, but rather, the nature of the crime they allegedly committed; the officer should then match the force used in the crime – essentially instructing officers to take an eye for an eye.

In the next sentence, the Department's proposed policy appears doubles-down on this concept, by stating that the level of force an officer may use is based on the "the threat posed to human life ***for which the officer is taking action***." Again, the Department is stating that the officer's response should be dictated by the crime allegedly committed by the suspect "for which the officer is taking action" – not the suspect's resistance. Therefore, the Department is suggesting that if an individual is suspected of committing a murder, but does not resist arrest, the officer can use lethal force to apprehend the suspect. This policy also suggest that if a suspect was merely stopped for a MUNI fare evasion, but then produces a firearm and shoots at an officer, the officer cannot use lethal force in response. Undoubtedly neither outcome is intended by the

Department. What appears to have happened with this definition is that the Department took one of the *Graham* factors (the severity of the crime committed) and made it the only factor for proportionality, which leads to an absurd and unintended result.

Second, in the next sentence, the Department changes course, suggesting instead that officers must respond "proportionally" to the threat to the officer, by meeting like force with like force. This is deeply flawed for different reasons. Specifically, the Department states that " *[i]t 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."* Taken literally, this would mean that an if an officer is threatened by a suspect brandishing a knife, bottle, brick or baseball bat, an officer can only respond with a knife, bottle, brick or baseball bat. If the Department does not intend to require officers to meet like force with like force, it is critically important that it state as much, because absent some clarification, that is how this portion of the proposed policy reads.

If, however, the Department does intend to require officers to meet like force with like force, this creates a host of additional problems. Currently, officers are trained to use a higher level of force than their attacker, so that they and the civilians they might be trying to protect are not seriously injured or killed. If the Department wishes to usher in a new era of law enforcement, in which officers must meet like force with like force, all officers will need to be re-trained, San Francisco may lose its P.O.S.T. certification, and the Department will endanger its officers and the public. The re-training will be difficult and expensive. It will be difficult to find any certified instructors to do the training, not to mention an equipment belt large enough to hold all of the possible weapons an officer might encounter in the field.[3]

Third, in the next sentence, this definition appears to give another contradictory definition of proportional force. The Department's proposal states that "*Officers* may *only use the degree of force that is reasonable* ***and necessary*** *to accomplish their lawful duties."* It is unclear whether this sentence is meant to define proportional force, or to limit the use of proportional force to only those situations where it is "reasonable and necessary." Regardless, this language should be removed from this section because it conflicts with P.O.S.T., all relevant case law, and other parts of the proposed order. In the United States, the universally-accepted, constitutionally-established test for when reasonable force has been used is whether the officer's use of force was objectively

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[3] Don Cameron, who has personally trained over 45,000 police officers in California and helped write the P.O.S.T. use of force learning domains, has stated that he knows of no certified instructors who could train San Francisco police officers in gladiator-style fighting techniques, where the police officers must be equipped with knives, bottles, rocks and chains depending on the specific weapons expected to be used by the subjects they encounter.

reasonable based on the totality of the circumstances known to the officer at the time. (*Graham v. Connor*, 490 U.S. 386 (1989).) The language of this proposal suggests a different standard – that the use of force must not only be reasonable, ***but necessary***, which implies a retroactive evaluation of the use of force based on information unknown to the officer at the time. This would be unfair second-guessing of officers' actions and contrary to P.O.S.T. and all relevant case law. (*See, e.g.* P.O.S.T. Learning Domain 20: 1-4.)

Fourth, the proposed definition of "proportionality," unless clarified, suggests that officers are prohibited from using overwhelming force, which is often necessary to prevent a situation from escalating. For example, if a suspect holds a hostage at gun point, this policy seems to suggest that the Department can only have one officer pointing a weapon at the suspect. Having 7 or 8 officers, some armed with rifles or shotguns, would ostensibly be disproportionate to the threat posed by the suspect. In such a situation, however, a display of overwhelming force may be appropriate to convince the suspect that he or she cannot escape or shoot their way out. Having a "proportionate" response would invite the suspect to continue to resist and even attempt escape, which may harm the suspect, the officers, and additional civilians. Similarly, several officers are often necessary to gain quick, physical control over a struggling suspect. If this language is adopted, without clarification, officers and the public may believe that the use of more than one officer to detain one struggling suspect is disproportionate and prohibited. If that is not what the Department intends, it should clarify the meaning of this dangerously ambiguous term.

If the Department insists on using the term "proportionality," the SFPOA suggests that it adopt the following definition used by Seattle, which avoids many of the problems with the Department's current proposal:

> "Proportional Force: The level of force applied must reflect the totality of circumstances known or perceived by the officer at the time force is applied, including imminent danger to officers or others. ***Proportional force, however, does not require officers to use the same type or amount of force as the subject.*** The more immediate the threat and the more likely that the threat will result in death or serious physical injury, the greater the level of force that may be objectively reasonable and necessary to counter it."

The better approach, however, is to eliminate any reference to proportionality entirely. SFPD's proposed general orders contain a detailed description of when force can be used and how it should be evaluated. If the proportionality test is different from the other tests described in the general orders for the use of appropriate force, it will only lead to confusion. If the proportionality tests is meant to be synonymous with the other use of force directives in the general orders, it is unnecessarily redundant and harmful

due to the resulting likelihood of confusion. A general order that has multiple and possibly conflicting directives gives either no guidance at all, or worse, vague, inconsistent and/or unpredictable guidance. Such an outcome is precisely what a good general order is intended to avoid.

E.D. **CRISIS INTERVENTION.** This section will include language on CIT training and procedures.

F.E. **DUTY TO INTERVENE.** Where an officer(s) has a reasonable opportunity to do so, the officer(s) shall interveene when they know, or have reason to know, that another officer is about to use, or is using, unreasonable force under color of state law. ~~Officers shall intervene when they reasonably believe another officer is about to use, or is using, unnecessary force.~~ Officers shall promptly report any use of unnecessary force and the efforts made to intervene to a supervisor.

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SFPOA'S PROPOSED CHANGE:

1. **The duty to intervene should include a requirement that the officer have a reasonable opportunity to do so.**

An officer's duty to intervene can be found in Ninth Circuit case law regardless of whether it is in a department's general orders. Therefore, the SFPOA believes it is appropriate to refer to this requirement in the general order. Consistent with case law, however, the Department should clarify that officers are required to intervene only when they have a reasonable opportunity to do so.

II. DEFINITIONS:

A. **FEASIBLE.** Capable of being done or carried out to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person.

B. **IMMEDIATE THREAT.** A person is an immediate threat if the officer reasonably believes the person has the present intent, means, opportunity and ability to complete the threat regardless of whether the threatened action has

been initiated.[4]

C. **Imminent threat:** means a significant threat that peace officers reasonably believe will result in death or serious bodily injury to themselves or to other persons. Imminent danger is not limited to "immediate" or "instantaneous." A person may pose an imminent danger even if they are not at the very moment pointing a weapon at another person.

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SFPOA'S PROPOSED CHANGE:

1. **The SFPOA recommends that the Department add "regardless of whether the threatened action has been initiated."**

If the Department substitutes the term "immediate" for "imminent," in the lethal force context, this could have disastrous results unless the Department clarifies – as Oakland has done – that "immediate" does not require that the threatened action has been initiated. For example, in the lethal force context, officers have never had to wait until a gun is actually pointed at them before they could fire. (*See George v. Morris*, 736 F.3d 829, 838 (9th Cir. 2013) [the Fourth Amendment does not require officers to delay their fire until a suspect turns his weapon on them].) If an officer reasonably believes that a suspect has a weapon and is about to use it (such as bank robber with a gun in his belt), case law has never required an officer to wait until the gun is drawn and pointed at the officer before the officer can fire. If officers have to wait until a gun is pointed at them before the officer can use lethal force, many officers will be killed because by the time a gun is pointed at the officer, it will be too late for the officer to react in time. The SFPOA merely suggests that the Department use the entire Oakland definition, adding to

[4] *Graham v. Connor*—"whether the suspect posed an immediate threat to the safety of the officers or others," (*Graham*, 490 U.S. at 396,) The "most important" factor under Graham is whether the suspect objectively posed an "immediate threat to the safety of the officers or others." *Smith v. City of Hemet*, 394 F.3d 689, 702 (9th Cir.2005). Oakland Police Department's Use of Force policy uses the term "immediate" throughout. The Los Angeles Police Commission's Inspector General noted that LAPD's subtle shift in 2009 from authorizing deadly force to defend against an *immediate* threat to the authority to use deadly force to defend against an *imminent* threat "equates to a slight broadening of an officer's authority to use deadly force." (Office of the Inspector General's Ten Year Overview of Categorical Use of Force Investigations, Police, and Training, March 10, 2016, page 11).

the proposed definition that the threat can be immediate "regardless of whether the threatened action has been initiated." This would address the SFPOA's concern.

C. DEADLY~~LETHAL~~ **FORCE.** Any use of force ~~designed to and~~ substantially likely to cause ~~death or~~ serious bodily ~~physical~~ injury or death, including but not limited to the discharge of a firearm, the use of an impact weapon under some circumstances, other techniques or equipment, and certain interventions to stop a subject's vehicle (see DGO 5.05, Response and Pursuit Driving).

SFPOA'S PROPOSED CHANGE:

1. **Change the definition of "lethal force" to comport with case law, P.O.S.T., every other police department in California, and other portions of the proposed general order by eliminating the "designed" language. Consider using the term "deadly" instead of "lethal."**

This proposed general order defines lethal force as "any use of force ***designed to*** and likely to cause death or serious physical injury." The use of the phrase "designed to" could be read to introduce a subjective component into the use of force analysis that is contrary to *Graham v. Connor* and other provisions of this proposed general order. Rather, a use of force should be judged by whether the use of force was objectively, not subjectively, reasonable. In addition, officers are not trained to use force with the "design" to kill anyone. They are trained to use force to stop a threat. If this policy addresses only those situations in which it was an officer's "design" to kill, it would almost never be applicable. The appropriate definition, which is used by P.O.S.T., the Ninth Circuit, and every other police department of which the SFPOA is aware, is that lethal force is "force that is substantially likely to cause serious bodily injury or death." (*See* Exhibit B, P.O.S.T. Learning Domain 20 3-3.) The Department should adopt this definition.

The problem with including the "designed to" language in the definition of lethal force is perhaps best demonstrated by looking at the last given example of a type of lethal force – certain vehicle interventions. Certain vehicle interventions are included as constituting lethal force, not because they are "designed to" cause serious injury or death, but because they create a substantial likelihood of serious injury of death. Therefore, unless adjusted, the Department's examples of lethal force – fire arms and certain vehicle interventions – do not fit the Department's definition, which will lead to unnecessary confusion.

This definition of lethal force is different from the definition of lethal force provided in Section IV. C, which defines "lethal force" as "the degree of force likely to cause death or serious bodily injury." It is confusing and unnecessary for these proposed

general orders to define the same phrase differently. The SFPOA suggest that the definition provided in Section IV, C should be the only definition used in these general orders because it comports with P.O.S.T. and case law, while the other definition does not.

Additionally, the preferred term used by most agencies, the courts, and P.O.S.T. is "deadly" as opposed to "lethal" force, although the terms are generally interchangeable. (*See* Exhibit B, P.O.S.T. Learning Domain 20 3-3.) Interestingly, all of the DOJ subject matter experts used the term "deadly" instead of "lethal," as well. (*See, e.g.* DOJ COPS comment 63 ("[t]his policy lacks enough guidance on deadly force applications. Most policies have an entire section dedicated to differentiating between non-deadly force options and deadly force options.").)

D. LEVELS OF RESISTANCE.

~~**1. Compliant.** A person contacted by an officer who acknowledges direction or lawful orders given and offers no passive/active, aggressive, or aggravated aggressive resistance.~~

~~**2. Passive Resistance.** The subject is not complying with an officer's commands and is uncooperative, but is taking only minimal physical action to prevent an officer from placing the subject in custody and taking control. Examples include: standing stationary and not moving upon lawful direction, holding onto a fixed object, falling limply and refusing to use their own power to move, or locking arms to another during a protest or demonstration.~~

~~**Active Resistance.** The subject's physical actions are intended to prevent an officer from placing the subject in custody and taking control, but are not directed at harming the officer. Examples include: walking or running away, breaking the officer's grip.~~

~~**3. Aggressive Resistance.** The subject displays the intent to harm the officer and prevent the officer from placing the subject in custody and taking control. Examples include: a subject taking a fighting stance, punching, kicking, striking, attacks with weapons or other actions which present an immediate threat of physical harm to another or the officer.~~

~~**3. Aggravated Aggressive Resistance.** The subject's actions are likely to result in death or serious bodily harm to another, the subject or the officer. Examples include: the subject's use of a firearm, brandishing of an edged or other weapon, or extreme physical force.~~

- **Compliant**: Subject offers no resistance.
- **Passive Non-Compliance:** Does not respond to verbal commands but also offers no physical form of resistance.
- **Active Resistance:** Physically evasive movements to defeat an officer's attempt at control, including bracing, tensing, running away, verbally, or physically signaling an intention to avoid or prevent being taken into or retained in custody.
- **Assaultive:** Aggressive or combative; attempting to assault the officer or another person, verbally or physically displays an intention to assault the officer or another person.
- **Life-Threatening:** Any action likely to result in serious bodily injury or death of the officer or another person.

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SFPOA'S PROPOSED CHANGE:

1. **These definitions of the levels of resistance should be changed to comport with P.O.S.T.**

Years of study, evaluation of relevant case law, extensive meetings with subject matter experts and stakeholders, and myriad drafts, P.O.S.T. – which sets the guidelines for all officers in California – has provided carefully thought through definitions of the appropriate levels of resistance. These have been taught to every officer in the Department. (*See* Exhibit B, P.O.S.T. Learning Domain 20: 2-6.) Where P.O.S.T. has already defined a term – as it has done with the various levels of resistance – the SFPOA believes it is unnecessary and dangerous for the Department to use different terminology. If the Department adopts contrary definitions from those usd by P.O.S.T., the Department will confuse its officers.

Here, the definitions of level of resistance suggested by the Department are inconsistent with P.O.S.T. They must be changed. It appears that the Department borrowed these definitions wholesale from the Las Vegas Metropolitan Police Department, which is not governed by P.O.S.T. While the general orders for Las Vegas might serve as a useful guide, P.O.S.T. definitions are better because they are already understood by SFPD officers.

Each specific level of force identified by the Department in this proposal should be changed for the following reasons in order to comport with P.O.S.T. and Ninth Circuit law.

a. The Department's proposed definition of "passive resistance" is contrary to P.O.S.T., and case law and must be changed.

The Department proposes defining "passive resistance" as including "minimal physical action to prevent an officer from placing the subject in custody and taking control." This portion of the definition is contrary to P.O.S.T., which defines "passive non-compliance," as "not respond to verbal commands but also offers no physical form of resistance." (*See* Exhibit B, P.O.S.T. Learning Domain 20: 2-6.) Unlike the Department's proposal, the P.O.S.T. definition of passive does not include "minimal physical" resistance. After conducting a diligent search, the SFPOA has been unable to find any legal decision that defines passive resistance in the manner proposed by the Department.

The Department also proposes that "holding onto a fixed object" to avoid arrest should be considered "passive resistance." This language is contrary to P.O.S.T., as noted above, and inconsistent with Ninth Circuit case law.[5] It should be removed from this definition.

b. The Department's definition of "active resistance" is also contrary to P.O.S.T. and case law.

The Department proposes that "active resistance" is where "the subject's physical actions are intended to prevent an officer from placing the subject in custody and taking control, but are not directed at harming the officer. Examples include: walking or running away, breaking the officer's grip." This definition is at odds with P.O.S.T., case law, and common sense in several respects.

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[5] In *Mattos v. Agarano* 661 F.3d 433, 445 (9th Cir. 2011) the Ninth Circuit held that an arrestee's refusal to leave the vehicle and clutching of the steering wheel tightly, so as to prevent officers from removing her from the car, constituted "some resistance to arrest." *See also Chew v. Gates* 27 F.3d 1432, 1442 (9th Cir. 1994) (noting that offering physical resistance to arresting officers weighed towards actively resisting arrest). Although in *Headwaters Forest Def. v. Cnty. of Humboldt,* 276 F.3d 1125, 1130 (9th Cir. 2002), *as amended* (Jan. 30, 2002), the Ninth Circuit held that *protestors* can be engaged in "passive resistance by "locking arms to another during a demonstration, "part of the court's analysis that they were passive was dependent on the fact that they "were easily moved by the police." (*Id.* at 1103.) *See Hesterberg v. United States* (N.D. Cal. 2014) 71 F.Supp.3d 1018, 1030 (comparing driver's clinging to steering wheel in *Mattoos* as similar to suspect "pulling his arm away from [the officer]" and characterizing both as active resistance).

First, the Department is suggesting a bright line distinction between "active resistance" and "aggressive [or assaultive] resistance," which is not found in P.O.S.T., relevant case law, or other portions of this proposed general order. Again, this creates unnecessary confusion. The Department states that active resistance does not include resistance that is "directed at harming the officer." P.O.S.T., however, uses the more common understanding of active resistance of which assaultive conduct would merely be a subset. P.O.S.T. defines active resistance as "physically evasive movements to defeat an officer's attempt at control, including bracing, tensing, running away, verbally or physically signaling an intention to avoid or prevent being taken into or retained in custody." (*See* Exhibit B, P.O.S.T. Learning Domain 20: 2-6.) In addition, no court has defined "active resistance" to exclude assaultive conduct, as the Department is suggesting.

Moreover, the other portions of the Department's proposed general order do not use this narrowed definition of "active resistance." For example, Section III.B.2. (factor under *Graham*), IV.A.1. (use of control holds /personal body weapons), and IV.B.1 (use of chemical agents), each use the phrase "active resistance" to describe a suspect's behavior but do not provide any discussion of how officers should respond if the suspect is offering "aggressive resistance." Therefore, the Department's use of this counter-intuitive definition of "active resistance" will create unnecessary confusion even within the Department's own proposed general order. It appears that the Department plucked the definitions of levels of resistance from Las Vegas without considering how those terms are used by P.O.S.T., or the rest of the proposed general orders, which is dangerous and ill-advised.

Second, the Department's definition is based on the subjective intent of the suspect – as opposed to how an officer might reasonably perceive a suspect's intent. Because an officer cannot know what a suspect actually intends, emphasis on the suspect's intent is inappropriate, which is why P.O.S.T. intentionally avoids that issue by focusing on what intention is "signaled" by a suspect's behavior instead of the suspect's actual intent. Oddly, the next definition proposed by the Department seems to recognize the importance of this distinction and uses the phrase "the subject ***displays*** the intent to harm" – which implies an objective evaluation – instead of merely "the subject actions are intended," which is subjective and difficult if not impossible for the officer to determine.

Third, the Department's definition does not include verbal conduct. It should. As P.O.S.T. correctly notes, verbally signaling an intention to avoid or prevent being taken into or retained in custody can be deemed "active resistance" as well. (*See McDonald v. Pon*, No. C05-1832JLR, 2007 WL 4420936, at *4 (W.D. Wash. Dec. 14, 2007) (verbal gestures that indicate an unwillingness to cooperate with a police officer's lawful commands can constitute active resistance, citing *Greene v. Barber,* 310 F.3d 889, 898 (6th Cir. 2002) and *Draper v. Reynolds,* 369 F.3d 1270, 1278 (11th Cir. 2004)); *see also*

Brown v. City of Golden Valley, 574 F.3d 491, 499 (8th Cir. 2009) ("active resistance" may include "verbal hostility" or a "deliberate act of defiance").)

c. The Department's definition of "aggressive resistance" is also contrary to P.O.S.T. and case law.

The Department suggests creating a new category of resistance not found in P.O.S.T. – "aggressive resistance." The Department then proposes that "aggressive resistance" be defined as where "the subject displays the intent to harm the officer and prevent the officer from placing the subject in custody and taking control. Examples include: a subject taking a fighting stance, punching, kicking, striking, attacks with weapons or other actions which present an immediate threat of physical harm to another or the officer."

P.O.S.T. provides a definition of "assaultive" behavior that is substantially similar to the Department's "aggressive resistance" and should be used instead. P.O.S.T. defines "assaultive" behavior as follows: "Aggressive or combative; attempting to assault the officer or another person, verbally or physically displays an intention to assault the officer or another person." (*See* Exhibit B, P.O.S.T. Learning Domain 20: 2-6.) P.O.S.T.'s term and definition is superior in several respects. First, because this is a P.O.S.T. definition, it is preferable because it will be immediately familiar to officers, which will avoid confusion and lessen the learning curve for new policies.

Second, the Department's definition unnecessarily has three parts. To be deemed "aggressive resistance," the suspect not only has to display an intent to harm the officer, but also an intent to prevent the officer from placing the suspect in custody and an intent to prevent the officer from taking control. No law of which the SFPOA is aware defines "aggressive resistance," or assaultive behavior, in that manner. The SFPOA sees no reason to require that a suspect display not only an intent to harm an officer, but also an intent to prevent the officer from placing the suspect in custody to qualify as aggressive resistance.

d. The Department's definition of "aggravated aggressive resistance" is also contrary to P.O.S.T. and case law.

The Department suggests creating a second new category of resistance not found in P.O.S.T. – "aggravated aggressive resistance." The Department then proposes that "aggravated aggressive resistance" be defined as where "the subject's actions are likely to result in death or serious bodily harm to another, the subject or the officer. Examples include: the subject's use of a firearm, brandishing of an edged-weapon or other weapon, or extreme physical force." The Department's proposal is essentially the same as the P.O.S.T. definition for "life-threatening" force. (*See* Exhibit B, P.O.S.T. Learning Domain 20: 2-6.) Because San Francisco officers are already familiar with the P.O.S.T.

term and definition, the SFPOA Department should use the P.O.S.T. phrasing.

In addition, although similar the phrase used by P.O.S.T. is much better than the phrasing suggested by the Department. The phrase "aggravated aggressive resistance" is confusing, hard to remember and contrary to the ordinary meaning of the words. Inexplicably, the Department suggests defining all behavior by a suspect that is non-compliant as various levels of "resistance," even when that behavior has become assaultive and even life-threatening. P.O.S.T only uses the term resistance once – to describe active resistance. Where the behavior goes beyond merely to assaultive and life-threatening, P.O.S.T. appropriately uses those terms.

It is important that the Department use the ordinary meaning of terms whenever possible. The terms used in these general orders will be used by officers when writing reports and explaining their actions. Incident reports are read by the general public as well as officers. It would be a mistake to define terms contrary to their ordinary meaning to the point where the general public cannot understand what is meant in a report without consulting the glossary of terms in the general orders. For example, if an officer wrote that "I fired my service weapon at the subject three times because the suspect was demonstrating aggravated, aggressive resistance" – few who did not have the general order glossary in front of them would know what the officer was attempting to communicate. However, if the officer instead wrote, "I fired my service weapon at the subject three times because the suspect's behavior was life threatening" – everyone would know what the officer was attempting to communicate. The general public may already feel like police officers, on occasion, speak in a code they do not understand. Good general orders should not exacerbate that problem.

To summarize, the P.O.S.T. definitions of levels of force, which the SFPOA suggests that the Department adopt instead of the Las Vegas definitions, are as follows:

- **Compliant**: Subject offers no resistance.
- **Passive Non-Compliance:** Does not respond to verbal commands but also offers no physical form of resistance.
- **Active Resistance:** Physically evasive movements to defeat an officer's attempt at control, including bracing, tensing, running away, verbally, or physically signaling an intention to avoid or prevent being taken into or retained in custody.
- **Assaultive:** Aggressive or combative; attempting to assault the officer or another person, verbally or physically displays an intention to assault the officer or another person.

- **Life-Threatening:** Any action likely to result in serious bodily injury or death of the officer or another person

Importantly, P.O.S.T. incorporates these terms into concrete illustrations through the following chart to provide officers with a clear understanding of the type of police response warranted by a specific type of behavior.

Subject's Actions	Description	Possible Force Option
Compliance	Subject offers no resistance	• Mere professional appearance • Nonverbal actions • Verbal requests and commands • Handcuffing and control holds
Passive non-compliance	Does not respond to verbal commands but also offers no physical form of resistance	• Officer's strength to take physical control, including lifting/carrying • Pain compliance control holds, takedowns and techniques to direct movement or immobilize
Active resistance	Physically evasive movements to defeat an officer's attempt at control, including bracing, tensing, running away, verbally, or physically signaling an intention to avoid or prevent being taken into or retained in custody	• Use of personal body weapons to gain advantage over the subject • Pain compliance control holds, takedowns and techniques to direct movement or immobilize a subject
Assaultive	Aggressive or combative; attempting to assault the officer or another person, verbally or physically displays an intention to	• Use of devices and/or techniques to ultimately gain control of the situation • Use of personal body weapons to gain advantage over the subject

Subject's Actions	Description	Possible Force Option
	assault the officer or another person	• Cartoid restraint
Life-threatening	Any action likely to result in serious bodily injury or death of the officer or another person	• Utilizing firearms or any other available weapon or action in defense of self and others to stop the threat • Vehicle intervention (Deflection)

(*See* P.O.S.T. Learning Domain 20: 2-6.)

The SFPOA strongly recommends that the Department adopt the P.O.S.T. terms, definitions, and suggested force options instead of unnecessarily confusing SFPD officers with unfamiliar terms imported from Las Vegas general orders that do not comport with their training, P.O.S.T. certifications, experience, or case law.

E. MINIMAL AMOUNT OF FORCE NECESSARY. The lowest level of force ~~within the range of objectively reasonable force~~ that is necessary to effect an arrest or achieve a lawful objective without increasing the risk to others.

SFPOA'S PROPOSED CHANGE:

1. For the reasons discussed in detail below regarding Section IV, the SFPOA believes that the Department should change this definition to exclude the phrase "within the range of objectively reasonable force."

F. PERSONAL BODY WEAPONS. An officer's use of his/her hand, foot, knee, elbow, shoulder, hip, arm, leg or head by means of high velocity kinetic energy transfer (impact) to gain control of a subject.

G. REASONABLE FORCE. An objective standard of force viewed from the perspective of a reasonable officer, without the benefit of 20/20 hindsight, and based on the totality of the circumstances known to the officer at the time, ~~presented at the time of the incident.~~

SFPOA'S PROPOSED CHANGE:

1. The definitions of reasonable force should be changed to indicate that the totality of circumstances is based on what was known to the officer, not what was merely "present at the time of the incident."

Under every reported decision that has dealt with the issue that the SFPOA could locate, the totality of circumstances test refers to what was known to the officer(s) at the time, not just what circumstances were present at the time of the incident. (*See, e.g. Tennessee v. Garner*, 471 U.S. 1, 7–8, (1985).) For example, if a suspect was pointing a gun at an officer and, unknown to the officer, the gun was not loaded, that would be a circumstance "present at the time of the incident," but irrelevant to evaluating whether the officer behaved reasonably because it was not known to the officer. Therefore, the SFPOA suggests that the Department add to its proposed definition of reasonable force that the totality of the circumstances must be known to the officer, which would be consistent with the definition used by P.O.S.T. (*See* P.O.S.T. Learning Domain 20: 1-7.)

H. REPORTABLE FORCE. Any use of force which is required to overcome subject resistance to gain compliance that results in death, injury, complaint of injury in the presence of an officer, or complaint of pain that persists beyond the use of a physical control hold. Any use of force involving the use of personal body weapons, chemical agents, impact weapons, extended range impact weapons, vehicle interventions, conducted energy devices, and firearms. Any intentional pointing of a conducted energy device or a firearm at a subject.

SFPOA's PROPOSED CHANGE/COMMENT:

1. **As proposed here, the SFPOA believes that the Department is correct not to make each use of force reportable.**

Officers use varying degrees of force on a daily basis. To require that officers report each instance in which they physically touch a suspect – even though there is no injury or complaint of injury – is unrealistic, unnecessary, and will overburden the officers and the supervisors who would otherwise be responsible for evaluating each touching, no matter how minor.

I. SERIOUS BODILY INJURY. means 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. (California Penal Code section 243(f)(4).)

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~~A bodily injury that creates a substantial risk of death; causes serious, permanent disfigurement; or results in a prolonged loss or impairment of the functioning of any bodily member or organ.~~

J. **VITAL AREAS OF THE BODY.** The head, neck, face, throat, spine, groin and kidney.

III. CONSIDERATIONS GOVERNING ALL USES OF FORCE.

A. **USE OF FORCE MUST BE FOR A LAWFUL PURPOSE.** Officers may use reasonable force options in the performance of their duties, in the following circumstances:

1. To effect a lawful arrest, detention, or search.
2. To overcome resistance or to prevent escape.
3. To prevent the commission of a public offense.
4. In defense of others or in self-defense.
5. To gain compliance with a lawful order.
6. To prevent a person from injuring himself/herself. **However, an officer is prohibited from using lethal force against a person who presents only a danger to himself/herself and does not pose an imminent threat of death or serious bodily injury to another person or officer.**

B. **USE OF FORCE MUST BE REASONABLE.** The Fourth Amendment of the United States Constitution requires that an officer's use of force must be ~~a police officer only use force as is~~ "objectively reasonable" under the totality of circumstances known to the officer at the time." ~~under all of the circumstances.~~ The standard that the court will use to examine whether a use of force is constitutional was set forth in *Graham v. Connor,* 490 U.S. 386 (1989), and expanded by subsequent court cases. ~~Officer shall when feasible, employ de-escalation techniques and use only the minimal amount of force necessary as described below.~~

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SFPOA'S PROPOSED CHANGE:

1. **This paragraph should be amended to accurately reflect the Supreme Court's holding in *Graham v. Connor*.**

Graham v. Connor did not simply hold that an officer's use of force must be "'objectively reasonable' under all of the circumstances," as the Department suggests. Critical to the Supreme Court's holding is that the circumstances must have been known

to the officer at the time. (*Graham*, 490 U.S. at 397 [the "question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances *confronting them*" (emphasis added)]; *See also Deorle v. Rutherford*, 272 F.3d 1272, 1281 (9th Cir. 2001) [an officer's use of force must be objectively reasonable based on his contemporaneous knowledge of the facts]. Therefore, the SFPOA suggests that this paragraph be revised as follows: "In *Graham v. Connor*, the United States Supreme Court held that under the Fourth Amendment to the Constitution, an officer's use of force must be objectively reasonable under the totality of circumstances known to the officer at the time."

1. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than 20/20 hindsight, and without regard to the officer's underlying intent or motivation. –Whether a particular use of force is objectively reasonable must be objectively judged from the perspective of a reasonable officer on the scene, rather than with 20/20 hindsight. The objective determination of "reasonable force" must account for the fact that officers are often forced to make split-second judgments, in circumstances that are tense, uncertain and rapidly evolving.

2. When balanced against the type and amount of force used, the Graham factors used to determine whether an officer's use of force is objectively reasonable are:

   a. The severity of the crime at issue
   b. Whether the suspect posed an ~~immediate~~immediate threat to the safety of the public or the officers
   c. Whether the suspect was actively resisting arrest
   d. Whether the suspect was attempting to evade arrest by flight.

      Of these factors, the most important is whether the individual poses an immediate threat to the officer or public.

   ~~d.~~e.

3. The reasonableness inquiry in not limited to the consideration of the Graham factors alone. Other factors which may determine reasonableness in a use of force incident may include:

   f. availability of other reasonable force options
   g. number of officers/subjects
   h. age, size, gender, and relative strength of officers/subjects
   i. specialized knowledge, skills, or abilities of subjects
   j. prior contact

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k. injury or exhaustion of officers
l. access to potential weapons
m. environmental factors, including but not limited to lighting, footing, sound conditions, crowds, traffic, and other hazards
n. whether the officer has reason to believe that the subject is mentally ill, emotionally disturbed, or under the influence of alcohol or drugs
o. whether there was an opportunity to warn about the use of force prior to force being used, and, if so, was such a warning given
p. whether there was any assessment by the officer of the subject's ability to cease resistance and/or comply with the officer's commands

4. **Reasonable Officer Standard asks:**

a. would another officer
b. with like or similar training and experience,
c. facing like or similar circumstance,
d. act in the same way or use similar judgment?[6]

~~f. Availability of other reasonable force options~~
~~g. Proximity, access to and type of weapons available to the subject;~~
~~h. Time available to an officer to make a decision;~~
~~i. Availability of additional officers or resources to de-escalate the situation;~~
~~j. Environmental factors and/or other exigent circumstances;~~
~~k. Whether other tactics are available to the officer;~~
~~l. The ability of the officer to provide a meaningful warning before using force;~~
~~m. The officer's tactical conduct and decisions preceding the use of force;~~
~~n.~~q. Whether the officer is using force against an individual who appears to be having a behavioral or mental health crisis or is a person with a mental illness;

~~o.~~r. Whether the subject's escape could pose a future safety risk

[6] These factors are taken directly from P.O.S.T. Learning Domain 20:1-6.

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Not all of the above factors may be present or relevant in a particular situation, and there may be additional factors not listed.

4. California Penal Code section 835a states that "Any officer who has reasonable cause to believe that a person to be attested has committed a public offense may use reasonable force to effect an arrest, to prevent escape or to overcome resistance.

A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by use of reasonable force to effect the arrest or to prevent escape of overcome resistance."

SFPOA'S PROPOSED CHANGE / COMMENT:

1. **This SFPOA believes that the Department should include the language of Penal Code 835a, as it has done here.**

For reasons unclear to the SFPOA, it has been suggested that the Department remove the language of Penal Code Section 835a. Penal Code Section 835a is California law. All officers and citizens are bound by Section 835a whether it is included in the Department's general orders or not. Because Section 835a gives important guidance on the use of force by police officers, the SFPOA believes that it would be a mistake to exclude it from the Department's general orders.

Regardless, the word "attested" should be changed to "arrested."

C. **DE-ESCALATION.** Officers will use de-escalate tactics whenever feasible and appropriate, to reduce the need or degree of force.

1. When encountering a non-compliant subject or a subject armed with a weapon other than a firearm, such as an edged weapon, improvised weapon, baseball bat, brick, bottle or other object, officers shall use the following de-escalation tactics, when safe and feasible under the totality of the circumstances known to the officer:

a. Attempt to isolate and contain the subject;
b. Create time and distance from the subject by establishing a buffer zone ("reactionary gap") and utilize cover to avoid creating an ~~immediate~~imminent threat that may require the use of force;

c. Request additional resources, such as Crisis Intervention Team (CIT) trained officers, Crisis/Hostage Negotiation Team, Conducted Energy Devices, or Extended Range Impact Weapon;

d. Designate an officer to establish rapport and engage in communication with the subject;

e. Tactically re-position as often as necessary to maintain the reactionary gap, protect the public, and preserve officer safety;

f. Continue de-escalation techniques and take as much time as reasonably necessary to resolve the incident, without having to use force, if feasible.

g. ~~When feasible, before deploying a particular force option, officers shall evaluate the ray of objectively reasonable options to select an option anticipated to cause the least amount of injury to the subject while achieving the arrest or lawful objectives.~~

SFPOA'S PROPOSED CHANGE:

1. Like the suggestion that officers must use "minimal" instead of "reasonable" force, this proposed language would result in officer indecision, imposes an unrealistic standard, and should be eliminated.

While it is important for officers to strive towards using the minimal amount of force necessary, it is a mistake to subject officers to discipline if the option they choose, although reasonable, might not have been the option least likely to cause injury based on hindsight. All force options carry a risk of injury. Officers cannot be expected to be clairvoyant or exercise superhuman judgment. On the surface, the proposed language might sound like a good idea, but in practice, it could be deadly, for the reasons more thoroughly explained in Section IV below, which is why no jurisdiction in the country has this requirement.

Regardless, the word "ray" should be changed to "array."

h. While deploying a particular force option and when feasible, officer shall continually evaluate whether the force option may be discontinued while still achieving the arrest or lawful objectives.

i. ~~Whether a particular use of force is the minimum amount of force necessary must be objectively judged from the perspective of a reasonable officer on the scene, rather than with 20/20 hindsight. The objective determination of "minimal" must account for the fact that officers are often forced to make split-second judgments, in circumstances that are tense, uncertain and rapidly evolving.~~

SFPOA'S PROPOSED CHANGE:

1. The discussion of "minimum" force conflicts with section IV of this proposal and should be removed from this section.

It is unclear why this section, which relates to de-escalation, contains a description of how it is determined if an officer used minimal force. Section IV of this proposal, which is entitled "levels of force," deals with this same subject, but in more detail. The SFPOA suggests that, to avoid confusion, needless repetition, and giving conflicting instructions, the Department should define how minimum force is determined only once, in Section IV.

Regardless, whether the discussion of minimum force is included in this section or Section IV, the Department should change how it discusses the use of minimum force to comport with P.O.S.T., Supreme Court precedent, and the case law of every other jurisdiction in the United States. Here, the Department has merely taken a quote from *Graham v. Connor* regarding how to determine "reasonable force" and substituted the term "minimal" for the term "reasonable." The terms are not interchangeable, and to pretend they are creates a contradictory mess, which actually exposes why it is inappropriate to require that officers use minimal force. The point being made in the borrowed *Graham* analysis is that officers must be given some latitude when their use of force is evaluated – that they should not be second-guessed simply because a different option looks more appealing ***after-the-fact***. The Department turns that analysis on its head by suggesting that even though officers often cannot determine in advance exactly how much force is ultimately necessary, they will be disciplined if they guess wrong and use anything but the minimum amount of force. This language, and the proposed minimum force requirement, merely sets officers up for failure and endless second-guessing. For these reasons and the reasons articulated below related to Section IV, the Department should not adopt this language.

Other options, not listed above, may be available to assist in de-escalating the situation.

Supervisors who become aware of a situation where an officer is using de-escalation techniques shall monitor the radio communications and evaluate the need to respond to the scene.

2. ~~Officers shall continually assess the effectiveness of their actions and consider the desired outcome for the level of force used, including, when feasible:~~

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a. ~~What efforts can the officer use to de-escalate the situation or to minimize the need for use of force?~~
b. ~~Can the officer allow the subject time to submit to arrest before using force?~~
c. ~~Is the officer using the minimum amount of force necessary to carry out lawful objectives?~~
d. ~~Is the subject physically or mentally capable of complying with the officer's commands?~~
e. ~~Does the officer have an opportunity to utilize additional resources/officers to bring the situation to a peaceful resolution?~~
f. ~~What is the severity of the subject's actions and is the risk of injury to either the subject or officer worth achieving the officer's lawful objective?~~
g. ~~What is the proximity or access of weapons to the subject?~~
h. ~~What is the time available to an officer to make a decision and what efforts has the officer made to provide additional time?~~
i. ~~What are the physical considerations for the officer, e.g. officer exhaustion or injury during a physical confrontation?~~
j. ~~Are innocent bystanders present who could be harmed if force is or is not used?~~
k. ~~Are there hostile bystanders present who are sympathetic to the subject?~~

SFPOA'S PROPOSED CHANGE:

1. This entire portion should be eliminated because it is redundant, confusing, and harmful.

Sections III A, B and C of the proposed general order go through an exhaustive list of factors that an officer should consider before using any force. This section repeats those factors but then converts them into questions. For example, one of the factors to be considered under B. 3. is the "proximity of or access of weapons to the subject." Under III. C. 2., officers are also required to ask themselves "what is the proximity of access of weapons to the subject." There is no reason to repeat this list within the span of two pages. Unnecessary repetition breeds confusion and should be avoided.

More importantly, the mental gymnastics that this proposal requires an officer to go through before using any force is not practical. Before using any force, this proposal requires that officers consider 18 or more factors, evaluate 9 or more de-escalation techniques and then ask themselves 11 questions. This proposed policy will either set an officer up to fail because he or she failed to consider one of the **38 items** on this list, or the opportunity to use force appropriately and safely will be lost as the officer works through this redundant, bureaucratic mess.

The DOJ suggested "the language of the policies needs to be simplified and clarified so that a rank-and-file officer can understand the general guidance and principles. If the policy cannot be understood by an officer reading or referencing them, then the policy has not fulfilled the intended purpose." (DOJ summary comment p.2.) When the DOJ made this suggestion, the Department had listed 9 factors that an officer should consider before using force. Following the DOJ's suggestion to simplify and clarify the proposed orders, the Department went in the wrong direction – adding an additional 14 factors and 11 questions that an officer must ask him or herself before using any force. This proposed policy – in requiring that officers consider a 38-item list before using any force – completely fails to satisfy the DOJ's concern.

A good general order is simple and easy to understand. This proposed policy is a bureaucratic nightmare. For example, if an officer is conducting a pat search of a subject who suddenly pulls out a knife from his pocket and threatens the officer, must the officer go through the 38-item list before using force? If adopted, and if followed, this policy will result in officer paralysis, which will cause avoidable officer and civilian injuries and perhaps deaths.

Attached is a link to a video of an officer in Georgia being killed as a result of indecision: https://youtu.be/cIttLH5aP9Y

D. **UNLAWFUL PURPOSES.** Penal Code Section 149 provides criminal penalties for every public officer who "under color of authority, without lawful necessity, assaults or beats any person." An assault and battery committed by officers constitute gross and unlawful misconduct and will be criminally investigated.

E. **DUTY TO RENDER FIRST AID.** Officers shall render first aid, to the extent they are trained to do so, when a subject is injured or claims injury caused by an officer's use of force unless first aid is declined, the scene is unsafe, or emergency medical personnel are available to render first aid. Where feasible and safe to do so, Officers shall continue to render first aid and monitor the subject until relieved by emergency medical personnel.

SFPOA'S PROPOSED CHANGE:

1. **This provision should be changed to require officers to render first aid only to the extent they are trained to do so.**

Officers are not medical doctors, EMTs, or paramedics. Their first-aid training is mostly limited to CPR. To require officers to render first-aid that they are unqualified to

preform, is irresponsible and dangerous. Furthermore, patrol vehicles are equipped with only very small medical kits, while officers on foot patrol do not carry medical equipment at all. If the Department is going to require officers to render first aid, it needs to provide officers with the appropriate medical training, certifications, and equipment. Under current case law, an officer has fulfilled his or her obligation to render first aid if they call for medical aid to respond to the scene. The Department should not change this rule until and unless officers are provided with appropriate medical training and equipment. Alternatively, the Department should require officers to render first-aid only to the extent of their first aid training, and only to the extent they have the proper equipment to do so. If the Department wishes to make the provision of "first-aid" by officers a requirement, it must also define what exactly is meant by first-aid. For example, if a suspect complains that he has a severe neck injury as a result of a struggle with an officer, *does this rule require that the officer attempt to provide first-aid, which if done improperly could cause paralysis?*

2. If officers are going to be trained in providing first-aid, and provided with appropriate medical equipment, it does not make sense to limit the circumstances in which they provide first-aid to suspects complaining of injury from an officer.

If the Department is going to invest in training all officers as EMTs so that they can provide appropriate first-aid after a use of force, it does not make sense to limit their medical services to only those individuals complaining of injury from a use of force by the officer. Officers frequently encounter civilians in need of first-aid. The SFPOA cannot think of a justification for why an individual who is injured by a use of force is entitled to different medical treatment than a civilian who is injured by another. For example, under the proposed policy, if an officer arrives on a scene in which a suspect has just stabbed an individual, and the officer uses force to detain that suspect, causing the suspect to scrape his knee, the officer would be required to attend to the suspect's scraped knee while leaving the stabbing victim unattended. Again, this proposal seems to have been written with one particular circumstance in mind without considering the possible ramifications when the general order is applied to other circumstances.

F. DUTY TO PROVIDE MEDICAL ASSESSMENT. Where appropriate and feasible, oOfficers shall arrange for a medical assessment by emergency medical personnel when a subject is injured or complains of injury caused by a use of force, or complains of pain that persists beyond the use of a physical control hold, and the scene is safe. If the subject requires a medical evaluation, the officer shall call for ~~emergency transportation to subject shall be transported to~~ a medical facility. If the officer believes that ~~the~~ emergency medical response is excessively delayed, the ~~under the circumstances,~~ officers shall contact a supervisor to help coordinate and expedite the medical ~~assessment or~~ evaluation of the subject~~, e.g., transport subject to nearest~~

~~medical facility by SFPD~~. See DGO 5.18. Prisoner Handling and Transportation.

SFPOA'S PROPOSED CHANGE:

1. **This provision should be changed to require that officers call for medical assistance only when appropriate, and that they should make repeated efforts to obtain medical assistance only if emergency personnel appear to be delayed. Officers should not be required to ensure prompt medical care to individuals injured by a use of force and should never be required to provide transportation to a medical facility where someone is seriously injured.**

Even though officers have no control over whether emergency medical personnel will respond to a scene after being requested, or how long they will take, this proposal appears to hold officers responsible for ensuring that citizens receive appropriate medical treatment in a timely manner – but only if the individual was injured by an officer. This is not only unfair, but could lead to bizarre and unintended results. For example, if a suspect shot a civilian and then was shot by an officer before the suspect could shoot another civilian, the officer would be responsible for ensuring that the suspect received prompt medical attention, but would not have a similar obligation toward the civilian. If the ambulance did not arrive promptly, the officer would be required to load the suspect into his or her police vehicle and drive to a hospital, but would have no such obligation to further assist the injured civilian. Although an officer should not be required to drive anyone to a hospital – especially in San Francisco with an area of only 7 x 7 miles – it makes no sense to elevate the physical wellbeing of a suspect over that of the civilian(s) or officer(s) they may have injured.

2. **Officers should not be required to provide transportation in a SFPD vehicle even if an ambulance is delayed.**

This proposal will place citizens in danger, expose the City to unnecessary liability, and place an unfair burden on officers. Ambulances and trained medical personnel are not only intended to provide rapid transportation, but they can provide immediate medical attention at the scene and medical attention during transport (in a hygienic environment) that might be necessary to save the patient's life. SFPD vehicles are not equipped with the tools necessary to provide anything remotely close to comparable care. If untrained officers are required to provide emergency transportation in an unequipped, unhygienic SFPD vehicle because an ambulance is delayed, citizens could die who might otherwise have been saved because they will have been denied appropriate medical attention. Moreover, the back seats of SFPD vehicles are not only cramped, but unhygienic. *Is the Department proposing that a suspect with a gunshot wound is better served by being loaded into the back of a SFPD patrol vehicle instead of*

waiting a few minutes for an ambulance? It would be unwise and dangerous for the Department to require officers to transport seriously injured individuals to a hospital in the back of a patrol vehicle. No other department in the country has such a requirement. Moreover, San Francisco already has numerous emergency vehicles at the ready to provide exactly this service – i.e., ambulances.

Before interfering with the manner in which citizens in San Francisco receive first-aid and emergency transportation to a medical facility, the Department should consult with appropriate healthcare provides to make sure that the proposed policy will not endanger the public, as this proposed policy unquestionably does.

G. SUBJECT ARMED WITH A WEAPON – NOTIFICATION AND COMMAND. In situations where a subject is armed with a weapon, officers and supervisors shall comply with the following:

1. OFFICER'S RESPONSIBILITY. Upon being dispatched to or on-viewing a subject with a weapon, an officer shall call a supervisor as soon as feasible.

2. SUPERVISORS' RESPONSIBILITIES. When notified that officers are dispatched to or on-view a subject armed with a weapon, a supervisor shall as soon as feasible:

a. Notify DEM, monitor radio communications, respond to the incident (e.g., "3X100, I'm monitoring the incident and responding.");

b. ~~Notify responding officers, while en-route, absent a "Code 33" or other articulable reasons why it would be unsafe to do so, to protect life, isolate and contain the subject, maintain distance, find cover, build rapport, engage in communication without time constraint, and call for appropriate resources;~~

SFPOA'S PROPOSED CHANGE:

1. The requirement that supervisors read a *Miranda*-type admonition over the air each time there is a call or on-view of a suspect with a weapon is absurd, dangerous, and should be eliminated.

For many reasons, this requirement is dangerous, makes no sense, and will not encourage de-escalation. First, although the proposal has an exception for Code 33 situations, this does not solve the safety problem. In many situations a call that an individual has a weapon is not immediately a Code 33 – but it can become a Code 33 in the 10-15 seconds that a supervisor would spend reading this admonition over the air. If this policy is in place, valuable time will be lost during the 10-15 second admonition

which could cost civilians and officers their lives. As the DOJ noted, "this will tie up radio communications during a critical incident and could create risk." (DOJ COPS comment 33.)

Second, this admonition will be ineffective at best, and dangerous at worst, even if it does not interfere with valuable air-time. This proposal requires that, *regardless of the circumstances,* a supervisor who is not on the scene and may know nothing about the situation, must go over the air and give advice to the on-scene officer about how to handle the call. This is inefficient and impractical. Suppose, for example, that an on-scene officer arrives to a weapons call and finds a suspect about to shoot a child: *Should that officer heed his supervisor's canned advice to "build rapport," or should the officer make an appropriate decision based on what he or she observes based on the totality of circumstances known to him or her?* The obvious answer is that the on-scene officer should ignore any advice that does not apply to that particular situation. If the on-scene officer heeds the canned advice, however, but treats the admonition as a directive from a supervisor, this could endanger the public and officers. Officers might be taking cover when it is unsafe to do so, maintaining distance when they should be advancing, and trying to establish rapport when they should be quiet – all because they believe they are following a supervisor's orders.

Third, almost none of this advice would apply to the great majority of the routine calls officers receive about individuals armed with weapons. For any of these admonitions to be appropriate, the following circumstances must apply: (1) the call is for an armed suspect; (2) the suspect is sufficiently far away from any possible victims that the officer can maintain distance, build rapport, call for additional resources, take cover, and engage in communications without time restraints and without jeopardizing anyone's safety; and (3) the scene is sufficiently secure and controlled that command of the scene can be transferred from the on-scene officer to the later-arriving supervisor. The only scenario in which this would he applicable is a very rare critical incident situation (such as a barricaded suspect situation), which is addressed by other general orders. Therefore, if this proposal is approved. the Department would be requiring that, regardless of the situation, supervisors must dispense advice that is almost never going to be applicable.

Moreover, the blanket application of these de-escalation principles would turn many routine weapons calls into dangerous critical incidents. Situations that might be resolved merely by the officer ordering a suspect to drop a weapon will now require the officer to retreat, call for backup and obtain cover. For example, in response to our survey, one officer recounted the following scenario: The officer responded to a weapons call and found a mentally unstable woman lying on her bed saying that she wanted to kill herself. The officer approached, the woman moved her leg and revealed a knife under her leg (which she was not holding – yet). Without saying another word, the officers grabbed the woman and moved her away from the knife. The woman struggled, spat, and was held for a 5150. If the officer had instead backed off to establish rapport, called a supervisor, took cover and created a "reaction gap," this situation could have turned disastrous. The quick action by the officer resolved the situation and probably

saved the woman's life.

Fourth, if the Department believes that officers should be instructed about de-escalation and the "sanctity" of human life, the worst, most dangerous, and least effective means of achieving this is for supervisors to repeat those words over the air 20 times a day in situations where the admonitions do not apply and officers are responding to a potentially dangerous situation. Instead, the Department should provide additional training and draft appropriate general orders.

Fifth, the Department does not have the resources for a supervisor to be dispatched to every weapons call. For example, the Mission district receives dozens of similar calls a day, but only has a limited number of patrol sergeants at any given time. The SFPOA suggests that if the Department still believes that some variation of this policy is appropriate, it should study the practical effect of this policy before implementation to avoid the possible chaos that might follow.

No police department in the entire country has a policy like this. San Francisco should not be the first. As the DOJ suggests, this proposal is "better accomplished through training and something that should situationally be left up to the supervisor's discretion."

Alternatively, if the Department insists on keeping this requirement, the SFPOA suggests that the Department could have a pre-recorded message, perhaps from the Chief, that could play any time an officer responds to a weapons call. This could be done through DEM or the officer could have a device to play this recording in their vehicles which they could just depress when they respond to a weapons call. This would eliminate the risk of this message taking up valuable air-time. Having a pre-recorded message would also ensure that the message is delivered the same way each time regardless of whether it is appropriate for the circumstance confronting the officer (which appears to be the intent of this requirement), and it would avoid burdening supervisors with having to remember a script.

c. Upon arrival, where appropriate, the supervisor shall assume command, and ensure appropriate resources are on-scene or are responding.

SFPOA'S PROPOSED CHANGE:

1. **This requirement should be changed to allow for some discretion as to whether a supervisor can or should assume command immediately upon arrival.**

Officers encounter a wide variety of situations when dealing with armed, or potentially armed suspects. In many situation, a supervisor who arrives later to the scene can gain enough information from the officers on the scene to take immediate command and make appropriate decisions. But that is not always the case. Often the lead officer(s) will have information that a later arriving supervisor does not and cannot possess. To

have a categorical requirement that command immediately transfers to a later arriving supervisor is dangerous and inappropriate. For example, if a lead officer has followed an individual whom the officer believes just robbed a store at gunpoint into an abandoned building, it would be inappropriate for a supervisor who arrives later and is outside of the building to immediately assume command. The late-arriving supervisor may have limited or no information about what is occurring upon which to base any decisions. Typically, in that situation, the lead officer would be responsible for directing the pursuit and requesting additional resources.

IV. LEVELS OF FORCE. Officers shall strive to use the minimum amount of force necessary to accomplish their lawful purpose. ~~When force is needed, members shall assess each incident to determine which use of force option is believed to be the minimum amount of force necessary within the available range of objectively reasonable force options to bring the situation under control in a safe manner. The level of force must be proportional to the circumstances and the level of resistance encountered by the officer.~~

SFPOA'S PROPOSED CHANGE:

1. The Department should not replace the objectively reasonable requirement under *Graham v. Connor* with a requirement that officers use minimal force.

This provision appears to suggest that the *Graham v. Connor* analysis will no longer apply in San Francisco, which is contrary to numerous other provisions of the proposed general order, P.O.S.T., every city in the United States of which the SFPOA is aware, the U.S. Supreme Court, the California Supreme Court, and the Ninth Circuit. Approval of this language would be a grave mistake.

Although using the minimum force necessary is an admirable goal, to replace the objectively reasonable requirement with a minimal force requirement will subject officers to dangerous second guessing as they attempt to calibrate exactly how much force, an no more, is necessary to gain control of a dangerous suspect. In *Scott v. Henrich*, 39 F.3d 912 (9th Cir. 1994), the Ninth Circuit specifically rejected this requirement because it is dangerous and places an unrealistic burden on officers, which endangers everyone. In *Scott*, police officers responded to a "shots fired" call. Officers banged and kicked the door, ordering the shooter to open up. The shooter fumbled with the door latch, opened the door, and pointed a gun at the officers. The suspect was shot and killed. The widow sued, alleging that the officers used excessive force under the Fourth Amendment. The widow argued that the officer could have used less intrusive means to apprehend the suspect. The Ninth Circuit disagreed, holding that the Constitution does not require officers to select the least intrusive means available. The Court stated that "as the text of the Fourth Amendment indicates, the appropriate inquiry is whether the officers acted reasonably, not whether they had less intrusive alternatives available to them…"

The Ninth Circuit explained that requiring officers in such a tense situation to choose not only to use reasonable force, but the least intrusive reasonable force would hold officers to an impossible standard. The Court stated that "[r]equiring officers to find and choose the least intrusive alternative would require them to exercise ***superhuman judgment***. In the heat of a confrontation, with lives potentially in the balance, an officer would not be able to rely on training and common sense to decide what would best accomplish his mission. Instead, he or she would need to assess the least intrusive alternative (an inherently subjective determination) and choose that option and that option only. Imposing such a requirement would inevitably induce tentativeness by officers, and thus deter police from protecting the public and themselves. It would also entangle the courts in endless second-guessing of police officer decisions made under stress and subject to the exigencies of the moment. Officers need not avail themselves of the least intrusive means of responding to an exigent situation; they need only act within that range of conduct we identify as reasonable. . ." The California Supreme Court reached this same conclusion in *Hayes v. County of San Diego,* 57 Cal.4th 622, 160 Cal.Rptr.3d 684 (2013), holding that officers are not required to choose the "most reasonable" action or the conduct that is the least likely to cause harm, so long as their conduct falls "within the range of conduct that is reasonable under the circumstances." *Hayes,* 160 Cal.Rptr.3d at 691.

For this reason, there is no jurisdiction in the United States (of which the SFPOA is aware) that has supplanted the objectively reasonable test with a requirement to use minimal force. Some of the other stakeholders have claimed that the police departments in Albuquerque, Chicago, Cleveland, Denver, Las Vegas, Los Angles, Milwaukee, New Orleans, Oakland, Portland, Seattle and Washington D.C. have switched from a requirement that an officer's use of force will be examined under *Graham v. Connor*, and will instead look to a new "higher" standard – that officers must use minimal force. This is simply not true. While many of these departments state that officers should use minimal force, or encourage de-escalation, none of them state that the requirement to use minimal force supplants the objectively reasonable test outlined in *Graham v. Connor.* In fact, the general orders of each of these cities explicitly state that the *Graham v. Connor* analysis still governs. What the other stakeholders fail to understand is that these two principles – requiring the use of minimal force and the *Graham v. Connor* analysis – work together, serving different purposes, as has been the case in San Francisco since at least 1989.

Below are summaries of the general orders for each city cited by the other stakeholders, showing that in each case, although officers are encouraged to use "minimum" amounts of force or de-escalation techniques, the cities also provide that any use of force by an officer is to be evaluated based on the objectively reasonable standard under *Graham v. Connor.*

(1) **Albuquerque:** states that, where feasible officers are to use "the minimum amount of force necessary," but that any use of force shall be evaluated pursuant to the objectively reasonable test provided by *Graham v. Connor*. Specifically, Albuquerque provides that "this policy is not intended to limit the lawful authority of the ADP officers to use objectively reasonable force." (Albuquerque Police Department, Procedural Orders, Use of Force, 2-52-1.)

(2) **Chicago:** states that its officers should use "the least amount of appropriate force." Chicago also cites *Graham v. Connor* and states that "the central inquiry in every use of force is whether the amount of force used by the officer was objectively reasonable in light of the particular circumstances faced by the officer." (Chicago Police Department Use of Force Guidelines, General Orders G03-02-01 III.C.)

(3) **Cleveland**: emphasizes de-escalation procedures before using force. However, citing *Graham v. Connor*, Cleveland also states that "Objectively Reasonable Force is that level of force that is appropriate when analyzed from the perspective of a reasonable officer possessing the same information and faced with the same circumstances as the officer who actually used force. Objective reasonableness is not analyzed with hindsight, but will take into account, where appropriate, the fact that officers must make rapid decisions regarding the amount of force to use in tense, uncertain, and rapidly evolving situations." (Cleveland Division of Police General Police Orders 2.1.01 pages 2, 4-5.)

(4) **Denver**: requires its police officer to "exercise control" and "de-escalate the use of force as the situation progresses or circumstances change." Denver, however, also provides that "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 policy further explains "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 reasonableness inquiry in an excessive force case is an objective one; the question is whether the officers' actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." Denver also specifically cites *Graham v. Connor*, stating that "Law enforcement officers are permitted to use force to affect [sic] an arrest only to the extent that it is 'objectively reasonable' under the circumstances." (Denver Police Department, Use of Force Policy 105.01(1)(a) and 105.01(3)(a).)

(5) **Las Vegas**: introduces its use of force policy by stating that its officers should "place minimal reliance upon the use of force." Las Vegas, however, defines reasonable force as "an objective standard of force viewed from the perspective of a reasonable officer, without the benefit of 20/20 hindsight, and based on the totality of the

circumstances presented at the moment the force is used." The policy further explains how to determine objectively reasonable force, citing *Graham v. Connor*: "The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with 20/20 vision of hindsight. The reasonableness must account for the fact that officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving." (Las Vegas Metropolitan Police Department General Order, Use of Force, GO-008-15, Sections I, II.W., and III.)

(6) **Los Angeles**: states "the police should use physical force to the extent necessary." Los Angeles also cites *Graham v. Connor*, stating that '[t]he 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.'" Los Angeles further provides "the force must be reasonable under the circumstances known to 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." (Los Angeles Police Department Policy, 115 and 556.10.)

(7) **Milwaukee**: states that its officers should use "the minimum force and authority necessary to accomplish a proper police purpose." Although Milwaukee does not expressly cite *Graham v. Connor*, it incorporates the *Graham v. Connor* test. Under the "objective reasonableness" section of its policy, it states that "objective reasonableness is judged from the perspective of a reasonable police member facing similar circumstances and is based on the totality of the facts known to the police member at the time the force was applied, along with the member's prior training and experience, without regard to the underlying intent or motivation of the police member." (Milwaukee Police Department Code of Conduct, 6.00 and Milwaukee Police Department General Order 2015-17 460.10.)

(8) **New Orleans**: defines reasonable force as "the minimum amount of force necessary to effect an arrest or protect the officer or other person," but clarifies this use of force as that which an "objectively reasonable officer would use in light of the circumstances to effectively bring an incident or person under control, while protecting the lives of the member or others." Furthermore, New Orleans states "any evaluation of reasonableness must allow for the fact that officers must sometimes make split-second decisions about the amount of force that is necessary in a particular situation with limited information and in circumstances that are tense, uncertain and rapidly evolving." (New Orleans Police Department Operations Manual, Chapter 1.3 Use of Force, pages 3, 5.)

(9) **Oakland**: states its "members are required to de-escalate the force when the member reasonably believes a lesser level or no further force is appropriate." That sentence is preceded with "members are allowed to use a reasonable amount of force based on a totality of the circumstances." Oakland cites *Graham v. Connor* and says "the determination of reasonableness is not based on the 20/20 vision of hindsight." (*See* Oakland Police Department's General Order K-3, Sections I. A. and C.)

(10) **Portland**: provides that "it is the intention of the Bureau to accomplish its mission as effectively as possible with as little reliance on force as practical." Portland further "adopts the constitutional standard for the use of force established in *Graham v. Connor*" where "the determination of reasonableness is not based on the 20/20 vision of hindsight." Portland prohibits force that is not "objectively reasonable under the constitutional standard." (Portland Police Department's Use of Force, Policy 1010.00, 1010.00 (1).)

(11) **Seattle**: states that "it is the policy of the Seattle Police Department to accomplish the police mission with the cooperation of the public and as effectively as possible, and with minimal reliance upon the use of physical force." Seattle also provides that "an officer shall use only the degree of force that is "objectively reasonable." Seattle states that whether force is objectively reasonable is determined "based on the totality of circumstances known by the officer at the time of the use of force and weighs the actions of the officer against the rights of the subject, in light of the circumstances surrounding the event. It must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." (Seattle Police Department Manual, 8.000.1; 8.000.4.)

(12) **Washington, D.C.**: states "officers of the Metropolitan Police Department shall use the minimum amount of force that the objectively reasonable officer would use in the light of the circumstances to effectively bring an incident or person under control, while protecting the lives of the member or others." Washington, D.C., also provides, however, that the "reasonableness inquiry is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them" and the force "must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation." (Washington, D.C. Metropolitan Police Department, Use of Force, GO-RAR-901.07, Sections I and III.E.)

Therefore, contrary to the suggestions by other stakeholders, ***none*** of the police departments cited by the other stakeholders have policies that replace the *Graham v. Connor* objectively reasonable analysis with a requirement to use minimal force or to de-escalate. In fact, the SFPOA could not find a single department in the entire country that does what the Department is recommending here. This is not by accident. Although it is

appropriate to establish a goal of using the minimal amount of force necessary, it is inappropriate to fault an officer if they use force that was objectively reasonable, but based on 20/20 hindsight, might not have been the least intrusive means available.

Graham v. Connor requires that officers' use of force must be objectively reasonable, based on the totality of circumstances known to the officer at the time. According to Webster's Dictionary, "reasonable" means "sensible, rational, logical, fair." It means "using sound judgment, fair and sensible." With that understanding of the term "reasonable," how can a department require more from an officer? Conversely, under this proposal, is the Department suggesting that an officer should be disciplined if the officer used force that was reasonable under the totality of circumstances known to the officer, but yet based on 20/20 hindsight the officer might have been able to use less force? This would mean that even where an officer's actions were sensible, rational, fair and demonstrated sound judgment, the officer would still be subject to discipline because someone far removed from the dangers of the scene can envision a force option that might have been less intrusive and might have accomplished the same goal. That, of course, would hold officers to a standard of superhuman judgment and foresight that they cannot hope to meet.

Not only would imposing this impossible standard be unfair, it would be dangerous. For example, let's suppose that instead of being required to use a reasonable amount of water to put out a fire, a fire fighter was required to use the minimum amount of water, or face discipline. When confronting a fire, instead of reacting quickly to put out the fire in a reasonable manner, the fire fighter would be unnecessarily worried about guessing exactly how much water might be sufficient. This would cause a dangerous delay and, in many case, the fire fighter might guess incorrectly and use too little water, causing the fire to spread uncontrollably. The same would be true with an officer subject to discipline in the event the officer used reasonable force, but in hindsight, might have been able to use a less intrusive means to apprehend a suspect. Forcing an officer in uncertain situations to determine the precise amount of force sufficient before acting will cause officers to hesitate unnecessarily and often use less force than necessary – which will be dangerous to officers, citizens and suspects.

The notion of asking an officer to strive towards using minimal force, but judging his or her use of force based on the totality of circumstances known to the officer at the time go hand-in-hand. This is supported by every city in the United States, as well as every court that has addressed this issue. The Department will be setting a very dangerous precedent if, as proposed, it attempts to upend the constitutional requirement for determining when appropriate force was used.

2. The proportionality requirement should be clarified or eliminated.

As noted above, proportionality is not well defined in the relevant case law,

nor is it well defined by this proposed order. A common understanding of this term could require officers to meet like force with like force (combat a knife with a knife). Such a requirement would be exceedingly dangerous, inappropriate, and unsafe. If this is not what the Department intends, it should indicate as much. Also, a common understanding of proportionality might prohibit officers from ever exhibiting overwhelming force in the hope that the suspect will surrender without a fight. If that is the Department's intent, it will take away a valuable law enforcement tool from San Francisco officers, which will result in more force being used (because suspects will essentially be encouraged to resist), and increase the risk of harm to officers, civilians, and suspects.

A. **Low Level Force.** The level of control necessary to interact with a subject who is or displaying passive or active resistance. This level of force is not intended to and has a low probability of causing injury.

B. **Intermediate Force.** The level of force necessary to compel compliance by a subject displaying aggressive resistance. This level of force poses a foreseeable risk of significant injury or harm, but is neither likely nor intended to cause death. Case law decisions have specifically identified and established that certain force options such as OC spray, probe deployment with a conducted energy device, impact projectiles, K-9 deployment, carotid restraint control hold and baton strikes are classified as intermediate force likely to result in significant injury.

SFPOA'S PROPOSED CHANGE:

1. **The Department should include K-9 deployment in the list of intermediate levels of force.**

The use of a K-9 is an intermediate use of force and should be included in this list. (*See Lowry v. City of San Diego*, 818 F.3d 840, 847 (9th Cir. 2016).)

C. Deadly~~Lethal~~ **Force.** Deadly ~~Lethal~~ force is the degree of force likely to cause death or serious bodily injury. An officer may use ~~lethal~~deadly force upon another person only when it is objectively reasonable to:

1. Protect him/herself or others from what is reasonably believed to be an ~~immediate~~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~~deadly force is reasonably necessary to prevent escape;
d. When feasible, some warning should be given before the ~~lethal~~deadly force is used under these circumstances.

3. ~~Lethal~~Deadly force shall only be exercised when all reasonable alternatives have been exhausted or appear impracticable.

V. FORCE OPTIONS. The force options authorized by the Department are physical controls, personal body weapons, chemical agents, impact weapons, extended range impact weapons, vehicle interventions, conducted energy devices, K-9 deployment and firearms. These are the force options available to officers, but officers are not required to use these force options based on a continuum.

A. Tools and Techniques for Force Options

The following tools and techniques are not in a particular order nor are they all inclusive.

- Verbal Commands/Instructions/Command Presence
- Control Holds/Takedowns
- Impact Weapons
- CEDs (Tasers, Stun Guns, etc.)
- Chemical Agents (Pepper Spray, OC, etc.)
- Police K-9
- Vehicle Intervention (Deflection)
- Firearms
- Personal Body Weapons
- Impact Projectile
- Carotid Restraint Control Hold

A.B. PHYSICAL CONTROLS/PERSONAL BODY WEAPONS. Physical controls, such as control holds, takedowns, strikes with personal body weapons, and other weaponless techniques are designed to gain compliance of and/or control over uncooperative or resistant subject. ~~incapacitate and subdue subjects. The use of physical control techniques and equipment against vulnerable populations—including children, elderly persons, pregnant women, people with physical and mental disabilities, people with limited English proficiency, and others—can undermine public trust and should be used as a last resort.~~

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SFPOA'S PROPOSED CHANGE:

1. **The Department should eliminate this entire paragraph because it is contrary to common sense, and inconsistent with the Department's other proposed orders, P.O.S.T., and the case law addressing the issue.**

First, contrary to the statement in this proposed policy, use of physical controls should not be the "last resort," with respect to any population. In fact, as this policy appropriately provides, the use of deadly force is the "last resort." Of course, it is contradictory for a policy to have two "lasts." Moreover, not only shouldn't the use of physical controls be the "last resort," it is the least intrusive means of gaining control of a suspect not following verbal commands. (*See* P.O.S.T. Learning Domain 20 3-3.) The use of baton, K-9, OC spray, CED, and physical body weapons, all properly come before the use of a control hold in terms of the likelihood of causing injury. And, the Ninth Circuit has held that control holds can properly be used against non-compliant, passive suspects. *Eberle v. City of Anaheim,* 901 F.2d 814, 820 (9th Cir. 1990) (reasonable as a matter of law to use a "finger control hold" to remove belligerent spectator from arena). As written, under this policy, if a pregnant woman was refusing to obey a lawful order (such as to get out of the street), the officer would be required to consider deploying a k-9, using a baton and discharging firearm before escorting the woman out of the street with a firm grip.

Second, the description of "control holds" as being "designed to incapacitate and subdue subjects," should be removed because that is not their actual purpose. In fact, physical control holds are a critical part of a police officer's tools to resolve a situation using minimal force. According to P.O.S.T., "control holds" constitute the least amount of force that an officer can use, and can even be used on suspects that are offering no physical resistance of any sort. (*See* P.O.S.T. Learning Domain 20: 2-6.) Physical controls are not designed to incapacitate or subdue subjects. Frequently, physical control holds are merely intended to help move a non-compliant subject from one location to another. (*See Eberle v. City of Anaheim,* 901 F.2d 814, 820 (9th Cir. 1990) [reasonable as a matter of law to use a "finger control hold" to remove belligerent spectator from arena].)

If the Department defines all physical control holds to be the equivalent of intermediate force – which is the level of force designed to incapacitate and subdue suspects – then the Department will have left its officers with virtually no means of attempting to control non-compliant suspects. The result is that many suspects that are merely non-compliant will become actively resistant, requiring officers to exert an even greater level of force with which to gain control, which will unnecessarily endanger suspects, civilians, and officers.

Furthermore, this definition of physical control holds is inconsistent with the explanation of when such holds can be used. Below, the Department suggests that an officer may use "physical controls" on an individual who is passively resisting. But, if, as this paragraphs states, physical controls are "designed to incapacitate" suspects, then it would be inappropriate to use such technique on an individual who is merely passively resisting.

Third, this policy inappropriately lumps physical controls and personal body weapons into the same category even though they are significantly different. Under section II., G, this proposed general order defines "personal body weapons" as "[a]n officer's use of his/her hand, foot, knee, elbow, shoulder, hip, arm, leg or head by means of high velocity kinetic energy transfer (impact) to gain control of a subject." A physical control hold can be anything from a finger hold (*Eberle v. City of Anaheim,* 901 F.2d 814, 820 (9th Cir. 1990)) to an arm bar (*Tatum v. City and County of San Francisco,* 441 F.3d 1090, 1092-93 (9th Cir. 2006)).

Fourth, this proposed policy is internally inconsistent. In the title and the first sentence, it discusses physical controls and other "weaponless techniques." In the next sentence it references "physical control techniques and equipment." It is inconsistent for the Department to propose a policy that on one hand concerns only "weaponless techniques," and in the very next sentence make reference to "techniques and equipment." As a result, unless modified – or eliminated – officers will have no idea what this proposed policy means.

Fifth, the inclusion of "people with limited English proficiency," as a category of individuals against whom physical control should be a "last resort" is ridiculous. Officers confront many violent criminals every day with limited English proficiency. To essentially prohibit officers from using the lowest level of force against a suspect merely because they have limited English proficiency makes no sense and will needlessly endanger officers.

Sixth, the phrase "and others," stuck on the very end of the list of "vulnerable populations" makes the entire paragraph meaningless. If the Department is attempting to define a subset of citizens for whom none of the normal rules related to use of force applies, to add the phrase "and others" to the end of the list undoes any value to the list because "and others" can include everyone else. While the SFPOA believes that including a list of populations against whom physical controls should only be used as a "last resort," is unnecessary, confusing, and dangerous, having an open ended list does not provide officers with any guidance as to which populations are included in the list.

Lastly, this policy, when read together with some of the other policies proposed by the Department, leads to absurd results. For example, if an officer sees a non-English speaking suspect strangling a civilian with handcuffs, the officer is precluded from using

any impact weapon or any physical control technique (except as a last resort), or the carotid restraint, but the officer would be permitted to shoot the individual. But, if the individual could speak English and was strangling another individual with a rope instead of handcuffs, the officer would have the full range of force options available (except the carotid restraint).

1. PURPOSE. When a subject offers some degree of passive or active resistance to a lawful order, in addition to de-escalation techniques and appropriate communication skills, officers may use physical controls consistent with Department training to gain compliance. A subject's level of resistance and the threat posed by the subject are important factors in determining what type of physical controls or personal body weapons should be used.

SFPOA'S PROPOSED CHANGE:

1. **The SFPOA believes that this is an appropriate general order provision, but it is inconsistent with the preceding paragraph.**

In this paragraph, "physical controls" can be used to gain compliance over suspects offering passive resistance, whereas in the preceding paragraph, physical controls are intended to "incapacitate," which is inappropriate for passive resistance. Because physical controls are not designed to incapacitate, as explained above, the SFPOA recommends that the Department keep this provision of the general orders over the preceding and contradictory provision.

2. USE. Officers shall consider the relative size and possible physical capabilities of the subject compared to the size, physical capabilities, skills, and experience of the officer. When faced with a situation that may necessitate the use of physical controls, officers shall consider requesting additional resources to the scene prior to making contact with the subject, if feasible. Different physical controls involve different levels of force and risk of injury to a subject or to an officer. Some physical controls may actually involve a greater risk of injury or pain to a subject than other force options.

3. PROHIBITED USE OF CONTROL HOLDS.
Officers are prohibited from using the following control holds:

~~a. carotid restraint~~

SFPOA's PROPOSED CHANGE:

1. Consistent with P.O.S.T., the SFPOA believes that the carotid restraint should be authorized and considered intermediate force.

The carotid restraint is not a choke-hold and should not be treated as such. The carotid restraint is an intermediate level of force, which can be used to subdue an actively resisting suspect without any injury to the suspect or the officer. (*See* Exhibit B, P.O.S.T. Learning Domain 20: 2-6, 2-9.)

The SFPD has successfully used the carotid restraint for years without incident. As with other non-lethal force options, the more such options are at an officer's disposal, the greater the chance the officer will not have to resort to lethal force. Limiting the use of the carotid restraint to only those situations in which lethal force can be used will effectively eliminate this valuable tool from an officer's arsenal, making the use of deadly force more likely. Limiting the use of the carotid restraint to lethal force situations helps no one, and endangers the public and officers. In response to our survey, one of our officers wrote the following:

> "I am a 5'4" female that has rarely used force in my 28 years of law enforcement: however, in the moments where I have been attacked the Carotid Restraint has saved my life. It has saved my life 3 times because the person that attacked me was huge and extremely violent. The carotid restraint was applied correctly (due to training), was perfectly effective, and caused no injury to the suspect. It is a tool that call he effectively used by all officers - small/large/male/female -- to safely manage a violent suspect."

Regardless, if the Department wishes to ban this otherwise approved technique, it should not do so categorically. The Department should, at minimum, be allow to use this technique in the same situations where using lethal force is justified. The SFPOA cannot conceive of a reason why an officer could be in a situation in which he or she was justified in using lethal force, but should be prohibited from using this non-lethal technique.

a~~b~~. choke hold--choking by means of pressure to the subject's trachea or other means that prevent breathing.

4. **MANDATORY MEDICAL ASSESSMENT.** Any subject who has been injured, complains of an injury in the presence of officers, or complains of pain that persists beyond the use of the physical control hold shall be medically assessed by emergency medical personnel.

5. **REPORTING.** Use of physical controls is a reportable use of force when the subject is injured, complains of injury in the presence of officers, or complains of pain that persists beyond the use of a physical control hold. Striking a subject with a personal body weapon is a reportable use of force.

SFPOA's PROPOSED CHANGE / COMMENT:

1. **As proposed here, the SFPOA believes that the Department is correct to not make every use of force reportable.**

Officers use varying degrees of force on a daily basis. To require that officers report each instance when they physically touch a suspect – even though there is no injury or complaint of injury – is pointless, unrealistic, and will overburden the officers and the supervisors who will be responsible for evaluating each touching, no matter how minor.

B.C. **CHEMICAL AGENTS.** Chemical agents, such as Oleoresin Capsicum (OC) Spray, are designed to cause irritation and temporarily incapacitate a subject.

1. **PURPOSE.** Chemical agents can be used to subdue an unarmed attacker or to overcome active resistance (unarmed or armed with a weapon other than a firearm) that is likely to result in injury to either the subject or the officer. In many instances, chemical agents can reduce or eliminate the necessity to use other force options to gain compliance, consistent with Department training.

2. **WARNING.** Officers shall provide a warning prior to deploying a chemical agent, if feasible:

   a. Announce a warning to the subject and other officers of the intent to deploy the chemical agent if the subject does not comply with officer commands; and
   b. Give the subject a reasonable opportunity to voluntarily comply unless it would pose a risk to the public or the officer, or permit the subject to undermine the deployment of the chemical agent.

3. **MANDATORY FIRST AID.** At the scene or as soon as possible, officers shall administer first aid by:

   a. Seating the subject or other person(s) exposed to a chemical agent in an upright position, and
   b. Flushing his/her eyes out with clean water and ventilate with fresh air.

4. **MANDATORY MEDICAL ASSESSMENT.** Any person exposed to a chemical agent shall be medically assessed by emergency medical personnel. Any exposed person shall be kept under direct visual observation until he/she has been medically assessed. If an exposed person loses consciousness or has difficulty breathing, an officer shall immediately request for emergency medical personnel, render first aid and monitor the subject until relieved by emergency medical

personnel. Officers shall notify dispatch to expedite emergency medical personnel if the person loses consciousness or has difficulty breathing.

5. **TRANSPORTATION.** Subjects in custody exposed to a chemical agent must be transported in an upright position by two officers. The passenger officer shall closely monitor the subject for any signs of distress. If the subject loses consciousness or has difficulty breathing, officers shall immediately seek emergency medical attention. Hobble cords or similar types of restraints shall only be used to secure a subject's legs together. They shall not be used to connect the subject's legs to his/her waist or hands or to a fixed object.

6. **BOOKING FORM.** Officers shall note on the booking form that the subject has been exposed to a chemical agent.

7. **REPORTING.** If an officer deploys a chemical agent on or near someone, it is a reportable use of force.

C.D. **IMPACT WEAPON.** Department issued and authorized impact weapons include the 26" straight wooden baton, the 36" straight wooden baton, the wooden or polymer Yawara stick, the 21' to 29" telescopic metal baton and the wooden bokken, and are designed to temporarily incapacitate a subject. Impact weapons, such as a baton, are designed to temporarily incapacitate a subject.

1. **PURPOSE.** An impact weapon may be used in accordance to Department training to administer strikes to non-vital areas of the body, which can subdue an aggressive subject. Only Department issued or authorized impact weapons shall be used. Officers may resort to the use of other objects as impact weapons, such as a flashlight or police radio, if exigent circumstances exist, and officers shall articulate in writing the reason for doing so.

2. **WARNING.** When using an impact weapon, an officer shall, if feasible:

   a. Announce a warning to the subject of the intent to use the impact weapon if the subject does not comply with officer's commands; and

   b. Give the subject a reasonable opportunity to voluntarily comply, except that officers need not do so where it would pose a risk to the public or the officer or permit the subject to undermine the use of the impact weapon.

3. **RESTRICTED USES.** Unless exigent circumstances exist, officers shall not:

~~a. Raise an impact weapon above the head to strike a subject,~~

SFPOA'S PROPOSED CHANGE:

1 **The policy should restrict strikes to inappropriate parts of the body, not overhead strikes.**

Policies that reduce inappropriate baton strikes are commendable. But a severe restriction on overhead strikes does nothing to accomplish that goal. San Francisco policies, academy, and P.O.S.T. training already focus on the appropriate areas of the body to strike an individual with impact weapons, not whether the blow is delivered with a forehand or backhand swing, or an overhead strike. Because it is the location on the individual struck that matters (head versus thigh), the method of delivering the strike is not the appropriate focus. Specifically, an overhand strike may not be any more likely to result in an inappropriate strike than a sidearm strike. Nor is an overhead strike likely to deliver more force than a sidearm strike. In addition, current best practices and San Francisco training teach that the proper way to hold a baton is with some portion of the baton extending over the officer's head before striking the suspect. Moreover, what may constitute an overhead strike may not always be clear. *If the officer is bent over, is a strike over the officer's head an overhead strike? If the officer is on the ground, would any strike be prohibited as "overhead"? If the suspect is above the officer, is an officer prohibited from reaching up to strike the individual on the thigh?* The likely unintended consequence of this restriction on overhead strikes is that officers will be far less likely to use this non-lethal option even when it is appropriate to do so. Such an outcome will not increase safety. Additionally, if this provision is adopted, all SFPD officers will have to undergo extensive re-training on how to use batons because this general order would be contrary to their training.

ab. Intentionally strike vital areas, including the head, neck, face, throat, spine, groin or kidney. The use of an impact weapon to a vital area has a likelihood of causing serious bodily injury or death, and the intentional use of an impact weapon to these areas shall only be used in situations where lethal force is justified

b. Strike a handcuffed prisoner with an impact weapon. ~~Striking a handcuffed prisoner is an inappropriate action and may result in disciplinary action and/or criminal prosecution.~~

4. **PROHIBITED USES.** Officers shall not:

a. Use the impact weapon to intimidate a subject or person, such as slapping the palm of their hand with an impact weapon, other than situations where it is appropriate for the officer to use the impact weapon, or the officer is giving an appropriate warning before using an impact weapon.

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SFPOA'S PROPOSED CHANGE:

1. **The Department should eliminate the restriction on officers using an impact weapon to intimidate, or better define what is meant, because, as proposed, this restriction conflicts with the requirement that an officer should, when feasible, warn a suspect before using an impact weapon.**

This proposed general order language prevents officers from using an impact weapon to "intimidate" a suspect. Webster's Dictionary defines intimidate to mean "to force into or deter from some action by inducing fear." Under Section V. C. 2., above, officers are required, when feasible, to warn a suspect before striking them with an impact weapon. A warning issued by an officer that the suspect will be struck with a baton unless they comply certainly would constitute an action "to force into or deter from some action by inducing fear," and therefore could be considered both a warning and intimidation.

Therefore, within the same page, these proposed orders purport to both require and prohibit an officer from doing the same thing – issuing a warning prior to striking a suspect with an impact weapon. If the Department believes there is a difference between intimidating a suspect with an impact weapon and issuing a warning before striking a suspect, the Department should explain the difference. Otherwise, officers will not know which portion of the general order to follow. For example, if an officer is struggling with a suspect who is refusing to show his hand and the officer reasonably suspects that the suspect might be hiding a weapon, if the officer warns the suspect that unless he shows his hands the officer will be forced to use an impact weapon, would the officer be merely issuing a warning, as is required, or would that amount to intimidation, which is apparently prohibited? Alternatively, *if an officer gave a warning that he or she would use a baton, but slapped the palm of their hand while issuing the warning, would the warning be compliant, while the palm slap prohibited? And, if so why? What objective is achieved by prohibiting an officer from striking their own hand with an impact weapon while issuing an appropriate warning?*

What the Department appears to be trying to prevent is for officers to threaten to use a baton, by words or actions, in circumstances in which it would be inappropriate to use a baton in the first place. If that is what the Department intends, it should amend this proposed language to so indicate.

Well drafted general orders should not require officers to guess as to what is meant, or whether they are required or prohibited from taking certain action. Accordingly, this proposed policy should be revised or eliminated.

b. ~~Strike a handcuffed prisoner with an impact weapon. Striking a handcuffed prisoner is an inappropriate action and may result in disciplinary action and/or criminal prosecution.~~

SFPOA'S PROPOSED CHANGE:

1. **The Department should move striking a handcuffed prisoner with an impact weapon to "restricted" uses.**

It is beyond dispute that someone in handcuffs can still be dangerous – even deadly. Handcuffed suspects can use weapons (including firearms), run, kick, use the handcuffs as a weapon and drive cars. Attached are three video links which demonstrate the dangers of a handcuffed suspect:

(1) Video showing a suspect who was handcuffed from the back becoming a lethal threat: https://youtu.be/xvra5EgiWUM

(2) (2) Video documenting seven instances in which handcuffed suspects have killed police: http://legalinsurrection.com/2014/09/busting-the-myth-that-handcuffed-suspects-pose-no-deadly-danger-to-police

(3) Video which debunks the myth that handcuffed suspects are not dangerous, by showing, for example, that even when handcuffed behind the back a suspect can still shoot a gun and deliver violent kicks: https://blutube.policeone.com/tasers-videos/937045039001-the-danger-of-a-handcuffed-suspect

Preventing officers from using an impact weapon against a dangerous individual, whether handcuffed or otherwise, will only increase the risk of injury to the officer and the individual. Impact weapons are a non-lethal alternative use of force. The more that non-lethal options are removed from an officer's arsenal, the more likely the incident will escalate to the point where the officer's only option is deadly force. Proper use of force guidelines and corresponding disciplinary consequences are the appropriate means of addressing the risk that an officer will use an impact weapon on an individual who is not posing a threat, whether they are handcuffed or not. Therefore, there is no value in having a blanket prohibition against use of impact weapons on individuals who are handcuffed, and it dangerous to do so.

In addition, the policy does not make any sense. Under this proposed policy, if a handcuffed prisoner attacked an officer and was trying to get his gun, an officer would be allowed to use OC spray, a conducted energy device ("CED"), personal body weapons,

ERIW, and, if the suspect gets a hold of the officer's weapon, a firearm, but not an impact weapon. Under this proposed policy, an officer could shoot a handcuffed suspect who is presenting a lethal threat, but would be prohibited from striking the suspect with a baton.

The SFPOA fails to understand why, when dealing with a handcuffed subject, there is any reason to treat impact weapons differently than every other tool at an officer's disposal, or why dangerous handcuffed suspects should be evaluated differently from any other dangerous suspect. P.O.S.T. and every jurisdiction and reported decision the SFPOA could find determines whether a particular use of force is appropriate based on the level of threat reasonably-perceived by the officer. If the subject poses a sufficient threat – regardless of whether they are in handcuffs, wearing a funny hat, or in a straitjacket – the reasonableness of the force used should be evaluated based their level of threat – not what they are wearing.

Therefore, this proposed policy conflicts with the requirement that officers may use reasonable force based on the totality of circumstances known to them. It should, therefore, be changed.

5. **MANDATORY MEDICAL ASSESSMENT.** Any officer who strikes a subject with an impact weapon shall ensure the subject is medically assessed.

6. **REPORTING.** If an officer strikes a subject with an impact weapon, it is a reportable use of force.

D.E. **EXTENDED RANGE IMPACT WEAPON (ERIW).** An Extended Range Impact Weapon (ERIW), such as a beanbag shotgun, is a weapon that fires a bean bag or other projectile designed to temporarily incapacitate a subject. An ERIW is generally not considered to be a lethal weapon when used at a range of 15 feet or more.

1. **PURPOSE.** The ERIW may be used on a subject who is armed with a weapon, other than a firearm, that could cause serious injury or death. This includes, but is not limited to, edged weapons and improvised weapons such as baseball bats, bricks, bottles, or other objects. The ERIW may also be used in accordance with Department training to subdue an aggressive, unarmed subject who poses an immediate threat of serious injury to another person or the officer.

2. **USE.** The ERIW shall be properly loaded and locked in the shotgun rack of the passenger compartment of the vehicle. Officers shall observe the following guidelines:

a. An officer deploying an ERIW shall always have a lethal cover officer. When more than one officer is deploying an ERIW, tactical judgment and scene management in accordance with Department training will dictate the appropriate number of ERIW and lethal cover officers. In most circumstances, there should be fewer lethal cover officers than the number of ERIWs deployed.

b. The ERIW officer's point of aim shall be Zone 2 (waist and below). The ERIW officer's point of aim may be Zone 1 (waist and above) if:
   i. Zone 2 is unavailable; or
   ii. The ERIW officer is delivering the round from 60 feet; or
   iii. Shots to Zone 2 have been ineffective or in the officers judgment a shot to zone 2 would be ineffective.

Officer shall articulate in writing the reason for intentionally aiming the ERIW at Zone 1.

c. The use of an ERIW to a vital area has a likelihood of causing serious bodily injury or death, and the intentional use of an ERIW to these areas shall only be used in situations where ~~lethal~~deadly force is justified.

d. The ERIW officer shall assess the effect of the ERIW after each shot. If subsequent ERIW rounds are needed, the officer shall aim at a different target area.

3. LIMITED USES. The ERIW should not be used in the following circumstances (unless the use of lethal force is appropriate):

a. The subject is at the extremes of age (elderly and children) or physically frail.
b. The subject is in an elevated position where a fall is likely to cause serious injury or death.
c. The subject is known to be or appears pregnant.
d. At ranges of less than 15 feet.

SFPOA'S PROPOSED CHANGE:

1. **The Department should modify this restriction to allow for the ERIW to be used in those four circumstances only if lethal force is justified.**

4. WARNING. When using the ERIW, an officer shall, if feasible:

a. Announce to other officers the intent to use the ERIW by stating "Red Light! Less Lethal! Less Lethal!"

b. All other officers at scene to acknowledge imminent deployment of ERIW by echoing, "Red Light! Less Lethal! Less Lethal!"
c. Announce a warning to the subject that the ERIW will be used if the subject does not comply with officer commands;
d. Give the subject a reasonable opportunity to voluntarily comply unless it would pose a risk to the community or the officer, or permit the subject to undermine the deployment of the ERIW.

5. **MANDATORY MEDICAL ASSESSMENT.** Any subject who has been struck by an ERIW round shall be medically assessed by emergency medical personnel.

6. **BOOKING FORM.** Persons who have been struck by an ERIW round shall have that noted on the booking form.

7. **REPORTING.** Discharge of an ERIW is a reportable use of force.

E.F. **VEHICLE INTERVENTIONS.** An officer's use of a police vehicle as a "deflection" technique, creation of a roadblock by any means, or deployment of spike strips, or any other interventions resulting in the intentional contact with a noncompliant subject's vehicle for the purpose of making a detention or arrest, are considered a use of force and must be objectively reasonable ~~minimal~~ under the circumstances. The Department's policies concerning such vehicle intervention tactics are set forth in DGO 5.05, Response and Pursuit Driving.

SFPOA'S PROPOSED CHANGE:

1. **The Department should modify this restriction to replace the term "minimal" with "reasonable."**

It appears that the Department merely did a search and replace from previous drafts to substitute the term "minimal" for "reasonable." That results, however, in a proposed policy that makes no sense. The proposal states that officers can use a vehicle as a roadblock, for example, but then states that the use of the vehicle "must be minimal under the circumstances." That makes no sense. How would the use of a vehicle be minimal? Must officers use only small vehicles? Reasonable and minimal have different meanings. Search and replace is a useful tool for word processing, but it is a dangerous way in which to modify general orders.

F.G. **CONDUCTED ENERGY DEVICE (CED).** See Special Operations Bureau Order on use of CED.

G.H. FIREARMS AND OTHER ~~LETHAL~~DEADLY FORCE. It is the policy of this Department to use lethal force only as a last resort when reasonable alternatives have been exhausted or appear impracticable to protect the safety of the public and police officers. The use of firearms and other ~~lethal~~deadly force is the most serious decision an officer may ever make. When safe and feasible under the totality of circumstances, officers shall consider other objectively reasonable ~~(minimal)~~ force options before discharging a firearm or using other ~~lethal~~deadly force.

SFPOA'S PROPOSED CHANGE:

1. **The Department should modify this restriction to replace the term "minimal" with "reasonable."**

The Department appears to have again merely substituted the word "minimal" for "reasonable," without adequately considering the context or the meaning of the words. The result is a proposed policy that makes no sense. Specifically, this policy suggests that officers must consider other "(minimal)" force options before using lethal force. The Department fails to define what a "minimal" force option is, nor could the SFPOA find any such definition in any of the materials or case law that it has reviewed. Even if the correct term (reasonable) is used, the last sentence of this proposal is unnecessarily redundant in light of the first sentence, and should be struck.

1. **HANDLING, DRAWING AND POINTING FIREARMS.**

(a) **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.

(b) **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 officer shall, if feasible, advise the subject the reason why the officer(s) pointed the firearm after the officer reasonably determines that the threat of the incident is over and it is otherwise appropriate to do so.

SFPOA'S PROPOSED CHANGE:

1. **The requirement to advise suspects of the reason a firearm was pointed at them should only occur *after* the officer reasonably determines that the threat of the incident is over.**

As the DOJ pointed out, requiring an officer to advise a suspect why a firearm is being pointed at the suspect, ***while the weapon is being pointed at the suspect***, is dangerous and suggests a misunderstanding of the reason for pointing a firearm at a suspect. (DOJ COPS comment 19.) If a situation is sufficiently dangerous that an officer believes it is necessary to point a gun at a suspect, it will ***never*** be appropriate for the officer to engage the suspect in conversation about the reason for the gun pointing while the gun is still being pointed. The officer will have much more urgent matters to attend to, such as making the very difficult and often split-second decision as to whether to fire the weapon. The SFPOA cannot envision a scenario where it would be appropriate for an officer pointing a weapon at a suspect to – at that very moment – explain why he or she is pointing the weapon. If an officer sees a bank robber exit a bank with a shotgun and a bag of money, should the officer shout "I am pointing my gun at you because I think you might try to kill me or someone else"? If an officer is making a high-risk felony stop and the suspect makes a sudden move towards an open glove compartment, should the officer be required to say "I am now pointing my gun at you because you appear to be reaching for a weapon to try and kill me or my fellow officers"? Of course not.

Accordingly the DOJ appropriately noted that "[i]t should probably be specified that this exception would only apply well after the fact, not at any time during when the officer might be in actual or perceived danger." (DOJ COPS comment 19.)

(c) **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.

(d) **POINTING A FIREARM AT A PERSON.** 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 it is objectively reasonable based on the totality of circumstances known to the officer at the time.~~there is a reasonable perception of a substantial risk that the situation will escalate to justify lethal force~~.

SFPOA'S PROPOSED CHANGE:

1. **This policy should be changed to relax the restriction as to when an officer can point a firearm, to comport with this general order and case law.**

This proposed general order defines pointing a firearm as a use of force. Therefore, the circumstances under which it is objectively reasonable for an officer to point a firearm at someone should be based on the totality of circumstances known to the officer at the time. (*See Graham v. Connor*). Here, however, the Department suggests a deviation from that well-established standard. The Department suggests requiring that the officer have a "reasonable perception of a ***substantial risk*** that the situation will escalate to justify lethal force." This proposed test for when an officer can point a firearm is not found in any case law that the POA could locate and is overly restrictive. In particular, the use of the phrase "substantial risk" is problematic. If an officer is not allowed to point a firearm despite having an objectively reasonable belief that the use of a firearm might be necessary to protect against serious bodily injury or death, then officers will undoubtedly have their guns in their holsters when they should be out. Requiring the risk of a lethal threat to be "substantial" inserts uncertainty and confusion into the standard. If an officer *reasonably* perceives a risk that lethal force is required, such risk is substantial by definition. Were it not, the officer's perception could not be deemed reasonable. Yet use of the term "substantial risk" suggests that something more is required – that the officer's perception must be more than reasonable, but also accurate. Requiring that the risk be "substantial" suggests that officers' perception must be spot on, in fast-moving uncertain circumstances in which the life of the officer or another might be in jeopardy. No case law or other jurisdictions of which the POA is aware has such a dangerous requirement. It takes time for an officer to react to a danger, point his or her gun, and fire. If officers are required to have their weapons at the low ready position, even though they have a reasonable belief that the suspect may threaten them with lethal force, the Department is unnecessarily putting officers and citizens in danger.

(e) **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.

2. **DISCHARGE OF FIREARMS OR OTHER USE OF ~~LETHAL~~DEADLY FORCE.**

(a) **PERMISSIBLE CIRCUMSTANCES.** Except as limited by Sections H.2.d. and H.2.e., an officer may discharge a firearm or use other ~~lethal~~deadly force in any of the following circumstances:

i. In self-defense when the officer has reasonable cause to believe that he or she is in imminent~~immediate~~ danger of death or serious bodily injury; or

SFPOA'S PROPOSED CHANGE:

1. The word "immediate" should be changed to "imminent."

Under P.O.S.T. and all applicable case law, officers are permitted to use deadly force when faced with "***imminent*** threat of death or serious bodily injury to the officer or another person." (P.O.S.T. Learning Domain 20: 3-3; *see, e.g. Price v. Sery*, 513 F.3d 962, 969 (9th Cir. 2008) (objective belief that an imminent threat of death or serious physical harm is required).) Although, as the Department has pointed out, *Graham v. Connor* states that one of the most important factors in analyzing an appropriate use of force is whether the subject posed an "immediate threat," that does not mean that for the use of lethal force, the term "immediate" is more appropriate than "imminent." In fact, the standard for using lethal force was not an express issue in *Graham v. Connor*.

Although the terms are similar, the difference is important. Immediate means now, this moment. Imminent means impending. For example, if an officer encounters a suspect who is pointing a gun at the officer, the danger is immediate – the danger is facing the officer at that exact moment. If, however, an officer encounters a suspect who has recently shot three people but has a gun in his waist band, the danger may not be immediate – because the gun is not presently pointed at the officer – but it is imminent. Case law has long recognized that in those types of situations, where the officer reasonably believes the suspect has a gun and is about to use it against the officer, the officer can fire without first observing the suspect's gun being pointed at the officer – because if the officer has to wait to see the gun pointed at him or her, it could be too late. (*Blandford v. Sacramento County* 406 F.3d 1110 (9th Cir. 2005) (officers used appropriate force when shooting suspect armed with sword who would not comply with their commands based on hypothetical danger to residents in nearby homes, despite lack of threats or violent action on the part of suspect).) For this reason, it might unnecessarily place officers in danger for the Department to require that officers face an "immediate" threat, as opposed to an "imminent" threat, before being authorized to use lethal force.[7]

ii In defense of another person when the officer has reasonable cause to believe that the person is in

[7] Adding the language proposed by the SFPOA to the definition of "immediate threat" ["regardless of whether the threatened action has been initiated"], which is the omitted part of the Oakland definition, would eliminate this concern.

~~immediate~~ imminent danger of death or serious bodily injury. However, an officer may not discharge a firearm at, or use ~~lethal~~deadly 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 ~~immediate~~ imminent danger of death or serious bodily injury to the officer or any other person; or

SFPOA'S PROPOSED CHANGE:

1. **For the reasons stated above, the Department should change the word "immediate" to "imminent," or change the definition of "immediate" to include the complete definition used by Oakland, which would allow officers to defend themselves and others appropriately.**

iii. To apprehend a person when both of the following circumstances exist:
- 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~~deadly force; AND
- 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

iv. To kill an animal posing an imminent threat.

The above circumstances (2.a, i-iv apply to each discharge of a firearm or application of ~~lethal~~deadly force. Officers shall ~~constantly~~ reassess the situation, ~~as feasible,~~ when feasible and safe to do so, to determine whether the subject continues to pose an active threat. Officers, however, are not required to reassess the situation between each shot being fired or the repeated use of any force where the time and effort necessary to reassess may jeapordize the safety of any officer or other person.

SFPOA'S PROPOSED CHANGE:

1. **Officers should not be required to reassess the danger before each individual shot is fired.**

If this proposed policy is meant to require officers to reassess, after each individual shot, this would be contrary to all officer training, P.O.S.T., Supreme Court precedent, as well as inconsistent with every other police department in the country and

exceedingly dangerous for officers and civilians. When officers are engaged in a potentially lethal situation, where the use of a firearm is appropriate, they are trained to shoot until the threat is over. Sometimes, depending on the situation, an officer may be able to fire one shot and reassess the situation. Often, however, that is impracticable. Including such a requirement will get officers killed. For example, suppose a suspect who just robbed a bank emerges from the bank with a shotgun and aims it at an officer. If after a shot is fired, the officer is required to determine if the suspect has been incapacitated before firing again, the officer will likely be killed. While this proposal states that the officer should only reassess when feasible, the Department should make it clear that it is not requiring that an officer reassess between every shot unless it is safe and appropriate to do so.

(b) **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~~deadly force.

(c) **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.

(d) **PROHIBITED CIRCUMSTANCE.** Officers shall not discharge their firearm:

i. As a warning; or
ii. At a person who presents a danger only to him or herself.

(e) **MOVING VEHICLES.** The following policies shall govern the discharge of firearms at or from a moving vehicle or at the operator or occupant of a moving vehicle:

A. At a Moving Vehicle: An officer shall not discharge a firearm at a moving vehicle with the intent to disable the vehicle.

B. From a Moving Vehicle. An officer shall not discharge a firearm from a moving vehicle unless the officer has reasonable cause to believe there is an imminent danger of death or serious bodily injury to the officer or to others.

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C. At the Operator or Occupant of a Moving Vehicle: Discharging a firearm at the operator or occupant of a moving vehicle is inherently dangerous to officers and the public. Disabling the operator will not necessarily eliminate an imminent danger of death or serious bodily injury. Further, a moving vehicle with a disabled operator may crash and cause injury to innocent members of the public or officers. Accordingly, it is the policy of the Department that officers are prohibited from discharging their firearm at the operator or occupant of a moving vehicle except in the narrow circumstances set in this subsection. An officer shall not discharge a firearm at the operator or occupant of a moving vehicle except under the following circumstances:

(a) If the operator or occupant of a moving vehicle is threatening the officer with imminent danger of death or serious bodily injury by means other than the vehicle itself.

(b) If the operator of the moving vehicle is threatening the officer with imminent danger of death or serious bodily injury by means of the vehicle, and the officer has no reasonable and apparent way to retreat or otherwise move to a place of safety.

(c) 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.

(d) To apprehend a person when both of the following circumstances exist:

(e) 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 deadly force; AND

(f) 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.

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In reviewing incidents involving the discharge of firearms from a moving vehicle or at an operator or occupant of a moving vehicle, the Department will consider the totality of the circumstances, including but not limited to whether the officer or others were in imminent danger of death or serious bodily injury and whether the officers who were present employed tactics consistent with Department approved training.

~~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.~~

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SFPOA'S PROPOSED CHANGE:

1. The blanket prohibition against officers shooting at occupants of vehicles who are using their vehicles as weapons should be removed.

It is beyond dispute that individuals can and do use their vehicle as a lethal weapon. It is also beyond dispute that officers can and have successfully saved lives by shooting at the operator of the vehicle to prevent them from killing officers or others.

In the past, there has been a concern that officers were unnecessarily shooting at drivers when the officer could have instead gotten out of the way. The previous general order, which was revised in 2011, directly addressed that concern, providing that officers could only shoot at the driver if there was an imminent threat of serious bodily injury or death *and* the officer had no reasonable or apparent means of retreat. This proposed order eliminates that language, and thus prevents an officer from shooting at the driver of a vehicle, even if there is no means of retreat, and where the officer or a bystander will likely be killed if the officer cannot shoot. In addition, this categorical ban prevents an officer from shooting at a driver of a vehicle to prevent their escape, even where there is a substantial risk that the driver will cause death or serious injury to others if allowed to escape.

Three examples illustrate the dangers of the proposed provision: First, if an individual were driving around San Francisco in an SUV, and running over pedestrians for fun, this policy would prevent an officer from shooting the driver to prevent that driver from killing a family of four in a cross-walk, even if the officer had a clear shot and there was little risk of injury to anyone else. Under the proposed policy, the officer would be required to hold his or her fire and watch the driver run over the family. This is not an abstract hypothetical. On August 30, 2006, Omeed Aziz Popal, struck 18 pedestrians, killing one in San Francisco with his Honda Pilot SUV.

Second, under the proposed policy, where a suspect is driving his or her vehicle straight at an officer, who has no means of escape or retreat, the officer would have to choose between his or her life and violating the policy. Officers risking their lives for the citizens of San Francisco should never be forced to make that choice when it can be avoided by a carefully drafted, restrictive policy, such as the one that currently exists.

Third, under the proposed policy, if a terrorist was escaping after killing numerous civilians, an officer would be justified in using lethal force to stop the terrorist, but only as long as the terrorist was fleeing on foot. Once the terrorist got into a car, the officer would be precluded from stopping the terrorist, even if the car was barely moving at the time the officer had a clear shot. This proposal turns a vehicle into a safety zone for violent felons to facilitate their escape.

The United States Supreme Court and the Ninth Circuit have repeatedly found that it can be reasonable for an officer to shoot at a suspect who is using his or her vehicle as a weapon. The dangers of an overly permissive policy can be, and have been, addressed by the Department's current policy. There have been no incidents in which the current policy failed to achieve the goal of protecting civilians and officers alike to warrant any re-evaluation of the existing policy. Other cities, such as Oakland, Portland, New Orleans, and Milwaukee, which have been held up as examples for San Francisco, have policies very similar to San Francisco's current policy, which allows for a narrow exception to the prohibition against officers shooting at drivers who are using their vehicle as a weapon.

One may wish that threats caused by moving vehicles will end. But in the real world confronting police officers, there will be cases involving violent suspects seeking to harm innocent people using their vehicles. The only question remaining is if the Department and Police Commission will enable officers to make reasonable choices in dangerous, rapidly-evolving situations to save lives. This proposed policy change precludes that.

The DOJ also recommended that the Department "allow this [shooting at drivers of vehicles] under extremely limited circumstances when other options are unavailable and the life of the officer or member of the public is at risk." (DOJ COPS comment 27.)

2. The Department's proposed blanket prohibition against shooting from a moving vehicle should be removed.

Similar to the blanket prohibition on officers shooting *at* suspects using their vehicle as a weapon, the Department should allow some latitude for situations in which it might be appropriate for an officer to fire *from* a moving vehicle. For example, if the officer's vehicle is moving slowly to a stop, but has not quite stopped, it would be inappropriate to require the passenger officer who is being fired at by suspects to hold his

or her fire until the vehicle has come to a complete halt, assuming that the officer can fire without unnecessarily endangering other people. An effective policy can be crafted using very restrictive language that would allow for an officer to fire in that circumstance.

(f) REPORTING.

(i) 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.

(ii) OTHER ~~LETHAL~~DEADLY 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~~deadly 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~~deadly force that does not result in serious bodily injury shall report the force.

The following chart illustrates how a suspects resistance / actions can correlate to the force applied by the officer:

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Subject's Actions	Description	Possible Force Option
Compliance	Subject offers no resistance	• Mere professional appearance • Nonverbal actions • Verbal requests and commands

Subject's Actions	Description	Possible Force Option
		• Handcuffing and control holds
Passive non-compliance	Does not respond to verbal commands but also offers no physical form of resistance	• Officer's strength to take physical control, including lifting/carrying • Pain compliance control holds, takedowns and techniques to direct movement or immobilize
Active resistance	Physically evasive movements to defeat an officer's attempt at control, including bracing, tensing, running away, verbally, or physically signaling an intention to avoid or prevent being taken into or retained in custody	• Use of personal body weapons to gain advantage over the subject • Pain compliance control holds, takedowns and techniques to direct movement or immobilize a subject
Assaultive	Aggressive or combative; attempting to assault the officer or another person, verbally or physically displays an intention to assault the officer or another person	• Use of devices and/or techniques to ultimately gain control of the situation • Use of personal body weapons to gain advantage over the subject • Cortaid restraint
Life-threatening	Any action likely to result in serious bodily injury or death of the officer or another person	• Utilizing firearms or any other available weapon or action in defense of self and others to stop the threat • Vehicle intervention (Deflection)

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VI. USE OF FORCE REPORTING

A. **REPORTABLE USES OF FORCE.** Officers shall report any use of force involving physical controls when the subject is injured, complains of injury in the presence of officers, or complains of pain that persists beyond the use of a physical control hold. Officers shall also report any use of force involving the use of personal body weapons, chemical agents, impact weapons, ERIWs, vehicle interventions, CEDs, and firearms. Additionally, officers shall report the intentional pointing of CEDs and firearms at a subject.

SFPOA's PROPOSED CHANGE / COMMENT:

1. **As proposed here, the SFPOA believes that the Department is correct not to make each use of force reportable.**

Officers use varying degrees of force on a daily basis. To require that officers report each instance in which they physically touch a suspect – even though there is no injury or complaint of injury – is unrealistic, unnecessary and will overburden the officers and the supervisors who will be responsible for evaluating each touching, no matter how minor.

1. **NOTIFICATION OF USE OF FORCE.** An officer shall notify his/her supervisor immediately or as soon as practical of any reportable use of force. A supervisor shall be notified if an officer receives an allegation of excessive force.

2. **EVALUATION OF USE OF FORCE.** A supervisor shall conduct a use of force evaluation in all cases involving a reportable use of force.

3. **EXCESSIVE USE OF FORCE.** Every allegation of excessive force shall be subject to the reporting and investigative requirements of this General Order and applicable disciplinary policies.

B. **PROCEDURES**

1. **OFFICER'S RESPONSIBILITY.** Any reportable use of force shall be documented in detail in an incident report. Descriptions shall be in clear, precise and plain language and shall be as specific as possible.

   a. When the officer using force is preparing the incident report, the officer shall include the following information:
      i. The subject's action necessitating the use of force, including the threat presented by the subject;
      ii. Efforts to de-escalate prior to the use of force;
      iii. Any warning given and if not, why not;
      iv. The type of force used;

v. Injury sustained by the subject;
vi. Injury sustained by the officer or another person;
vii. Information regarding medical assessment or evaluation, including whether the subject refused;
viii. The supervisor's name, rank, star number and the time notified.

b. In the event that the officer using force is not the officer preparing the incident report, all officer using the force shall:
i. Ensure that he/she is clearly identified in the incident report; and
ii. Prepare a supplemental report or a statement form with the above information.

In the event that an officer cannot document his/her use of force due to exceptional circumstances, another officer shall document this use of force in an incident report, supplemental incident report or statement form at the direction of a supervisor.

2. **SUPERVISOR'S RESPONSIBILITY.** When notified of the use of force, the supervisor shall conduct a supervisorial evaluation to determine whether the force used appears reasonable and within the provisions of this order. The supervisor shall:

a. Immediately respond to the scene unless a response is impractical, poses a danger, or where officers' continued presence creates a risk. When more than one supervisor responds, the responsibility shall fall on the senior supervisor;
b. Ensure the scene is secure and observe injured subjects or officers;
c. Ensure that witnesses (including officers) are identified and interviewed, and that this information is included in the incident report. The number of witnesses may preclude identification and interview of all witnesses, however supervisors shall ensure identification to the best of their ability;
d. Ensure photographs of injuries are taken and all other evidence is booked;
e. Remain available to review the officer's incident report, supplemental incident report and written statement at the direction of the superior officer. A supervisor shall not approve an incident report or written statement involving a use of force that does not comply with the requirements as set forth in II.A above;
f. If applicable, ensure the supervisor's reason for not responding to the scene is included in the incident report.

g. Complete and submit the Supervisory Use of Force Evaluation form, indicating whether the force used appears reasonable, by the end of watch;
h. Complete the Use of Force Log (SFPD 128) and attach one copy of the incident report by the end of watch.

If a supervisor determines that a member's use of force is unnecessary or that an officer has applied force that results in serious bodily injury or death, the supervisor shall notify his/her superior officer.

3. **SUPERIOR OFFICER'S RESPONSIBILITY.** When a superior officer is notified of unnecessary force or force that results in serious bodily injury or death, the superior officer shall:

a. Respond to the scene and assume command, as practical;
b. Notify the commanding officer and ensure all other notifications are made consistent with DGO 1.06, Duties of Superior Officers;
c. Make the required notification to the Office of Citizen Complaints if a citizen complaint is made;
d. Determine which unit(s) will be responsible for the on-going investigation(s);
e. Prepare a report containing preliminary findings, conclusions and/or recommendations, if appropriate.

C. OTHER REQUIREMENTS.

1. **USE OF FORCE LOG.** The following units shall maintain a Use of Force Log:

a. District Stations
b. Airport Bureau
c. Department Operations Center

2. **RECORDING PROCEDURES.** Supervisors shall document a reportable use of force for all officers – including those officers assigned to specialized units – in the Use of Force Log at the District Station where the use of force occurred, except as noted below:

a. Any use of force occurring outside the city limits, except at the San Francisco International Airport, shall be recorded in the Department Operations Center's Use of Force Log.
b. Any use of force occurring at the San Francisco International Airport shall be recorded in the Airport Bureau's Use of Force Log.

3. **DOCUMENT ROUTING.**

a. Commanding officers shall forward the original completed Supervisor's Use of Force Evaluation Form(s) to the Commanding Officer of Risk Management and one copy to the Commanding Officer of the Training Division and another to the officer's Bureau Deputy Chief no later than the end of the watch.

b. On the 1st and 15th of each month, commanding officers shall sign the Use of Force Log and send it, along with one copy of the incident report, to their respective Bureau Deputy Chief and one copy of the Use of Force Log with copies of the incident reports to the Commanding Officer of the Training Division.

4. **TRAINING DIVISION RESPONSIBILITIES.** The Commanding Officer of the Training Division will maintain controls that assure all Use of Force Logs and Supervisor Evaluations are received, and shall perform a non-punitive review to ascertain the number, types, proper application and effectiveness of uses of force. The information developed shall be used to identify training needs. The Commanding Officer of the Training Division shall report bi-monthly to the Chief of Police on the use of force by Department members that includes comprehensive use of force statistics consistent with current federal, state and local laws on use of force reporting.

5. **DATA COLLECTION AND ANALYSIS.** The Department will collect and analyze its use of force data through the Use of Force Log to enable electronic collection of the data. The Use of Force statistics and analysis will include at a minimum:

a. The type of force
b. The types and degree of injury to suspect and officer
c. Date and time
d. Location of the incident
e. Officer's unit
f. District station where the use of force occurred
g. Officer's assignment
h. Number of officers using force in the incident
i. Officer's activity when force was used (ex. Handcuffing, search warrant, pursuit)
j. Subject's activity requiring the officer to use force
k. Officer's demographics (age, gender, race/ethnicity, rank, number of years with SFPD, number of years as a police officer)
l. Suspect demographics including race/ethnicity, age, gender, gender identity, primary language and other factors such as mental illness, cognitive impairment, developmental disability, drug and alcohol use/addiction and homeless.

The Department will P.O.S.T. on a monthly basis on its website comprehensive use of force statistics and analysis and provide a written use of force report to the Police Commission annually.

PROPOSED CHANGE:

References
DGO 1.06, Duties of Superior Officers
DGO 2.04 Citizen Complaints Against Officers
DGO 5.05, Response and Pursuit Driving
DGO 5.18, Prisoner Handling and Transportation
DGO 8.11, Investigation of Officer Involved Shootings And Discharges
DGO 8.12, In Custody Deaths