

Memorandum

TO: ALL SWORN PERSONNEL

FROM: Edgardo Garcia
Chief of Police

**SUBJECT: DUTY MANUAL ADDITION:
L 2605.5 - COMMAND OFFICER
RESPONSIBILITY BY USE OF
FORCE CATEGORY**

DATE: October 18, 2017

Memo# 2017-036

BACKGROUND

The Department is creating a more comprehensive use of force review process to aid in strengthening the culture of professionalism and accountability. Command officers will now be directly involved in the investigation and review of incidents where certain force options are utilized or when a Department member's use of force produces significant injury. Additionally, specified categories of force will be reviewed by the Department member's chain of command. This review process is already in place for canine apprehensions involving a dog bite.

ANALYSIS

Changes to San Jose Police Duty Manual involving the addition of Section L 2605.5 - COMMAND OFFICER'S RESPONSIBILITIES are reflected below. Additions are shown in italics and underlined.

L 2605.5 **COMMAND OFFICER'S RESPONSIBILITY BY USE OF FORCE** **CATEGORY:**

Added 10-18-17

*In order to provide a standardized and comprehensive force review process, the Department has categorized its use of force. A Department member's use of force falls into one of four categories. Each category of force requires a different level of review based on the level of force utilized or the seriousness of the injuries sustained as a result of the force. The process of Command Review **may** be utilized for Category (II) uses of force and **shall** be utilized for the Category (III) uses of force.*

For the purposes of Command Review, the Department's Use of Force categorization is as follows:

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CATEGORY (I) USE OF FORCE
1. <u>Any use of force not listed in Categories II, III, or IV, that causes a minor injury or a complaint of pain</u>
CATEGORY (II) USE OF FORCE
1. <u>TASER Deployments (probe & drive stun)</u>
2. <u>Impact weapons (not to the head)</u>
3. <u>OC Spray</u>
4. <u>Projectile impact weapons (where up to 4 rounds strike the suspect)</u>
CATEGORY (III) USE OF FORCE
1. <u>Impact weapon or Projectile Impact Weapon strikes to the head (intentional and accidental)</u>
2. <u>Projectile impact weapon (where more than 4 rounds strike the suspect)</u>
3. <u>Kicks to the head</u>
4. <u>Two or more officers deploy less-than-lethal force (O.C., Projectile Impact Weapons, or TASER) on one suspect</u>
5. <u>Four or more officers use reportable force on one suspect</u>
6. <u>Force resulting in bone fracture</u>
7. <u>Canine apprehension (dog bite)</u>
8. <u>Carotid restraint applied</u>
9. <u>Force resulting in suspect's loss of consciousness</u>
10. <u>Hospital admission as a direct result of the force.</u>
CATEGORY (IV) USE OF FORCE
1. <u>Deadly force – That force which the user knows would pose a substantial risk of death or serious bodily injury</u>

CATEGORY (I) USE OF FORCE

Supervisors shall investigate a Department member's Category (I) use of force in accordance with Duty Manual Section L 2605 – Supervisor's Responsibility. Command officers are not required to respond to Category (I) uses of force unless their response is required in accordance with Duty Manual Section L 2605 – Supervisor's Responsibility (e.g., a sergeant uses reportable force and the supervising command officer is required to conduct the force investigation).

CATEGORY (II) USE OF FORCE

Upon being notified of a Category (II) use of force, the command officer shall respond to the scene and ensure the use of force investigation is handled in accordance with Duty Manual Section L 2605 – Supervisor's Responsibility. The command officer shall then document his/her observations and any actions taken in a supplemental report (Form 200-3A-AFR). The command officer **may** direct the responding supervisor to submit documentation of the incident (to include the General Offense Report, the CAD printout, photos, and any other pertinent documentation), along with a Transmittal Form (Form 216-1) up the chain of command for Command Review by the Chief of Police or Assistant Chief of Police; if directed to do so, the responding supervisor shall submit the documentation up the chain of command within 7 calendar days, or as otherwise

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directed by the Office of the Chief. Upon receiving the supervisor's Transmittal and documentation, the command officer shall complete and submit a Command Review memorandum (available on the intranet) up the chain of command; this Command Review memorandum shall document his/her findings as to whether the force was within Department policy and shall be submitted within 14 calendar days, or as otherwise directed by the Office of the Chief.

CATEGORY (III) USE OF FORCE

Upon being notified of a Category (III) use of force, the command officer shall respond to the scene and ensure that the use of force is handled in accordance with Duty Manual Section L 2605 – Supervisor's Responsibility. The command officer shall document his/her observations and any actions taken in a supplemental report (Form 200-3A-AFR). The command officer shall direct the responding supervisor to submit documentation of the incident (to include the General Offense Report, the CAD printout, photos, and any other pertinent documentation), along with a Transmittal Form (Form 216-1) up the chain of command for Command Review by the Chief of Police or Assistant Chief of Police; the responding supervisor shall submit the documentation up the chain of command within 7 calendar days, or as otherwise directed by the Office of the Chief. Upon receiving the supervisor's Transmittal and documentation, the command officer shall complete and submit a Command Review memorandum (available on the intranet) up the chain of command; this Command Review memorandum shall document his/her findings as to whether the force was within Department policy and shall be submitted within 14 calendar days, or as otherwise directed by the Office of the Chief.

NOTE: Canine officers involved in a canine apprehension (dog bite) shall utilize their canine chain of command for Command Review.

CATEGORY (IV) USE OF FORCE

Upon being notified of a Category (IV) use of force, the command officer shall ensure the incident is handled in accordance with the Santa Clara County Police Chiefs' Association Officer-Involved Incident Guidelines. Command Review of Category (IV) uses of force shall be conducted in accordance with Duty Manual Section L 2646 – Post Incident Review Procedure for Officer-Involved Incidents.

DISPOSITION OF COMMAND REVIEW DOCUMENTS

Once a command review has been completed, the memorandums and supporting documentation shall be routed to the Internal Affairs Unit for logging and retention. The documents shall be logged as official Department correspondence and shall not be placed into a Department member's Internal Affairs file or Personnel file, absent a Department-Initiated Investigation or a formal citizen complaint.

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ORDER

Effective immediately, all sworn personnel shall adhere to Duty Manual Section L 2605.5 - COMMAND OFFICER'S RESPONSIBILITIES. Command officers responsible for completing a Command Review Memorandum shall refer to the attached sample Use of Force Command Review Memorandum. The template is available on the intranet in the BFO document library under Use of Force Command Review Template.

A handwritten signature in black ink, appearing to read 'Edgardo Garcia', with a long horizontal stroke extending to the right.

EDGARDO GARCIA
Chief of Police

EG:JD:GT

Attachment



Memorandum

**TO: EDGARDO GARCIA
CHIEF OF POLICE**

FROM: (Rank and Name)

**SUBJECT: USE OF FORCE COMMAND
REVIEW
CASE #XX-XXX-XXXX**

DATE: XX/XX/201X

Approved:

Date:

BACKGROUND

(Provide a brief synopsis of the incident.)

INVESTIGATION

On (date), I was assigned as (assignment and call sign) when I responded to (location) to conduct a use of force investigation in accordance with Duty Manual Section L 2605.5. I took the following investigative actions:

- I responded to the scene and arrived at approximately (time) hours.
- I contacted the on-scene supervisor, (Supervisor's name), and received a briefing on the incident.
- I ensured that a canvass had been/was being conducted.
- I ensured photos had been/were being obtained.
- I reviewed the following documentation of this incident:
 - General Offense Report
 - Scene photos
 - Body Worn Camera footage
 - Etc.
- Etc. (Add any other pertinent steps taken or important investigative information).

STATEMENTS:

(Include the statement of the suspect(s), if obtained per SJPDM Section L 2605.)

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APPLICABLE AUTHORITIES

(The Duty Manual section below is used as an example. Please put in the appropriate DM section(s).)

San Jose Police Duty Manual

- L 2602 Objectively Reasonable Force
- L XXXX XXXX (List any other applicable DM sections here)

ANALYSIS

(The “Analysis” section is the focus of the use of force review.)

The following is a synopsis of the facts and circumstances that have been compiled during the course of the investigation that directly relate to the above listed SJPD Use of Force policies:

(Write a narrative, noting the applicable Duty Manual sections for each force application, and provide a preliminary assessment as to whether the use of force was within Department policy and why.)

COMMAND REVIEW

In accordance with Duty Manual Section L 2605.5, this memorandum and the attached supporting documentation are being submitted for Command Review. Based on my initial review of this incident, I find the use of force to be *(within or out of)* SJPD policy.

(Command officers do not recommend discipline as part of the command review process.)

Respectfully submitted,

*(Rank and name)
(Division)
(Bureau)*

