



Memorandum

TO: Honorable Mayor and City Council

VIA: Bert Lumbreras, City Manager

FROM: Bob Klett, Interim Chief of Police

DATE: June 26, 2020

SUBJECT: Discussion on San Marcos Police Use of Force Policies

I am very proud of the character and culture of our agency. It does not come easy, but through hard work and paying attention to the community. It requires being very intentional in our hiring practices and offering employment only to those who are a best fit for our diverse community and our culture of character. We typically hire only one applicant out of around ten because we strive for quality; the quality demanded by our profession to serve others and by our community.

We recruit locally and outreach via various methods to other areas where we can draw in diverse applicants to serve in a well-regarded agency. We have incentives for those who are already certified, but look for only quality applicants whether already certified peace officers or not. Applicants must comply with all applicable Civil Service requirements and regulations. Additionally, The Texas Commission on Law Enforcement (TCOLE) has clear rules on eligibility and licensing for individuals to be Peace Officers. There is a written test consisting of multiple-choice questions covering subjects such as cognitive skill, reading comprehension, and memory skills. The department has adopted one of the methods used by the Texas Department of Public Safety (DPS) to assess officer and candidate fitness and readiness. Candidates take the same fitness test that officers take every year.

The hiring process uses an extensive police officer Personal History Statement which is the key document for our background investigation of police applicants. Family members, references, acquaintances, past employers and co-workers are interviewed, and a review is conducted of military and school records, driving records, credit history, and any other area the investigator deems appropriate. These things are done in person as much as possible because the results are much stronger. We invest the time up front in the background process to remove candidates that do not meet our high standards. If the applicant was previously certified in a Texas agency, the law requires the previous department shows our investigators all documents and files related to the employee to

make sure we would not be taking on someone else's problem employee. For officers that were previously employed out of state, we travel to those departments and actively uncover issues if any. All applicants progressing in the background process are also subjected to a polygraph exam.

Applicants who pass the background process are then brought before an Oral Interview Board of experienced police staff. The interview panel is composed of three officers from various assignments around the department including the Assistant Chief of Operations. The candidate will respond verbally to questions asked by the members of the panel which are designed to allow the panel to determine the communication skills, qualifications and character of the candidate.

A conditional offer of employment will be made to applicants who pass the oral interview and a final interview with the Chief of Police. A psychological examination is a TCOLE requirement. We use an independent psychologist for this examination. A pre-employment physical and drug screen is also required for police officers. The examination will be performed by a city selected licensed physician. Random drug screens are also held for staff.

Training is conducted, if needed, through various regional law enforcement academies who keep us informed of student's progress. All newly hired officers will go through local training as well. They attend a in house mini academy where we teach them OUR standards and expectation above what the TCOLE requirements demand. All officers undergo several months of field training rotating through different specifically trained officers before they are released to solo patrol. Officers who are released to solo patrol are on probation for one year from their release date.

Once an employee is hired, they have a comprehensive set of policies which guide them in their duties and keeps our culture strong. We have been working to adopt the Texas Police Chiefs Association (TPCA) best practice policies and adapt them for the unique needs of our San Marcos citizens. We started this process several years ago, focusing on those most critical policies first. Once we finish our policy transition, we will work to become a recognized agency, a designation awarded by the Association.

The Law Enforcement Recognition Program is a voluntary process where police agencies in Texas prove their compliance with 166 Texas Law Enforcement Best Practices. These Best Practices were carefully developed by Texas Law Enforcement professionals to assist agencies in the efficient and effective delivery of service, the reduction of risk, and the protection of individual rights.

Being "Recognized" means that the agency has proven that it meets or exceeds all of the identified Best Practices for Texas Law Enforcement. These Best Practices cover aspects of law enforcement operations such as use of force, protection of citizen rights, pursuits, property and evidence management, as well as patrol and investigative operations. Noted police researcher G. Patrick Gallagher identified 12 critical issues (other than vehicle accidents and employee injuries) that get police departments in trouble. These critical areas are:

- Use of Force
- Emergency Vehicle Operation and Pursuits

- Search, Seizure, and Arrest
- Care, Custody and Restraint of Prisoners
- Domestic Violence and agency employee domestic misconduct
- Off-Duty Conduct
- Selection and Hiring
- Sexual Harassment
- Complaint and Internal Affairs Management
- Narcotics, SWAT, and High-Risk Warrant Service
- Dealing with the Mentally Ill and Developmentally Disabled
- Property and Evidence Management

Recognition Program Standards address these areas in an attempt to minimize risk and increase officer safety and training. While being “Recognized” does not guarantee an agency will not make a mistake, it does ensure that the agency has studied these critical issues, has developed policy and procedures to address them and has systems in place to identify and correct problems.

Through the consent of those governed, Police Officers exercise the government’s granted powers and responsibilities – the power to stop and question a citizen, the power to arrest a citizen, to seize his person and property, and the power to use force in that process. Officers often operate alone without direct supervision. Police agencies direct and control officer’s activity through supervision, training and written policies and procedures. Since supervisors cannot always be present, the training and the policies and procedures of an agency are critical to ensuring proper performance. Appropriate equipment is also necessary. The Recognition Program ensures an agency has addressed the most critical law enforcement issues in both policy as well as actual operation to ensure that the powers and responsibilities that we carry out are done in a just and equitable manner.

The Recognition Program assures both City Management and the citizens of a city that their Police Department is operating in a manner that reflects the current Best Practices of Law Enforcement. It can provide citizens with reassurance and improve community relations and cooperation – and also leads to improved performance within the department.

Every Police Chief and every police agency has the opportunity to learn from their mistakes. Many develop systems and safeguards to keep from making the same mistakes again. The Texas Best Practices are the combined knowledge of all Texas Chiefs and their experiences in learning from mistakes and implementing change based on them. These best practices also ensure that agencies are following all legislative mandates and current judicial requirements.

One of the biggest problems for police agencies is keeping their policy manual up to date. The TPCA provides a Complete Sample Policy Manual that meets all 168 Best Practices. It is the combined work of many police chiefs in Texas and has been used by over 100 of Recognized Agencies. All parts of the Manual are editable and agencies can use all or only part of the manual that is needed.

For transparency, I recently had all of our policies placed on our departmental webpage so that anyone can see them. We have also been working to develop brochures and updating our website with

concerns brought up on a national level to help our San Marcos citizens have a better understanding of THEIR police department. We continue to enjoy great community support and take our position of service to the community very seriously.

The *8 Can't Wait Initiative* that has been presented has prompted many questions coming in to our agency and Council. With this memo, my desire is to let you know where the San Marcos Police Department stands on these issues. It has been a point of pleasure being able to tell our citizens, and those who have emailed from around the world where we stand. These eight initiatives are:

- Ban Choke Holds and Strangle Holds
- Require de-escalation training
- Require warning before shooting
- Exhaust all other means before shooting
- Establish a duty to intervene in instances of excessive force
- Ban practice of shooting at moving vehicles
- Require a use of force continuum
- Require comprehensive use of force reporting

Choke and Strangle Holds

SMPD Policy Reference: 6.1 Response to Resistance and Aggression - V. Limitations on Force

This is a recent policy change due to a change in the standards at the TPCA.

The department does not allow any of its employees to use choke holds or carotid artery neck restraints; the only exception shall be when the officer involved is justified in the use of deadly force. Any employee using such force will cease immediately upon control of the subject (normally when the person has been handcuffed or no longer actively resisting) and begin the application of an appropriate medical response if needed.

SMPD officers have been trained for years on the dangers of positional asphyxia, and holds that are designed to restrict breathing are strictly prohibited. Additionally, we have distributed reminder emails from the training cadre that respiratory restraints and knees being kept on necks is not allowed. In my personal experience of 30 plus years of law enforcement, I have never seen or taught the tactic of a knee being applied to the neck.

Previously, the San Marcos Police Department defensive tactics training program did not allow for the use of any type of choke hold or restraint designed or intended to restrict a person's ability to breath. All members of the department have, however, received training on how to correctly apply a carotid restraint. Neck restraints, as they are called, are seldom used in San Marcos, but are a valuable tool in keeping us from having to escalate force. The restraints used come from tactical, legal, and medically validated studies. SMPD officers are not allowed to "hog tie" arrested persons. Several years ago, the department invested several thousand dollars into purchasing Wrap restraints. These full-body restraints are designed and used to humanely restrain individuals who are being violent and aggressive

during the arrest process. They allow for a violently resisting individual to be transported while seated in an upright position and with the seatbelt applied. The wrap restraints have been very valuable here and around the country.

De-escalation Training

The state mandates de-escalation training as various cycles. We talk about it in all of our use of force training and at various other times throughout the year to stay on message about its importance.

Members of the San Marcos Police Department are consistently trained in de-escalation principles throughout their career and have been for years. Additionally, de-escalation training is part of the state mandated training for all new police officers. Our training focuses on active listening first, something we first developed here, and then other de-escalation principles so that lawful force is hopefully not needed. If force is used, de-escalation and the provision of care and recovery support for the person is required as soon as practicable. These trainings are supplied both in house and in online training that all sworn staff attended in the last year. Finally, built in to the culture of the San Marcos Police Department, is the undisputed value of treating our customers with dignity.

The legitimacy of the work of police is very important, it is a stewardship of authority given by those we serve. We earn that through the way we interact with the public and by treating people with dignity and respect. This has been a part of our culture for many years, and we have received positive feedback in many ways from our community.

Require warning before shooting

SMPD Policy Reference: 6.1 Response to Resistance and Aggression IV. Procedures B. Use of Deadly Force

Where practicable, prior to discharge of the firearm, officers shall identify themselves as law enforcement officers and state their intent to shoot.

SMPD officers are prohibited from using excessive force at all times. Requiring a verbal warning in all instances before force is applied is not a reasonable expectation. Deadly force encounters often involve split-second decisions in circumstances that are tense, uncertain, and rapidly evolving. In these situations, human brains cannot smoothly send signals to speak and act at the same time and could cause a deadly delay for the officer or innocent victims. Situations often involve very rapidly escalating violence on the part of offenders who choose to attack officers. The cases of Officers Ken Copeland and Justin Putnam are both specific, local, examples. In both of these instances, officers had no time to issue any type of warning before attempting to draw their weapons. Doing so would have slowed down their response to violence even further. Even with no verbal warnings given, they still could not react to the violence fast enough to save their own lives. That being said, SMPD policy does require officers to give clear verbal direction and explanation to detainees and arrestees in all instances if feasible.

Exhaust all other means before shooting

The reasonable and necessary standard established by the SMPD Response to Resistance Policy requires officers to articulate any level of force they use, which is why it is a higher standard than a force continuum. Deadly force, however it is used, requires any lesser options to be considered or used if reasonable, under the myriad of circumstances and nuances an officer is facing, therefore making it a last resort option. All SMPD officers receive training on rendering aid. In the event of injury from the use of force by police or others, SMPD policy requires the application of life saving measures to those who have been injured.

Duty to intervene

SMPD policy reference: 6.1 Response to Resistance and Aggression IX. Requirement to Stop and Report Excessive Use of Force

Any employee who observes another employee use excessive force against any person shall immediately intervene. Intervention includes any action that is reasonable, given the circumstances intended to stop the excessive force. The observing employee will notify a supervisor immediately and shall submit a memorandum within twenty-four hours.

The San Marcos Police Department general orders require immediate reporting of these types of incidents. This was codified in a recent policy update. The policy previously was specific to reporting another employee's use of excessive force. Not only does the policy require this, we had an example of it working effectively several years ago in the case of Corporal James Palermo when he was terminated and charged criminally after a fellow officer viewed him using unlawful and excessive force while reviewing dash camera video.

Additionally, our officers have created an accountability standard that gives permission to "relieve" a fellow officer who may be losing composure to step away while another officer steps in and takes over, allowing a cool down period. This is the benefit of working in a department where officers are not a number, where relationships are built, and trust is maintained within and without the organization.

Shooting at moving vehicles

SMPD policy reference: 6.1 Response to Resistance and Aggression IV. Procedures C. Deadly Force Restrictions

Officers shall not fire at a moving vehicle unless the continued operation of the vehicle presents an imminent danger of death or serious bodily injury to any person. Officers shall not voluntarily or recklessly place themselves in front of an oncoming vehicle where the need for deadly force is a likely outcome. Officers threatened by an oncoming vehicle shall make a reasonable effort to attempt to move out of its path, if possible, before resorting to discharging a firearm at it or any of its occupants.

Shooting at a moving vehicle is extremely rare, but incidents like the 2018 SXSW festival in Austin where a driver plowed through a crowd reveal shooting at a moving vehicle may be necessary for extreme

events to protect public safety. Unfortunately, incidents like these have been a little more common in the world recently.

Use of force continuum

The use of force continuum is a dated concept that is not recognized as current best practices and is not in line with the most recent relevant case law regarding the use of force by police (*Graham v Connor*). We used the use of force continuum for many years before adapting to the more current minimum reasonable and necessary standard. The SMPD follows one of the most restrictive use of force model protocols: Officers must only use the force that is reasonable and necessary to effectively bring an incident under control while effectively protecting the lives of the officer and others.

We moved to this standard several years ago, which is actually more restrictive in that an officer must articulate why they applied the force they did instead of just pointing to a continuum and using force just because it was allowed. This department values the protection and sanctity of human life. It is, therefore, the policy of this department that officers use only the force that is reasonable and necessary to effectively bring an incident under control while protecting the lives of the officer and others. The use of force must be objectively reasonable. Officers must use only the force that a reasonably prudent officer would use under the same or similar circumstances.

Comprehensive use of force reporting

SMPD Policy reference: 6.1 Response to Resistance and Aggression VII. Reporting Use of Force

Officers shall document any application of force, other than the routine use of handcuffs or use of a firm grip to direct the movements of a subject, except for those arising in training, departmental demonstrations, or off-duty recreational activities.

In all cases using force, including the Taser, or reports of an assault on an officer, or resisting arrest, the on-duty supervisor shall conduct a review of available body or vehicle camera footage to determine if officers followed protocol and used reasonably necessary force.

All use of force is also reviewed a second time by a member of administration.

The department conducts early intervention through the process of quarterly and random reviews of body worn and in-car camera footage by first line supervisory personnel. This current process has been in place for nearly 20 years. We use software called IAPro that was designed to help cities like New York keep track and provide early intervention warnings of their officers who can easily hide behind their vast numbers and supervisor span of control. Our smaller department affords us the opportunity to be more in tune with each and every one of our officers, yet we find this software to be a valuable tool in helping us to remain aware.

Annual reports are compiled and submitted to Council and, this year, we have plans to post them on our website as well for transparency. Our report this year has been well delayed due to a variety of factors. My goal will be to have this complete within the next few weeks.

Other Considerations – No-Knock

SMPD Policy reference: SMPD Policy – 7.5 Search Warrant VI. Executing a Search Warrant D. Gaining Entrance to Premises 5. No-Knock or Exigent Entry

Our practice over the last several years has moved away from no-knock warrants or entry and was recently codified in policy after a review.

In some circumstances a police officer may enter the premises to be searched without announcing his or her presence and purpose before entering. The judicial authority issuing the warrant may add a no-knock entry provision to the warrant. If not, the decision to make a no-knock entry may be made by the on-scene supervisor based on facts that would lead them to believe that an announcement would result in bodily harm either to the officer or to someone within the premises.

If circumstances require a no-knock or exigent entry, the first officer to cross the threshold into the premises shall announce that law-enforcement officers are executing a warrant. To ensure their own safety officers shall command the occupants to take appropriate action, such as "police, search warrant, get down."

No-knock warrants shall not be used solely for evidence preservation.

Exigent entries may be used to preserve life.

A common use of no-knock entries in the past may have involved the need to prevent the escape of a person or to preserve evidence from being destroyed. The use of no-knock for these types of incidents has been deemed too risky and other methods have been developed and used locally except for some very extreme and rare circumstances. The need to make a no knock entry may still be the best option in something such as a hostage rescue where surprise may be the best option to protect life.

Recommendation – public review of use of force policy

We currently have a Chief's Advisory Panel that provides flow of information to the department and to the public on internal and external issues. The panel also receives summary review on complaints and provides feedback on certain policies being considered by the police department. The participation of these volunteers is very much appreciated and welcomed. Although we have not met in some time due to COVID, we will be meeting again in early July to open discussion back up and to hear their thoughts on how we can best implement the points in the Cite and Release Ordinance as we plan for future meetings. After checking with several comparable agencies, it appears we are the ONLY agency that has a standing Chief's Advisory Panel. I am proud that this is something we have already been doing for some time now. The current standing members are:

- Eric Charleswell (employee)
- Gary Pack (resident)
- Nathaniel Kindred (resident)
- Olivia Juarez Reid (resident)

- Jesse Saavedra (employee)
- Jessica Todd (employee)
- Karen Zavala (employee)
- Frank Arredondo Sr (resident - new)
- Bucky Couch (resident - new)
- Nico Costilla (resident - new)
- James Bryant, Jr (resident - new)
- Antonio Palacios (resident - stepping down)
- Marianne Moore (resident – stepping down)

As stated earlier our policies are now online for anyone to review. President Obama's Town Hall on June 3 called upon mayors to review use of force policies with their communities to look for opportunities for improvement. Our suggestion would be to create an ad-hoc committee comprised of community members nominated by Council. The panel's charge should be to review policy and make recommendations to the Chief's Advisory Panel via written report and open presentation.

The department would provide the committee an initial "class" on the TPCA best practices program, and key case law issues that drive building a use of force or response to resistance and aggression policy. The committee would establish a deadline and meeting dates before beginning their work.

After receiving recommendations from the Advisory Panel, I will be prepared to make a report and presentation to City Council.

I truly appreciate your support of our officers and recognizing the work they do in service to our community; in how we strive to be different. As humans serving other humans, we do make mistakes, but we look for ways to improve what we do in the form of practices, policy, or training. We look for positive and negative feedback to be responsive. We police ourselves through routine review of officer's video, direct supervision, and reviewing complaints (or commendations) that come in through a variety of ways. Our citizens and visitors can fill out forms on our website, call and ask for a supervisor, fill out a paper form found in our lobby as some of the examples of ways we receive feedback.

Complaints and commendations are documented and tracked, to include disciplinary actions, in the same software that holds the use of force data so that we have a better view into any issues that need to be addressed. Substantiated misconduct is sanctioned on a progressive scale that considers the nature of the misconduct; the complexity of the circumstances or issues involved in the misconduct; the history of similar substantiated complaints against the affected employee; and any aggravating or mitigating circumstances. We find the best way to avoid disciplinary issues is to hire only the best possible people for our community, train and equip them well and provide appropriate guidance as they carry out their duties.

I wanted to share our values statement that was built collaboratively by all members of the department:

The San Marcos Police Department is committed to the concept of shared responsibility, in partnership with its community, to identify and solve community problems, to maintain the

public safety, and to promote a sense of confidence and security among its citizens, while remaining astute to the principles and craft of traditional policing.

The employees of the San Marcos Police Department take great pride in professionalism. We pursue a working environment in which honesty, integrity, open communications and compassion are woven into our character and culture.

The mission of the San Marcos Police Department is dynamic and ever changing. In an effort to best serve our community, to provide a safe living environment and high quality of life for our citizens, we always strive to utilize our limited resources in the most efficient and cost-effective manner.

Our community and our mission have never been more complex than they are today. The pace of change requires a continuing commitment to the training, education and professional development of our employees. We recognize that through a commitment to the highest professional standards, both in the selection and development of our personnel, that we can at least meet with the pace of change, instill pride in our community, and accomplish our dutiful obligations in a safe and professional manner. With diligence and devotion, we are committed to the attainment of excellence, an ongoing profession unto itself.

At no time in our history has the availability of technological tools played a more significant role in our ability to enhance our services to the public. We continue to evaluate and consider new applications for innovation in our duties, responsibilities and conventional methodology. We procure and assimilate cost effective advancements in technology to augment our service delivery and communication within our community.

Effective police service is always considerate of both the human and humane realities of our world. The San Marcos Police Department instills in its employees and encourages the use of professional and responsible discretion, guided by effective policy and practice. Individual initiative, enthusiasm and the value measured use of police discretion is rewarded.

In closing, I am proud to lead this organization and its commitment to continuously and intentionally evolve into a department that will become a standard for the nation to emulate.