



# City of San Marcos

## Meeting Minutes City Council

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Tuesday, July 7, 2020

3:00 PM

Virtual Meeting

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**This meeting was held using conferencing software due to the COVID-19 rules.**

### I. Call To Order

**With a quorum present, the work session of the San Marcos City Council was called to order by Mayor Hughson at 3:06 p.m. Tuesday, July 7, 2020. The meeting was held virtually.**

### II. Roll Call

**Present:** 6 - Council Member Melissa Derrick, Mayor Jane Hughson, Mayor Pro Tem Ed Mihalkanin, Deputy Mayor Pro Tem Mark Rockeymoore, Council Member Maxfield Baker and Council Member Saul Gonzales

**Absent:** 1 - Council Member Joca Marquez

### PRESENTATIONS

1. Receive a staff presentation and hold discussion regarding the San Marcos Police Department Use of Force policy specifically with regard to the topics highlighted by the "8 Can't Wait" campaign.

**Bert Lumbreras, City Manager, provided a brief introduction regarding the Police Department's use of force policy. He stated that we have a very progressive police department, and he is proud of the integrity and culture that has been fostered in the department. He explained this is possible by hiring the best and maintaining that high quality through ongoing training. The hiring process emphasizes hiring highly qualified law enforcement professionals, and ensuring they are a good fit for our community. The Police Department has placed a priority on community policing through events such as Coffee with a Cop, National Night Out, and the Citizen Police Academy. They also encourage meaningful community engagement through ongoing communication with citizens, our stakeholders, and the Chief's Advisory Panel. There are policies in place that address each of the "8 Can't Wait" initiatives that have been proposed by advocates and will be discussed in more detail. All policies should be reviewed periodically to ensure they are still appropriate and relevant, and we are recommending a similar review of our use**

of force policies that would include a citizen review component and result in a report to Council. He acknowledged those on Council and advocates within the community who have highlighted this issue. The attention to this matter has given us the opportunity to tell the story of what we are doing right and where we have made improvements. This includes video conference calls with students, virtual town halls, and today's presentation.

Bob Klett, Interim Police Chief stated for transparency purposes all policies have been placed on the department webpage and they are working on developing brochures. The website is also being updated with concerns that are on a national level to help San Marcos citizens to have a better understanding of the police department. Chief Klett mentioned that they continue to enjoy community support and take the service to the community very seriously.

Chief Klett stated that cite and release follows much of the street discretion that has been done for years. Staff enjoys the community outreach events such as Coffee with a Cop throughout town, cookouts, community meetings and most recently a unity march. Chief Klett mentioned that since Mr. George Floyd's death there has been 9 different types of protests that had a lack of complaints and had several accolades in the approach.

Chief Klett explained that once an employee is hired, staff has a comprehensive set of policies which guides them in their duties and maintains a strong culture. The staff has been working on adopting the Texas Police Chiefs Association (TPCA) model for best practice policies and adapt them for the unique needs in San Marcos. Chief Klett mentioned that when the policy transition is completed, staff will work to become a recognized agency, a designation award by TPCA. Being recognized means the agency has proven that it meets or exceeds all of the 166 identified best practices for Texas Law Enforcement. The 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.

Chief Klett stated the 12 critical areas where police departments can get in trouble, other than vehicle accidents and employee injuries, 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**

**Chief Klett mentioned the Standards address these areas in an attempt to minimize risk and increase officer safety and training.**

**Although 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 have systems in place to identify and correct problems.**

**Chief Klett presented the “8 Can't Wait Initiative” and explained how our policies address each initiative.**

- 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**

**Chief Klett stated the biggest impact we have on the use of force issues and satisfaction with the community is in the hiring of officers. Chief Klett provided the hiring process and offers employment only to those who best fit our diverse community and the department's culture of character by hiring only one applicant out of 10 to strive to meet the quality demanded by the profession to serve others and the community.**

**Chief Klett stated that the current San Marcos Police Department (SMPD) recruiting program is the most aggressive and ambitious program we have ever had. It includes multiple recruiting events per year at locations all across the state, on social media, movie theater ads, billboards, and professional social media sites to draw in diverse applicants to serve in this agency. We have incentives for those who are already certified, but look for only quality**

**applicants whether already certified 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.**

**Chief Klett explained the hiring process:**

- Written exam that includes cognitive skills, reading comprehension and memory skills.**
- Candidate Fitness: 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**
- Extensive background process that includes a polygraph test. The process is done in person and we invest time in the background process to remove candidates that do not meet the department's high standards.**
- The candidates who pass the background process goes before an oral interview board of police staff to determine communication skills, qualifications and character and final interview will be with Chief of Police.**
- Psychological examination is a Texas Commission on Law Enforcement (TCOLE) requirement and we use an independent psychologist**
- a pre-employment physical and drug screen is required for officers. Random drug screens are done for all staff throughout their career.**
- Training is conducted in local basic police officer academies. Following each candidate; attends an in house mini academy that teaches our standards and our expectations above TCOLE requirements, field training rotating with different specifically trained officers before released to solo patrol. Officers who are released to solo patrol are on probation for one year of the release date. Community standards are emphasize.**

**Choke and Strangle Holds Initiative:**

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

**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.**

**This is a recent policy change due to a change in the standards at the TPCA. Additionally, we have distributed reminder emails from the training cadre that**

respiratory restraints and knees kept on necks is not allowed. SMPD officers are not allowed to “hog tie” arrested persons. 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.

**De escalation Training Initiative:**

Chief Klett stated that the state mandates de escalation training in various cycles. Members of the San Marcos Police Department are consistently trained in de escalation principles throughout their career. Additionally, de escalation training is part of the state mandated training for all new police officers.

Chief Klett explained the training focuses on active listening first, and then other de escalation principles so that lawful force is 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.

Chief Klett stated that the legitimacy of the work of police is very important, it is a stewardship of authority given by those we serve. It is earned through the way staff interacts with the public and by treating people with dignity and respect.

**Require Warning Before Shooting Initiative:**

SMPD Policy Reference under 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.

Chief Klett stated 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. The human brain cannot speak and act at the same time. There have been situations involving 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.

SMPD policy does require officers to give clear verbal direction and explanation to detainees and arrestees in all instances if feasible.

**Exhausting Other Means Initiative:**

Chief Klett stated 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. 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 Initiative:**

SMPD policy reference under 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.

Chief Klett stated 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.

Chief Klett explained that 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 Initiative:**

SMPD policy reference under 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.

Chief Klett stated that shooting at a moving vehicle is extremely rare and gave

an example of the incident in 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. Chief Klett stated that the intention is not to shoot at the person in the vehicle but to disable the vehicle.

**Use of Force Continuum Initiative:**

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.

The department has moved to this standard several years ago, which is actually more restrictive in that an officer must articulate why they used that specific 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. 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.

**Comprehensive Use of Force Reporting Initiative:**

SMPD Policy reference under 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.

Chief Klett stated that supervisor reviews all use of force reports and 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 and updated along the way with mandatory review of certain incidents.

Chief Klett explained that the department uses a 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 to detect early warning.

Chief Klett mentioned that Texas Office of the Attorney General (TOAG) requires reports of custodial deaths or shootings and voluntary reports to the FBI which includes actions by a law enforcement officer as a response to resistance that resulted in a death or serious bodily injury of a person, or when a law enforcement officer, in the absence of death or serious bodily injury, discharges a firearm at or in the direction of a person.

**No Knock Initiative:**

**SMPD Policy reference under SMPD Policy – 7.5 Search Warrant VI.**

**Executing a Search Warrant D. Gaining Entrance to Premises 5. No Knock or Exigent Entry:** 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.

Chief Klett stated that the department's practice over the last several years has moved away from no knock warrants or entry. It has been recently codified in policy after a review, which states: 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.

Chief Klett mentioned the change was made because staff realized the traditional uses of no knock warrants doesn't serve the purpose they used to



and is risky depending on the circumstances or hostage situation are examples where police need to get entry and stabilize the situation.

Chief Klett stated that with the 8 Can't Wait Scorecard shown that it has met those initiatives but didn't give a check mark on the use of force continuum because the department has something that works better.

Chief Klett explained the retention of quality staff and in 2018, 31 officers left including 9 retirees with an average of 28.5 years and one officer serving 42 years. 4 officers left for career changes with an average of 13.6 years of service. One was killed in the line of duty. 17 left voluntarily or involuntarily in training.

They made it through the hiring process but not through the training development and were not going to be the best quality staff for City of San Marcos.

Chief Klett stated that complaints or 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 by:

- the complexity of the circumstances or issues involved in the misconduct
- the history of similar substantiated complaints against the affected employee
- any aggravating or mitigating circumstances.

Chief Klett mentioned that the department doesn't get many complaints, because of our high integrity. Complaints of officers in 2018 to current: 59 complaints with 24 Substantiated. The rest were exonerated, unsubstantiated, or unfounded; we hold them accountable for their actions. We have received more commendations than complaints.

Chief Klett explained that we currently have a Chief's Advisory Panel that provides 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 Panel has not met recently due to COVID, we will be meeting this week to open discussion back up and to hear their thoughts on the best way to

implement the points in the Cite and Release Ordinance. Chief Klett mentioned that after checking with several comparable agencies, the police department is the only agency that has a standing Chief's Advisory Panel. Chief Klett stated that he is proud that the Chief's Advisory Panel has been around for some time now.

Chief Klett wanted to recognize the current standing members:

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 and new member)  
Bucky Couch (resident and new member)  
Nico Costilla (resident and new member)  
James Bryant, Jr (resident and new member)  
Antonio Palacios (resident)  
Marianne Moore (resident)

Chief Klett mentioned that 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. Chief Klett suggested to create an ad hoc committee comprised of community members nominated by Council to focus on this task. The panel's charge should be to review policy and make recommendations to the Chief's Advisory Panel via written report and open presentation.

Chief Klett stated the department would provide the committee an initial "class" on the Texas Police Chiefs Association (TPCA) best practices program, and key case law issues that drive building a use of force or response to resistance and aggression policy.

After receiving recommendations from the Advisory Panel, Chief Klett will be prepared to make a report and presentation to City Council. Policies can be found on the website at <http://sanmarcostx.gov/3155/SMPD-Policy>

Council Member Derrick inquired about the 59 complaints in 2018 to current and out of those 24 were substantiated and were internal on insubordination, were there any citizen complaints that were substantiated that wrong doing was

found? Chief Klett didn't have the information readily available. Council Member Derrick would like to receive information on the citizen complaints. Council Member Derrick asked about the reporting on cite and release. Chief Klett stated that cite and release numbers have not been released due to the reporting issues and mentioned that staff is working on it. Council Member Derrick asked about the no knock warrants and have officers been retrained to not do a no-knock just to preserve evidence or have someone escape and only use it for hostage situations. Chief Klett stated that the department has a policy management software for officers to see the policy and acknowledge it. There are multiple ways on how the policy information is sent out by command staff and see it in the policy software.

Mr. Baker expressed interest in the complaints. He has concerns about the direction given by the Graham vs. Conner supreme court case and found it focuses on the 4th amendment right of the police officers. If the police department is different but established on the Graham vs Connor, what is administratively allowed? He believes this is not the best for our community or fears it could result in issues. Chief Klett stated that Graham vs. Conner does leave decision making to the officer at the moment and what is known at the officer at the time. Chief Klett stated Graham vs Connor is a better standard but not perfect and discusses openly on use of force training and discuss what is reasonable to think why in their decision making. Chief Klett mentioned Council could provide direction to have a committee then they could provide suggestions.

Council Member Baker stated what bearing on the local policies is there to show the citizen we know the nuisance is important. Chief Klett stated that when an officer is accused there are two different investigations, the first is a criminal investigation with the Texas Rangers and another is an administrative investigation. Officers are required to answer questions truthfully.

Council Member Gonzales asked if citizens' complaints are filed do they go into the personnel record. Chief Klett stated that all complaints go into the personnel record.

Council Member Gonzales asked about the diversity of the officers. Chief Klett stated that he will send the numbers to Council. Mr. Gonzales inquired about the rankings of police officers. Chief Klett stated when sending a candidate to academy they are a cadet, out of the academy they become an officer, after a promotion it will be a corporal, then a sergeant, commander, assistant chief and finally chief. Council Member Gonzales would like to receive the

percentage of diversity including all ranks. Chief Klett will provide the information to Council.

Council Member Baker asked about a duty of another office to intervene when an excessive force is being observed. It was identified that routine handcuffs or a firm grab are not to be reported as a use of force. Please explain if that can escalate to joint lock. Mr. Baker would like to know when threats or verbal threats or reaching for a weapon and unreasonable harassment would be expected to be reported. Chief Klett stated joint lock and similar would be required to be reported. Chief Klett mentioned that the presence and verbal direction are elements of force used by the officer on the use of continuum model, those are not used on the use of force reporting but will be on the videos, if a complaint is received. Chief Klett stated that staff routinely reviews videos and does include audio.

Council Member Rockey Moore stated when we began the Criminal Justice Reform meetings that policies were going to be reviewed. Chief Klett stated that staff has begun this process. Council Member Rockey Moore stated on behalf of Mr. Mihalkanin and former Council Member Lisa Prewitt that Chief Klett's diligence over the past year has been a wonder to behold and thanked him for his professionalism, responsiveness and his diligence with his department. He also thanked former Chief Chase Stapp. Lastly, he thanked Mr. Winkenwerder for his work on the statistics and informational backlogs.

Council Member Rockey Moore asked about the software. Chief Klett stated that it is the same reporting software and staff has helped to find the method to pull the information since the software collects a lot of data that can be used for cite and release data. A few pieces were not collected but new check boxes are being added for officers. Staff has defined SQL statements to pull the information needed. Chief Klett stated he would like the reporting to be as transparent as possible. Rockey Moore asked that information requested by council members tonight be sent to all council members.

Council Member Rockey Moore asked if the information will be connected to GIS. Chief Klett stated that it does have location data in it and will see how it will look in the future. Council Member Rockey Moore asked if GIS and the officers have access in the vehicles. Chief Klett stated that some software is in the vehicles and that is a work in progress. The software SmartForce will assist officers with information and visualization of certain areas that crimes are being committed. Chief Klett stated cite and release reporting will be sent to

council and will ask for suggestions.

Council Member Rockey Moore asked if the ad-hoc committee will have room for advocacy organizations. Chief Klett stated that he will get input from the Chief's Advisory Panel and direction about the cite and release ordinance. He mentioned that Council will be appointing members to the ad-hoc committee.

Council Member Baker asked about the requirements to be on the Chief's Advisory Panel. Chief Klett stated members have to participate in the Citizen Police Academy and have some basic background information of the police department. Council Member Baker asked what guidance are you looking for from them on the cite and release ordinance that wasn't clear from Council direction. Chief Klett stated this is to receive opinions and feedback from the members and if there can be more done or just what the ordinance language states.

Council Member Baker asked if every officer is required to report of use of force. He requested these numbers and the circumstance in which it was used. Chief Klett stated he will send out the use of force reports with the other reports requested .

Council Member Baker inquired on how use of force is taught and what is the priority. He also asked how many non-lethal weapons do officers carry and are they trained. Chief Klett stated that officers are trained in all weapons they may carry. They are trained in de-escalation techniques first using voice and brains. It is important to be trained on firearms in the rare case they are used and officers must be proficient. He also noted the weapons officers are carrying and they are required to carry at least one intermediate weapon but some officers carry more due to different circumstances.

Mayor Pro Tem Mihalkanin understands why there is so much training in fire arm use, which has the most deadly consequence. Dr. Mihalkanin stated that he does not want to cut any officers' training in the use of firearms as that could cause negative consequences. Chief Klett agreed and stated they also have online training available for de-escalation and active listening.

Council Member Baker inquired about reporting. Chief Klett noted that records are kept on all types of incidents and when considering someone for hiring this is something we review where they have worked. Mr. Baker asked if the use of force by any officer can be reviewed by the public. Mr. Stapp noted

that we have been reporting use of force by the department for 15 years, which is not a required report by the state. Individual data is not allowed to be on the report, but a report about the department and trends. Council Member Baker asked if a person files a complaint about use of force by a particular officer, could that person be advised of any other complaints about that officer. Mr. Stapp stated that is prohibited by law from being shared. Mayor Hughson asked if management takes note of any officer who appears to be using force often.

Council Member Baker asked about the recordings and any internal investigation which might be initiated. What will prompt an investigation and what information can be used? Chief Klett noted that body camera video will be reviewed.

Council Member Baker thanked Chief Klett for the information presented today and his outreach to the community.

Mayor Hughson asked if there is reporting when a firearm has been discharged. Mr. Klett stated yes, it is on the reporting documents.

III. Adjournment.

Mayor Hughson adjourned the work session of the City Council on July 7, 2020 at 4:45 p.m.

Elizabeth Trevino, Deputy Interim City Clerk

Jane Hughson, Mayor