

# LIMITING USE OF FORCE

## Duty to Intercede

What is the issue that the community is experiencing and which communities in Eugene experience this problem most strongly?

Excessive use of force can exceed that which policy allows. Creating more stringent policy reforms does not in and of itself correct excessive use of force. A culture within the police force can lend itself towards greater or lesser use of force, often that culture includes biases towards targeted populations. By establishing requirements to prevent, interrupt, stop and report excessive use of force, a police department can create a culture that places a stronger emphasis on peacekeeping and a lesser emphasis on show of force. This effects BIPOC, immigrant, houseless, disabled, LGBTQ, and persons with mental health or addiction conditions.

What, specifically and clearly, is your recommended change (motion)?

- A. Modify the current policy to clarify this policy as a requirement. Change “clearly beyond” to “exceeds” (800.1.2). Change “prevent” to “prevent or disrupt” (800.1.2). Change “will also report” to “shall report under section 801 Use of Force Reporting” (800.1.2).
- B. Any officer who observes another officer about to use force that is illegal, excessive, or otherwise inconsistent with this policy shall, absent extraordinary circumstances, do whatever he/she can to interrupt the flow of events *before* the fellow officer does something that makes any official action necessary.
- C. Any officer who observes another officer using force that is illegal, excessive, or otherwise inconsistent with this policy shall, absent extraordinary circumstances, do whatever he/she can to interrupt the flow of events and *stop* the use of force.
- D. Officers shall not be subject to discipline or retaliation for intervening, or for reporting excessive force, or for failing to follow a directive that the officer reasonably believed to be excessive.
- E. Officers who fail to intercede to prevent excessive force when the evidence deems the officer was in a position to do so will be subject to appropriate discipline.

How do you think that the recommended change will achieve the desired result?

This recommendation builds upon the current policy to clarify when an officer is expected to intervene, how an officer is expected to intervene, and how to report incidents (see recommendation below on Use of Force Reporting). The non-retaliation clause should encourage lower ranking officers to intercede even with higher ranking officers. This may help to weed out officers whose values do not meet the standards of the culture we are wanting to create. The clause about failure to comply makes the policy more defensible during investigations of complaints.

## De-escalation

What is the issue that the community is experiencing and which communities in Eugene experience this problem most strongly?

Use of force is limited to cases where the person is resistant to arrest or poses a threat. The problem is that officers are in a position to instigate resistant or aggressive behavior, thereby escalating situations. The current policy (820.3) contains one line that says officers *should* de-escalate followed by a second line that says officers are *expected* to respond with force. Without stronger policy in place to prioritize de-escalation, officers may use their position to target certain populations by provoking them into punishable behavior. The policy also lacks defensibility, meaning there is not enough in the policy to charge an officer for neglecting to attempt to de-escalate a situation. This effects BIPOC, immigrant, houseless, disabled, LGBTQ, and persons with mental health or addiction conditions.

What, specifically and clearly, is your recommended change (motion)?

- A. All attempts shall be made to carry out law enforcement by non-violent means (Add to 820.3).
- B. Officers will apply use of force only after attempts at de-escalation have been exhausted or are deemed not possible (Add to 820.3).
- C. Officers who fail to employ de-escalation strategies as described in Section 820 when evidence determines that it was reasonably possible will be subject to appropriate discipline. (800.2, 820.3)

How do you think that the recommended change will achieve the desired result?

This recommendation prioritizes de-escalation making it no longer simply an additional tactic that an officer may choose to employ, but instead the objective in every situation to attempt the least degree of violence possible. The recommendation gives supervisors and investigators better grounds to hold officers accountable for failure to apply de-escalation or for instigating or provoking engaged persons.

## Unreasonable Force

What is the issue that the community is experiencing and which communities in Eugene experience this problem most strongly?

There is an issue of infiltration of white supremacists in law enforcement. Unfortunately, Eugene has a history with white supremacists. One can see why a person who fosters hatred towards classes and characteristics of people would desire to acquire the power and resources of a police officer, as well as the qualified immunity. This is also true for any officer who approaches policing with an “us/them” mentality or who might harbor resentments, or desire displays of superiority and control. This issue most strongly affects the BIPOC community, but others as well.

What, specifically and clearly, is your recommended change (motion)?

- A. Officers are prohibited from using force or threat of force to punish, retaliate, or unlawfully coerce.
- B. Officers shall not use force based on bias against a person’s race, ethnicity, nationality, religion, disability, gender, gender identity, sexual orientation, or any other protected characteristic.
- C. An officer shall not use force solely because another officer is using force.

(Create section 800.2.3?)

### How do you think that the recommended change will achieve the desired result?

This recommendation draws a line in the sand and delineates what will not be tolerated. It names the acts of racism, sexism, xenophobia, transphobia, and general abuse of power that people in the community suspect and fear may underlie use of force. While it should perhaps go without saying that these recommendations should be presumed to be unreasonable, putting them into policy both facilitates accountability and serves to dissuade persons who wish to abuse their position to such ends from joining the EPD in the first place.

## Deadly Force

### What is the issue that the community is experiencing and which communities in Eugene experience this problem most strongly?

We have recent police shooting incidents that affect Black, Latinx, and gender non-conforming communities. Often, after the fact, it can seem that the use of deadly force could have been avoided, was unnecessary, or was due in part to provoking behavior on the part of the police force to escalate the situation. While it is understood that the reasonableness of force is based upon the totality of circumstances and not hindsight, it is also true that enacting police reform to prevent these cases from occurring in the first place would go further to make amends to the family members and community of those killed or injured by police. This problem is experienced by anyone confronted with deadly force, but appears to be more pronounced among BIPOC community members and the houseless populations.

### What, specifically and clearly, is your recommended change (motion)?

- A. An officer shall not use deadly force to apprehend a person who is suspected of a minor or non-violent offense.
- B. An officer shall not use deadly force to protect property.
- C. An officer shall not use deadly force against a person who presents only a danger to themself and does not pose an immediate threat of death or serious bodily injury to another person or officer.
- D. An officer shall not use deadly force against a restrained person.
- E. If possible, and if doing so would not increase the danger to the officer or others, an officer shall identify themselves as a police officer and give a verbal warning that deadly force may be used before discharging a firearm at a person.

(800.4.1)

### How do you think that the recommended change will achieve the desired result?

These recommendations provide clearer guidelines for when not to use deadly force. At best, such recommendations may prevent an officer from choosing to use deadly force and possibly save lives. If such an incident does occur, these recommendations establish a clear case of misconduct, facilitating accountability.

## Following Use of Deadly Force

What is the issue that the community is experiencing and which communities in Eugene experience this problem most strongly?

From the community perspective, officers seem to have sanction to use deadly force with impunity. They are allowed to walk away from the scene, given 48 hours of administrative leave, have time to consult with legal representation paid for them, can review their body cam footage and have time to build their defense. By contrast, those on the receiving end of deadly force, (if they survive) or the families of those who do not survive, often do not have access to legal counsel, are not given time to recover and gather their thoughts before facing questioning, and are not compensated for the job loss, travel expenses, mortuary and other expenses incurred. The discrepancy can seem almost a celebration of sworn officers who use deadly force for all the care they are given. Officers are returned to duty as soon as 72 hours following the incident. This problem is experienced by anyone confronted with deadly force, but appears to be more pronounced among BIPOC community members and the houseless populations.

What, specifically and clearly, is your recommended change (motion)?

- A. The officer will comply with drug testing as soon as possible after the incident, but before being relieved of duty. (800.4.3)
- B. Require officers who have used deadly force to attend counseling before return to work. Currently, officers are offered a minimum of two opportunities for mental health counseling within 6 months following the incident. The officer is only required to attend one session. (810.3.5(j))
- C. The 48 hour wait period before interviewing the officer is unfair. We recommend the City work with the State and Federal agencies to change this policy. (This is beyond the purview of this committee, but we would like to submit our recommendation nonetheless).
- D. Extend the period of administrative assignment, especially when there is an active investigation of misconduct and/or complaint filed against the officer. Currently, policy only requires 72 hours before an officer can be returned to duties that might place an officer in a situation in which he or she has to use deadly force. (810.3.5(g))

How do you think that the recommended change will achieve the desired result?

Use of deadly force should be seen as an extreme, something every officer hopes to never have to do. If the Department places a focus on accountability and thorough and immediate investigation, it sends a message to the officers that deadly force is a grave act that will be taken seriously every time. People shaken by police violence should at least know that they will not have to face that officer back on their beat while the investigation is underway.

## Use of Force Reporting

What is the issue that the community is experiencing and which communities in Eugene experience this problem most strongly?

Officers are required to report what are considered reportable incidents (801.1.1) which include discharging firearms and active use of less lethal weapons. However, the display or verbal threat of a weapon is also a use of force and can have a chilling effect on persons to whom such a threat may be implied. Emphasis on the police possession of weapons, such as an officer placing their hand on a holstered firearm during an interaction, can be perceived as threatening and intimidating. Community members report feeling harassed or intimidated by heavy police patrol in their neighborhood combined with veiled demonstrations of power. This mostly affects Black, indigenous, and Latinx communities, but also LGBTQ youth, houseless people, and others who congregate in downtown at night.

What, specifically and clearly, is your recommended change (motion)?

- A. EPD should track all shows of force including the verbal threat or display to use force options.
- B. Definitions of reportable incidents in Section 801.1.1 should be expanded beyond discharge and use of said force options to include the drawing, exhibiting, and unholstering of firearms as well as the verbal threat to use or draw such firearms and impact weapons.
- C. Add to the list of reportable incidents in Section 801.1.1 control holds, compliance techniques, takedowns, and physical control techniques including escorts.

(800.6 and 801.1)

How do you think that the recommended change will achieve the desired result?

If officers are required to report verbal threat to show or use force as well as any display of force options, they will be less likely to wantonly place emphasis on possession of weapons with the intention to intimidate or coerce. Tracking such data should assist the Department in identifying and addressing racial profiling and other systemic violations.

## Annual Training

What is the issue that the community is experiencing and which communities in Eugene experience this problem most strongly?

If EPD agrees to incorporate reforms in terms of revisions to existing policies and procedures, officers must be made aware of these changes. This issue most directly affects members of the Eugene Police Department, but then the deployment of policy into action is what mostly affects the public. Everyone who engages with the police experiences this problem.

What, specifically and clearly, is your recommended change (motion)?

- A. Sworn officers of all ranks, and professional staff members who are trained on and authorized to use specific force options, shall receive training at least annually on the specific provisions of policies involving Use of Force.
- B. All practical force and force option training for Department members that is delivered by Department training staff shall incorporate into the lesson plan or training materials instruction on policies involving Use of Force.

How do you think that the recommended change will achieve the desired result?  
An annual reminder can help officers to keep the priorities of these policies in place and put them into action. Incorporating these policies into practical force and force option training both gives officers examples of practical applications and it also helps prevent officers from getting conflicting messages about how and when to apply force.

## Vetting New Technology

What is the issue that the community is experiencing and which communities in Eugene experience this problem most strongly?

We are currently examining existing policy for multiple types of weaponry and technology that EPD has at its disposal, but new weapons and technology can emerge for which we have not given guidance.

What, specifically and clearly, is your recommended change (motion)?

Require public input with a focus on BIPOC community members as well as other groups who are more likely to be disadvantageously affected by the new technology such as people with disabilities and mental health issues, immigrants especially those with limited English proficiency, houseless or impoverished community members. (1206 – Emerging Technology)

How do you think that the recommended change will achieve the desired result?

Currently, public input is encouraged but not required. Emergent new technology should be vetted through the community.

## Ceding Mental Health and Related Calls

What is the issue that the community is experiencing and which communities in Eugene experience this problem most strongly?

The EPD is sent to deal with a wide variety of incidents, some of which could be better addressed by other agencies. In these situations, the very act of sending police officers to arrive on the scene can itself be an excessive use of force. This is especially true with well checks for persons with mental health issues, addiction, and can also apply to domestic situations requiring conflict resolution, mediation, or practical resources. The houseless population in Eugene requires a mutual aid response. Currently, the EPD does have a cooperative relationship with CAHOOTS. But many people in the community who could use CAHOOTS services do not call for fear of getting the police instead.

What, specifically and clearly, is your recommended change (motion)?

- A. Create a task force to develop and initiate a 5-year plan to reassign all non-violent emergency response, not necessarily requiring an arrest, to alternative unarmed agencies as first responders. The response teams will be dispatched through a separate console that will not automatically default to EPD. These agencies can, in turn, call in EPD as needed, essentially making the police second responders. Officers responding to the scene should first defer to the alternate agency.
- B. CAHOOTS is one such agency, responding to mental health crisis, suicide response, intoxication, transportation to services, housing crisis, first aid, and other non-violent situations. The city

should invest in increased salary and benefits for CAHOOTS staff and a massive expansion of the program, sufficient to enable it to absorb all such dispatch calls.

- C. Other agencies should be similarly funded to handle other kinds of non-violent, non-criminal emergency response. This can include mediation services to handle disputes, neighborhood safety patrols to handle loud parties, trained counselors to approach houseless youth, etc. The task force would develop a set of policies for dispatch, authority, and inter-agency engagement.

### How do you think that the recommended change will achieve the desired result?

The police force is trained to be a show of force. It is an armed unit designed for enforcement. As such, and given the training police officers have to respond to any perceived threat with (potentially lethal) force, the EPD is not the right tool for the job when it comes to non-violent, non-criminal emergency response. Especially now that we have passed a measure to decriminalize drug offenses, it is time to revamp our community response. We need to put community care first by creating a separate dispatch specifically for mental health, social services and public resources. Instead of funneling more resources into the EPD with additional trainings in an attempt to make the EPD into a “one size fits all” first responder, we should focus EPD on the armed force it is trained to be and reduce the demand on the EPD to only those situations that truly require a show of force. A cursory look at past dispatch logs indicates that CAHOOTS, given the funding and resources it requires, could probably absorb at least 25% of EPD’s current responses. Other agencies exist that could handle other non-violent incidents. With explicit demands from the BIPOC community, the CLDC, and other community organizations to disband, disarm, and/or defund the police, this transition of emergency response would be a step towards honoring those populations who have been harmed by police.

## Demilitarization

### What is the issue that the community is experiencing and which communities in Eugene experience this problem most strongly?

Studies have shown that the more militarized the field equipment and weaponry are, the more officers perceive citizens in a confrontational mindset, leading to more violent interactions. Studies also show that police departments that demilitarize, discontinuing use of high-powered rifles, armored vehicles, and military uniforms, experience lower rates of assault directed at the police officers. Chief Skinner has denied participation in the Department of Defense 1033 program, but admits to purchasing new military grade equipment (BearCat) directly. Heavily armored presence can itself be excessive show of force.

### What, specifically and clearly, is your recommended change (motion)?

- A. Discontinue purchases of field equipment, machinery and weapons designed for war.
- B. Evaluate the equipment and weaponry currently owned by EPD and sell or destroy items that should not apply to policing civilian communities. This should include equipment and technology designed for military surveillance and espionage.

### How do you think that the recommended change will achieve the desired result?

Demilitarization not only relaxes the tensions and resistance that the community feels towards the police, it relaxes the adversarial mindset that officers feel towards the civilian population. This would also decrease the expense dedicated to the purchase, maintenance, training and use of such equipment, potentially freeing up more city dollars for use elsewhere.

## Chemical Weapons

What is the issue that the community is experiencing and which communities in Eugene experience this problem most strongly?

Recent protests against police brutality have resulted in an aggressive response from police, lending more strength to the cause to address police brutality. Riot control agents such as OC spray, pepper balls, and tear gas, are outlawed for use in warfare. Originally, the US chose to use chemicals for riot control against prisoners of war. It was later expanded for law enforcement use to control riots. The media and some recent testimony here in Eugene have reported excessive use of chemical agents against protesters. This affects BIPOC, immigrant, houseless, disabled, LGBTQ, and persons with mental health or addiction conditions, as well as anyone who wants to protest in solidarity with any of these groups.

What, specifically and clearly, is your recommended change (motion)?

- A. Require a verbal warning with reasonable time for compliance before displaying chemical weapons. Verbal warning must be clear and audible (use of loudspeaker, repeated if necessary). Time and egress routes must be sufficient for orders to disperse to be met. (803.3, 804.2 C)
- B. OC spray should never be used to wake or rouse a person. (803.3)
- C. If use of chemical weapons is anticipated, officers shall have medical personnel on site prior to their use and shall make provision for decontamination and medical screening to those persons affected by the chemical agent(s).

How do you think that the recommended change will achieve the desired result?

No person practicing their First Amendment rights should have to fear an unexpected assault by chemical weapons. The requirement of verbal warnings and means of egress should prevent anyone from being subjected to chemicals without knowledge and forewarning.



## Reasonableness of Force

What is the issue that the community is experiencing and which communities in Eugene experience this problem most strongly?

Officers are rarely held accountable for excessive use of force. All a police officer has to say is that they feared for their life. This is because reasonableness of force is based on the totality of circumstances that are reasonably *believed* to be true by a police officer at the time of an incident or action. Beliefs can be pre-existing or predetermined, whereas perception is based on observations and information gathered. An officer should not be justified in use of force based upon presumed or fabricated beliefs. Threat assessment must be rooted in evident observations or determined facts. These observations should be evident on body worn video devices or presentable as determined fact. The policy as currently stated allows for officers to act on beliefs informed by implicit or explicit bias for or against certain populations, resulting in more forceful behavior towards certain populations. Officers should instead be required to determine the degree of threat and necessity of force based on observable behaviors, acts, language or information gained from reliable sources. This effects BIPOC, immigrant, houseless, disabled, LGBTQ, and persons with mental health or addiction conditions.

What, specifically and clearly, is your recommended change (motion)?

Change all places where current policy says “reasonably believes” to “reasonably perceives” as in the example below.

800.4.1 PERMISSIBLE USE OF DEADLY FORCE An officer is justified in using deadly force against another person when and to the extent the officer **reasonably perceives** the deadly force is immediately necessary to:

- a. Protect them or others from what he or she **reasonably perceives** would be an imminent threat of death or serious physical injury.
- b. To arrest or prevent the escape of a suspect when the officer has probable cause to believe that the suspect has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious physical injury or death, and the officer **reasonably perceives** that there is an imminent or potential risk of serious physical injury or death to others if the suspect is not immediately apprehended.

(800.1.3, 800.2.1, 800.2.2, 800.4.1, there may be more)

How do you think that the recommended change will achieve the desired result?

This is a subtle but important distinction. If an officer claims to believe there is imminent threat, that cannot be contested. But if an officer claims to have perceived imminent threat, one can ask what it was based on. Body cam footage can may support body movements or verbal exchanges upon which the perception was based. The recommendation is a step towards preventing an officer from justifying use of force based on a belief of imminent threat based on skin color or other implicit bias.