

Memorandum

TO: ALL DEPARTMENT PERSONNEL

FROM: Anthony Mata
Chief of Police

**SUBJECT: EXECUTIVE FORCE REVIEW
COMMITTEE**

DATE: December 22, 2021

APPROVED

Memo# 2021-044

BACKGROUND

In June 2020, the Department's Use of Force Committee convened to review national best practices for force review. During their research, the Committee discovered varying levels of force investigation and oversight. Approaches to force review ranged from a simple supervisory in-field response to in-depth post-incident analysis. Additionally, the personnel scrutinizing the officers' actions may or may not have been trained in force analysis, decision making, or human factors.

Currently, Use of Force Command Reviews are evaluated by lieutenants. There is no prescribed requisite training or experience necessary to complete a Command Review. As a result, the Use of Force Committee recommended to the Chief of Police the establishment of a specially-trained cadre of command officers to review and analyze the Department's use of force, the Executive Force Review Committee (EFRC). The EFRC will be comprised of personnel selected by the Office of the Chief.

A typical workflow with the EFRC is included as Attachment A.

The EFRC Analysis Memorandum is included as Attachment B.

ANALYSIS

The Duty Manual has been revised to reflect changes described below. Additions are shown in *italics and underlined*. Deletions are shown in ~~strike through~~ form.

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

CATEGORY:

Revised 12-22-21

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:

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

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~~ to the BFO Administrative Unit for review by the Executive Force Review Committee ~~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 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~~ to the BFO Administrative Unit for review by the Executive Force Review Committee ~~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 submit all materials and documentation for review to the Executive Force Review Committee 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.

L 2605.6

EXECUTIVE FORCE REVIEW COMMITTEE

Added 12-22-21

The Executive Force Review Committee (EFRC) is comprised of Department command officers at the rank of lieutenant, designated by the Office of the Chief, specially trained in force analysis and decision-making under stress, and responsible for evaluation of all use of force “Command Reviews” as outlined in Duty Manual section L 2605.5 – Command Officer’s Responsibility by Use of Force Category.

The EFRC convenes to review use of force and provide analysis as outlined below.

Responsibilities:

The EFRC will have the following responsibilities:

- Analyze and evaluate the force applied during the event.
- Identify any observed misconduct.
- Identify any training opportunities for the personnel involved.
- Document the analysis for review by the Chain of Command.

All Command Reviews, whether from a Category-II or a Category-III use of force, will be referred to the EFRC. The Office of the Chief may also refer any use of force case to the EFRC (during any phase of the investigation), including cases that are initiated by Internal Affairs.

Staffing:

The EFRC shall maintain a minimum of twelve (12) force experts, as identified by the Office of the Chief.

Management:

The EFRC will be collaterally managed by a Division Captain in the Bureau of Field Operations, designated by the Office of the Chief, who will act as the Program Manager (PM). The PM will work directly with the BFO Administrative Unit Lieutenant, who will be tasked with maintaining a record of all applicable Category-II and Category-III use of force incidents, organizing case referrals to the EFRC (including all documentation), and ensuring the EFRC completes its analysis within 45 days of the date of the EFRC review.

The EFRC will meet, at minimum, monthly. Each meeting will be comprised of three (3) command officers. The BFO Administrative Unit Lieutenant will be responsible for scheduling the monthly meetings. Seven (7) days prior to the meeting, each convening member of the EFRC will receive the entire Command Review packet from the BFO Administrative Unit. The packets will contain all material outlined in Duty Manual Section L 2605.5 – Command Officer's Responsibility by Use of Force Category, as well as any additional material requested by the EFRC. Officers will not be asked to appear or be interviewed as part of the EFRC process.

For each meeting, the PM will identify one (1) of the three (3) EFRC members to act as the Chairperson, to lead the EFRC meeting. The Chairperson will be responsible for completing the EFRC Analysis Memorandum or directing its completion by one of the convened committee members. The Analysis Memorandum must be completed, reviewed by the committee members, and submitted to the PM within 45 days from the date of review. The PM will then review and submit the memorandum to the BFO Administrative Unit lieutenant, who will record its receipt and route it through the appropriate officer's chain of command.

Notification:

Any commander requesting a Command Review by the EFRC shall complete a Use of Force Command Review entry in the Watch Commander's Log System before going off duty. The commander of the BFO Administrative Unit is responsible for tracking these entries.

Documentation:

The findings of the EFRC will be documented on the EFRC Analysis Memorandum (template available from the BFO Administrative Unit). Documentation from the EFRC shall be forwarded, through the Chain of Command, to the Internal Affairs Unit where it will be maintained consistent with Category-III Use of Force Reports.

Findings:

In each of the following categories, the EFRC may determine the category to be "within policy."

INVESTIGATION: In any event the EFRC may request additional information or materials be provided to better analyze and evaluate the incident. For any incidents in which the EFRC determines the investigation is insufficient, the EFRC shall recommend the case be returned to the involved officer's chain of command for additional information and material.

FORCE: The EFRC shall analyze and evaluate each incident and determine if the force used during the incident was objectively reasonable. For any incident in which the force was deemed to not be objectively reasonable, the EFRC shall recommend the case be forwarded to the Office of the Chief, requesting a Department-Initiated Investigation. In addition, in the event the EFRC is unable to make a determination of the reasonableness of the force due to a lack of available information, the EFRC shall recommend the case be forwarded to the Office of the Chief, requesting a Department-Initiated Investigation.

OTHER MISCONDUCT: The EFRC shall identify and report any observed misconduct. For any incidents in which misconduct is noted, the EFRC shall recommend the case be forwarded to the Office of the Chief, requesting a Department-Initiated Investigation. The EFRC will not conduct independent investigations into potential policy violations not involving the use of force, but will report the matter to the Office of the Chief with a request for a Department-Initiated Investigation.

TRAINING: The EFRC shall identify any training opportunities based on the involved officer's actions, behaviors, or decisions. For any incidents in which individual training opportunities would benefit the officer and the Department, the EFRC shall recommend a review by the involved officer's Chain of Command.

For any incident in which the EFRC fails to reach a unanimous decision among the convened command officers, the PM will review the case. The PM will be responsible for making the final decision and completing the EFRC Analysis Memorandum. The memorandum shall also note the dissenting opinions of the EFRC.

Training:

The PM and members of the EFRC shall attend advanced training identified by the PM, in consultation with the Commander of the Training Unit. Training shall be consistent with best practices in force analysis, defensive tactics, legal updates, and decision-making under stress.

The PM is responsible for ensuring on-going best practices training is completed. Training certificates shall be forwarded and maintained at the Training Unit in the commanders' respective training files.

ORDER

Effective immediately, all Department personnel shall adhere to the above Duty Manual sections.



Anthony Mata
Chief of Police

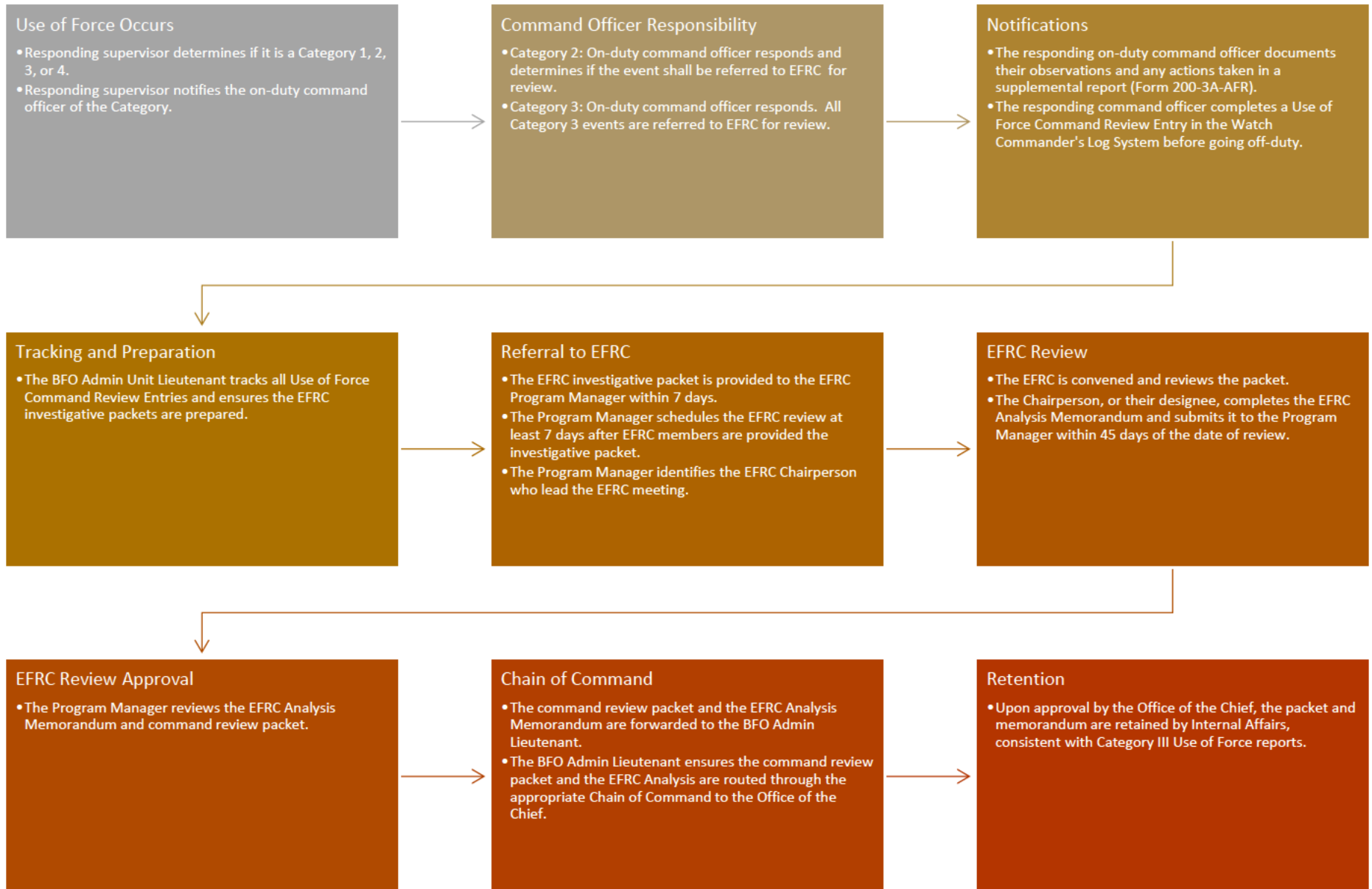
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ATTACHMENTS:

Attachment A: Typical EFRC Workflow

Attachment B: EFRC Analysis Memorandum

Attachment A: Typical EFRC Workflow



Attachment B: EFRC Analysis Memorandum



Memorandum

**TO: ANTHONY MATA
CHIEF OF POLICE**

FROM: RANK NAME BADGE
Executive Force Review
Committee

**SUBJECT: EVENT # EVENT
EFRC ANALYSIS**

DATE: DATE

APPROVED

DATE

COMMITTEE MEMBERS

Program Manager: RANK NAME BADGE
Chairperson: RANK NAME BADGE
Convened Member: RANK NAME BADGE
Convened Member: RANK NAME BADGE

Date of the Use of Force: DATE
Due Date of the Committee Analysis: DATE

EVENT SUMMARY

This event was sent to the EFRC for review based on the following criteria:

- This is a Category-II use of force and a command review was requested by RANK NAME BADGE
- This is a Category-III use of force and a command review was requested by RANK NAME BADGE

The following material was reviewed for this analysis:

- Body-worn Camera Recordings
- CAD Event Log
- Dispatch Audio Recording
- General Offense Report
- Independent Audio Recordings
- Other: OTHER
- Independent Video Recordings
- Medical Reports
- Photographs
- Taser Download Log
- Training File

ANTHONY MATA, CHIEF OF POLICE
SUBJECT: EVENT # **EVENT** EFRC ANALYSIS
DATE
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BRIEF SUMMARY OF EVENT

BRIEF DESCRIPTION OF FORCE USED

ANALYSIS

COMMITTEE ANALYSIS

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DATE
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RECOMMENDATION

INVESTIGATION: The information and material provided to the EFRC was
 sufficient / insufficient] to provide a thorough analysis. As such, the committee recommends:

- Acceptance of the following recommendations
- Return to the involved officer's chain of command for additional information and material
- Review by the Office of the Chief for a Department-Initiated Investigation pursuant to C 1722

FORCE: Pursuant to Duty Manual section L 2602, objectively reasonable force is defined as *that level of force which is appropriate when analyzed from the perspective of a reasonable officer possessing the same information and faced with the same circumstances as the officer who has actually used force*. Upon assessment by the Executive Force Review Committee, the force used in this incident
 was / was not] objectively reasonable. As such, the committee recommends:

- Acceptance as "within policy"
- Review by the Office of the Chief for a Department-Initiated Investigation pursuant to C 1722

OTHER MISCONDUCT: Pursuant to Duty Manual section C 1705, misconduct is defined as *an act or omission by a Department member that is a violation of Department or City policy, procedure, rules, regulations or the law, which if proven true may result in disciplinary action*. Upon assessment by the Executive Force Review Committee, did / did not] discover other misconduct. As such, the committee recommends:

- Acceptance as "within policy"
 - Review by the Office of the Chief for a Department-Initiated Investigation pursuant to C 1722
- Applicable Section(s) for Review: **SECTIONS**

TRAINING: The Executive Force Review Committee did / did not] discover actions, behaviors, or decisions that may benefit from additional training. As such, the committee recommends:

- Acceptance as "within policy"
- Review by the involved officer's chain of command for individual training opportunities

RANK NAME BADGE
Executive Force Review Committee

PROGRAM MANAGER:CHAIRPERSON:AUTHOR