



LOUISVILLE METRO POLICE DEPARTMENT

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MAYOR

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CHIEF OF POLICE

August 21, 2020

Councilwoman Jessica Green
Councilman Brandon Coan
Louisville Metro Council
601 West Jefferson Street
Louisville, KY 40202

Re: Proposed new section of Chapter 36 of the Louisville Metro Code of Ordinances

Councilwoman Green and Councilman Coan,

I have reviewed the proposed changes to Chapter 36 of the Louisville Metro Code of Ordinances. We are largely in agreement on many of these proposals. In fact, the majority of these proposals are reflected in current LMPD policy. I have enclosed an amended version to address some concerns and better align the proposed ordinance with its intent and sound policing practice.

As I am sure you will agree, police policy, practice, and procedures must continually evolve and be informed by current best-practices, studies, research, and data. Below I have listed the proposed areas of the new legislation and excerpts from LMPD policy that specifically address the concern.

- (1) For purposes of restraint, department members shall not use chokeholds, strangleholds, vascular restraint, carotid restraint, chest compression, or any other tactic which applies pressure to the neck or throat that compromises or obstructs blood flow to the brain, or obstructs air flow and the ability to respire.**

Current LMPD policy prohibits the use of “chokeholds”, except in deadly force situations.

SOP 9.1.5

Should physical force be necessary in order to gain control of a situation, an officer will only use that force which is reasonable to gain control of the subject (NOBLE)¹. Once a person is restrained or under control, the use of force is restricted to that which is reasonable to maintain control. Good judgment is extremely important in deciding which tactics to use and how much force to apply. Choking techniques (i.e. vascular restraints), even if applied appropriately, may cause a risk of death or serious physical injury, because they may restrict the flow of blood or

oxygen to a person's brain. Choking techniques are only an approved force option in a situation where the use of deadly force would be allowed.

LMPD policy goes further and incorporates prohibitions against placing weight on a person's neck and addressing issues of positional asphyxia.

SOP 9.1.5

The inappropriate placement of a person may obstruct the airway and cause positional asphyxia. A person in the face down position or leaning over may experience trouble breathing. The person's body type/physical size, mental condition, and/or drug and alcohol use may also increase the risk of breathing difficulty. These conditions, coupled with a prior violent struggle and the prisoner being handcuffed behind the back, can make him/her vulnerable to death by positional asphyxia.

A prisoner will not be placed in control restraints and allowed to remain lying on his/her back or stomach. A prisoner will not be placed leaning forward in a sitting position with hands and legs restrained together. Either of these positions can contribute to obstruction of the airway, resulting in positional asphyxia. Officers should not put weight on a person's back or head, such as with their knees or arms, for a prolonged period of time. Due to the increased risk of injury, officers should avoid placing weight on a person's neck.

In order to minimize the potential for positional asphyxia death, officers should take the following precautions:

- *As soon as a person is handcuffed, move him/her off of his/her stomach.*
- *Ask if he/she has used drugs or alcohol or suffers from a disease that can cause breathing difficulties.*
- *Monitor the person carefully and obtain medical treatment, if necessary. Monitor the person by watching the three (3) ABCs: airway, breathing, and circulation:*
 - *Airway – path is free of obstruction and allows the flow of air to the lungs*
 - *Breathing – air flows to, and from, the lungs*
 - *Circulation – heartbeat and pulse are present*
- *When the prisoner is turned over to the Louisville Metro Department of Corrections (LMDC) facility or another authority, the officer will notify the receiving authority of existing medical problems.*

It is important to note that the proposed ordinance, as written, effectively prohibits LMPD officers from utilizing CPR techniques to save life, due to the proposed prohibition against chest compressions.

- (2) Department members shall, when reasonable under the totality of the circumstances, resolve conflict or potential conflict through de-escalation techniques to decrease the likelihood that officers will resort to the use of force.**

De-escalation is the desired outcome of law enforcement encounters. LMPD policy extensively covers de-escalation. All LMPD officers have been trained in de-escalation techniques. The in-service training for last year taught all of our officers the Police Executive Research Forum's (PERF) Integrating

Communication and Tactics (ICAT) model. Our instructors have been requested to help teach the model at agencies across the country.

SOP 9.1.3

At times, policing requires that an officer must exercise control of a violent or resisting subject in order to make an arrest, or to protect the officer, other officers, or the public from the risk of imminent harm. De-escalation is a desired outcome achieved by utilizing decision-making, communication, and tactics to resolve conflict, or potential conflict, ethically based on the preservation of life per the safety priorities. Clearly, not every potentially violent confrontation can be de-escalated, but officers have the ability to impact the direction and the outcome of many situations that they encounter, based on their decision-making and the tactics that they choose to employ. It is the policy of the LMPD that officers resolve situations in an impartial manner, free of bias, and in accordance with applicable laws and the SOPs of this department.

When considering de-escalation techniques appropriate to the individual situation, officers should recognize they may be dealing with a person of diminished capacity. People suffering from intoxication, suicidal tendencies, medical complications, or mental illness may present members with a wide range of behaviors usually different than those exhibited by other persons in the community or persons involved in criminal activity. Persons of diminished capacity may display conduct that is bizarre, irrational, unpredictable, and/or threatening. They may not receive or comprehend commands or other forms of communication in the manner that the member would expect. These persons often do not respond to authoritative persons or the display of force. It is the primary task of the members of the LMPD who confront these special needs persons to resolve the encounter in the safest manner possible. Officers should refer to SOP 12.20 (Persons of Diminished Capacity) if the circumstances lead the officer to believe he/she may be encountering a person of diminished capacity. Officers should refer to SOP 12.11 (Crisis Intervention Team (CIT)) if the circumstances lead the officer to believe he/she may be encountering a situation requiring a CIT response. If the circumstances lead the officer to believe he/she may be encountering a subject who is experiencing excited delirium, he/she will refer to SOP 12.21 (Excited Delirium).

When reasonable under the totality of circumstances, officers should gather information about the incident, assess the risks, assemble resources, attempt to slow momentum, and communicate and coordinate a response. In their interaction with subjects, officers should use advisements, warnings, verbal persuasion, and other tactics as alternatives to higher levels of force. Officers should recognize that they may withdraw to a position that is tactically more secure or allows them greater distance in order to consider or deploy a greater variety of force options. Officers should perform their work in a manner that avoids unduly jeopardizing their own safety, or the safety of others, through poor tactical decisions. The prospect of a favorable outcome is often enhanced when supervisors become involved in the management of an overall response to potential violent encounters by coordinating resources and officers' tactical actions. Supervisors should possess a good knowledge of tactics and supervise officers under their command in regard to proper training standards. As a good practice, supervisors will acknowledge and respond to incidents in a timely manner where law enforcement use of force is probable.

SOP 12.6.10

At times, policing requires that an officer must exercise control of violent or resisting subjects in order to make an arrest or to protect the officer, other officers, or the public from the risk of imminent harm. Clearly, not every potential violent confrontation can be de-escalated, but officers have the ability to impact the direction and the outcome of many situations that they encounter, based on their decision-making and the tactics that they choose to employ.

When reasonable, under the totality of circumstances, officers should gather information about the incident, assess the risks, assemble resources, attempt to slow momentum, and communicate and coordinate a response. In their interaction with subjects, officers should use advisements, warnings, verbal persuasion, and other tactics as alternatives to higher levels of force. Officers should recognize that they may withdraw to a position that is tactically more secure, or allows them greater distance, in order to consider or deploy a greater variety of force options. Officers should perform their work in a manner that avoids unduly jeopardizing their own safety, or the safety of others, through poor tactical decisions.

The prospect of a favorable outcome is often enhanced when supervisors become involved in the management of an overall response to potential violent encounters by coordinating resources and officers' tactical actions. Supervisors should possess a good knowledge of tactics and verify that officers under their supervision perform to training standards. As a good practice, supervisors will acknowledge and respond to incidents in a timely manner where law enforcement use of force is probable.

During the de-escalation of the incident, the commanding officer/IC, along with the division commander, should consider implementing plans to address the following:

- *Providing vehicular and foot patrol security to residents and businesses in order to prevent further property damage/loss.*
- *Developing a means of identifying people who have a legitimate reason for being in the area.*
- *Providing media access and interviews through the Media and Public Relations Office.*
- *Dealing with unusual security problems.*
- *Assessing personnel and equipment needs until normal operations resume (KACP² 19.2r).*

If the command post is no longer needed, but a return to normal operations has not yet resumed, the division facility, if available, will become the staging area for personnel assigned to the detail.

SOP 2.15.4

Crisis Intervention Team (CIT) Officer of the Year – The CIT Officer of the Year Award may be awarded to an officer who has demonstrated superior communication, compassion, and de-escalation techniques in dealing with individuals experiencing a mental health crisis, or are struggling with addiction, while assuring the safety of themselves and others throughout the year.

(3) Department members shall, when reasonable under the totality of the circumstances, give a clearly audible verbal warning before the use of deadly force.

Deadly force is the most serious action any police officer must take. No police officer wants to be placed in a situation where deadly force is required. LMPD policy extensively discusses the use of deadly force.

SOP 9.1.13

Justification for the use of deadly force must be limited to what reasonably appears to be the facts known, or perceived, by an officer under the circumstances. Facts not known to an officer, no matter how compelling, cannot be considered in later determining whether the use of deadly force was justified. Deadly force, as with all uses of force, may not be resorted to unless other reasonable alternatives have been exhausted, would clearly be ineffective, or exigent circumstances exist. Deadly force is authorized in defense of oneself or another when the officer reasonably believes, based on the facts and circumstances, that the person against whom the force is used poses an immediate threat of death or serious injury to the officer or to another person (KACP 1.3b).

Deadly force is authorized to apprehend a felony suspect (KACP 1.3b), when under the facts and circumstances known to the officer, it is reasonable to believe that:

- *The arrest is for a felony involving the use of, or threatened use of, physical force likely to cause death or serious physical injury, and*
- *It is likely that the person to be arrested will clearly endanger human life unless he/she is apprehended without delay.*

The officer must be able to justifiably articulate his/her actions.

If feasible, verbal warnings should be given before the use of deadly force. Warning shots are not permitted (KACP 1.3d). Deadly force is never authorized to apprehend a fleeing misdemeanor or non-violent felony suspect (NOBLE).

Deadly force may be used to prevent the escape of a fleeing subject if there is probable cause to believe:

- *The subject has committed a felony involving the infliction, or threatened infliction, of serious physical injury or death; and*
- *The escape of the subject would pose an imminent danger of death or serious physical injury to the officer or to another person.*

Deadly force is also authorized to prevent the escape of an arrested person, when deadly force could justifiably have been used to make the arrest, under which the person is in custody (e.g. a serious, violent felony), and the officer believes that the person is likely to endanger human life, unless apprehended without delay (KACP 1.3c).

Officers are authorized to discharge a firearm for the following purposes:

- *In defense of human life, including the officer's life, or in defense of any person in immediate danger of serious physical injury or as described in this section.*
- *Against any animal that is gravely injured or poses an immediate danger to persons, as necessary, when no other disposition is practical and the safety of persons has been given prime consideration.*
- *Training and qualifications.*

Officers discharging a firearm should remain cognizant of the following:

- *The direction in which the firearm is to be discharged.*
- *The danger of discharging a firearm while running or moving.*

(4) Department members shall, when reasonable under the totality of the circumstances, exhaust all alternative uses of force prior to using firearms.

The progression of force is covered under current LMPD policy. The use of firearms is considered deadly force.

SOP 9.1.13

Deadly force, as with all uses of force, may not be resorted to unless other reasonable alternatives have been exhausted, would clearly be ineffective, or exigent circumstances exist. Deadly force is authorized in defense of oneself or another when the officer reasonably believes, based on the facts and circumstances, that the person against whom the force is used poses an immediate threat of death or serious injury to the officer or to another person (KACP 1.3b).

And

Officers are authorized to discharge a firearm for the following purposes:

- *In defense of human life, including the officer's life, or in defense of any person in immediate danger of serious physical injury or as described in this section.*
- *Against any animal that is gravely injured or poses an immediate danger to persons, as necessary, when no other disposition is practical and the safety of persons has been given prime consideration.*
- *Training and qualifications.*

Officers discharging a firearm should remain cognizant of the following:

- *The direction in which the firearm is to be discharged.*
- *The danger of discharging a firearm while running or moving.*

(5) Department members shall act to prevent or stop any other officer, regardless of rank or assignment, from using unlawful, unnecessary, or excessive force.

All officers are legally and morally required to intervene in situations where another officer is using unlawful or excessive force. This was incorporated into LMPD policy earlier this year.

SOP 9.1.6

All officers should act to prevent or stop any member, regardless of rank or assignment, from using unlawful or excessive force. Intervention may be verbal and/or physical.

Officers should immediately report any incidents of unlawful or excessive force to their supervisor. Members inhibited from reporting violations through the appropriate chain of command are required to submit the information directly to the Chief of Police or the Special Investigations Division (SID) Commander.

Members are prohibited from retaliation against any individual because he/she has prevented, intervened, or reported the unlawful or excessive use of force. Any member who engages in retaliation against an individual who has prevented, intervened, or reported the unlawful or excessive use of force may be subject to discipline. Any member who feels he/she has been subjected to such retaliation should report this action through the appropriate chain of command, to the division commander, who will then forward the information to the SID Commander or directly to the Chief of Police. Any member who is inhibited from reporting retaliation through his/her chain of command should report the retaliation directly to the SID Commander or the Chief of Police.

All officers are also required to report violation of laws, orders, or policies.

SOP 5.1.6

Members knowing, or suspecting, other members of violating any laws, orders, or policies will report the infraction immediately to their supervisor. Members inhibited from reporting violations through the appropriate chain of command are required to submit the information directly to the Chief of Police or the Special Investigations Division (SID) Commander.

Pursuant to Kentucky Revised Statute (KRS) 620.030 and Louisville Metro Code of Ordinances (LMCO) 35.200, complaints against members or civilian police volunteers involving the physical or sexual abuse of a minor shall be immediately reported to the Public Integrity Unit (PIU), the Chief of Police, the Kentucky Cabinet for Health and Family Services (CHFS), and any one of the following:

- *The Office of the Commonwealth's Attorney*
- *The Jefferson County Attorney's Office*
- *The Kentucky State Police (KSP)*

Documentation of notification will be retained in the investigative case file. Any failure to report suspected abuse may be subject to discipline, up to, and including, termination.

- (6) Department members shall not discharge their firearms either at, or from, a moving vehicle unless deadly force is being used against the officer or another person. The use of a vehicle by a civilian shall not be considered deadly force unless it is reasonable to believe the vehicle is intentionally being used to strike a person, a crowd, another vehicle or a building or structure with the intent of causing mass injuries or the death of another person.**

This section is covered in existing LMPD SOP.

SOP 9.1.13

Officers will not discharge their firearms either at, or from, a moving vehicle unless deadly force is being used against the officer or another person. For the purposes of this policy, a moving vehicle is not considered deadly force except when it is reasonable to believe that the moving vehicle is being used to conduct a vehicle ramming attack. Officers should, as a rule, avoid tactics that could place them in a position where a vehicle could be used as a weapon against them.

- (7) Department members shall, based on facts known or facts reasonably knowable to the officer, utilize the lowest level of force necessary to gain control of the subject.**

The progression of force is covered in LMPD policy. The current legal standard for the use of force is that which is reasonable based upon the situation the officer encounters and the facts known to the officer.

SOP 9.1.4

An officer should, to the extent possible, utilize the lowest level of force reasonable, depending on the situation.

- (8) Department members shall report, through the chain of command, each use of physical force or threatened use of physical force other than a control hold. Pointing a firearm shall be considered a reportable threatened use of physical force.**

LMPD has an extensive reporting process that can be found in SOP 3.1, which is too large to reproduce here, but is accessible through the link below. We welcome additional discussion on the additional proposed reporting requirement and how it may affect officer response and safety.

- (9) Department members shall not use chemical agents, including tear gas, unless it is reasonable to believe an individual or a group of individuals is acting with the intent of causing serious physical injury or death to another person or persons. When reasonable under the totality of the circumstances, department members shall give a clearly audible verbal warning prior to the use of chemical agents.**

I believe this portion of the ordinance is designed to govern civil disturbance and crowd control situations. If my understanding of the intent is correct, and this portion is not designed to limit the tools officers utilize in SWAT and Crisis Intervention Team (CIT) situations to more safely resolve these situations, or in situations where a patrol officer is required to utilize common pepper-spray to protect him/herself or another, I suggest more narrowly tailoring this area of legislation. Current LMPD policy on the use of chemical agents can be found in SOP 9.1.9 and SOP 9.1.10.

All of LMPD's policies are available for public view at:

<https://www.louisville-police.org/DocumentCenter/View/615/Standard-Operating-Procedures-PDF>

I encourage further discussion on this topic, current LMPD policy, and concerns LMPD has with some of the proposed language. Major Paul Humphrey is the commander of our Training Division, and a former commander of the LMPD SWAT team. He is available for further discussion on these topics.

I also encourage members of the Council to visit the LMPD training academy and see how we train our officers on use of force. We will also make available our firearms simulator to help give councilmembers a perspective on the challenges faced by police officers in use of force situations.

Sincerely yours,



Robert J. Schroeder
Chief of Police

¹NOBLE – National Organization of Black Law Enforcement

²Kentucky Association of Chiefs of Police