

**ORDINANCE NO. 3191-22****AN ORDINANCE OF THE CITY COUNCIL OF THE CITY  
OF SUNNYVALE APPROVING AND ADOPTING A  
POLICY REGARDING MILITARY EQUIPMENT USE FOR  
THE DEPARTMENT OF PUBLIC SAFETY**

WHEREAS, the Legislature of the State of California adopted Government Code Sections 7070 et seq. (the Military Equipment Use Statute) which requires municipalities to seek prior authorization from its governing body for acquiring and using military weapons; and

WHEREAS, the Legislature of the State of California found that ensuring adequate oversight of the acquisition and use of military equipment is a matter of statewide concern; and

WHEREAS, the Sunnyvale Department of Public Safety currently has in its possession several pieces of equipment that are now classified as “military equipment” pursuant to Government Code Section 7070(c); and

WHEREAS, pursuant to Government Code Section 7071(a)(1) and 7071(c), the Department of Public Safety must obtain approval of the governing body by an ordinance adopting a military equipment use policy at a regular, open meeting of the governing body held pursuant to the Ralph M. Brown Act and provide for public comment prior to seeking funds for military equipment; acquiring military equipment; collaborating with another law enforcement agency in the deployment of military equipment; using new or existing military equipment for a purpose, manner, or by a person not previously approved; or seeking funds for, applying, or receiving military equipment; and

WHEREAS, pursuant to Government Code section 7071(a)(2) and 7071(b), any law enforcement agency seeking to continue to use any military equipment that was acquired prior to January 1, 2022 shall commence a governing body approval process no later than May 1, 2022, and post its proposed military equipment use policy on a publicly available internet website at least 30 days prior to any public hearing; and

WHEREAS, the Department of Public Safety posted its proposed military equipment use policy on the City website on February 22, 2022; and

WHEREAS, pursuant to Government Code Section 7071(d)(2), the Department of Public Safety intends to post the final military equipment use policy on a publicly available internet website as long as the military equipment is available for use; and

WHEREAS, pursuant to Government Code Section 7071(e)(1) and 7071(e)(2), the Department of Public Safety shall submit annually for City Council consideration its military use policy and report to consider renewing the ordinance and analyzing whether each type of military equipment identified in that report has complied with the standards set forth in Government Code Section 7071(d), to be heard at a regular meeting held pursuant to the Ralph M. Brown Act; and

WHEREAS, pursuant to Government Code Section 7072, the Department of Public Safety intends to provide its annual military equipment report 30 days prior to the City Council meeting for consideration at a well-publicized and conveniently located community meeting; and

WHEREAS, a copy of the proposed Military Use Policy is attached hereto and incorporated herein as Exhibit "A" to this ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. FINDINGS. The City Council hereby finds and declares that the above recitals are true and correct. The City Council finds that the provisions of the Military Equipment Use Policy are consistent with the requirements stated in Government Code Section 7070 et seq. The City Council finds that the military equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety. The City Council finds that the policy will safeguard the public's welfare, safety, civil rights, and civil liberties. The City Council finds that prior military equipment use complied with the military equipment use policy that was in effect at the time.

SECTION 2. MILITARY EQUIPMENT USE POLICY ADOPTED. The Military Equipment Use Policy, as set forth in Exhibit "A", is hereby adopted, including all exhibits and attachments thereto. The Director of Public Safety is authorized to execute and implement the Military Equipment Use Policy on behalf of the City of Sunnyvale.

SECTION 3. CEQA - EXEMPTION. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment.

SECTION 4. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision or decisions shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

**SECTION 5. EFFECTIVE DATE.** This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

**SECTION 6. POSTING AND PUBLICATION.** The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on April 5, 2022, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on April 26, 2022, by the following vote:

AYES: KLEIN, HENDRICKS, LARSSON, MELTON, CISNEROS, DIN, SPITALERI  
NOES:  
ABSTAIN:  
ABSENT:  
RECUSAL:

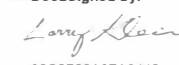
ATTEST:

DocuSigned by:  
  
663F57B921394F1

DAVID CARNAHAN  
City Clerk

Date of Attestation: 04/26/2022

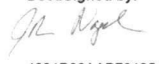
APPROVED:

DocuSigned by:  
  
36C5E28A37A9448

LARRY KLEIN  
Mayor

(SEAL)

APPROVED AS TO FORM:

DocuSigned by:  
  
4831B06AAB76435

JOHN A. NAGEL  
City Attorney

**Policy  
705****City of Sunnyvale Department of Public Safety**  
Department Policies

## Military Equipment

### 705.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the approval, acquisition, and reporting requirements of military equipment (Government Code § 7070; Government Code § 7071; Government Code § 7072).

#### 705.1.1 DEFINITIONS

Definitions related to this policy include (Government Code § 7070):

**Governing body** – The elected or appointed body that oversees the Department.

**Military equipment** – Includes but is not limited to the following:

- Unmanned, remotely piloted, powered aerial or ground vehicles.
- Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers.
- High mobility multipurpose wheeled vehicles (HMMWV), two-and-one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached.
- Tracked armored vehicles that provide ballistic protection to their occupants.
- Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
- Weaponized aircraft, vessels, or vehicles of any kind.
- Battering rams, slugs, and breaching apparatuses that are explosive in nature. This does not include a handheld, one-person ram.
- Firearms and ammunition of .50 caliber or greater, excluding standard-issue shotguns and standard-issue shotgun ammunition.
- Specialized firearms and ammunition of less than .50 caliber, including firearms and accessories identified as assault weapons in Penal Code § 30510 and Penal Code § 30515, with the exception of standard-issue weapons.
- Any firearm or firearm accessory that is designed to launch explosive projectiles.
- Noise-flash diversionary devices and explosive breaching tools.
- Munitions containing tear gas or OC, excluding standard, service-issued handheld pepper spray.
- TASER® Shockwave, microwave weapons, water cannons, and long-range acoustic devices (LRADs).
- Kinetic energy weapons and munitions.
- Any other equipment as determined by a governing body or a state agency to require additional oversight.

## City of Sunnyvale Department of Public Safety

### Department Policies

#### *Military Equipment*

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##### **705.2 POLICY**

It is the policy of the City of Sunnyvale Department of Public Safety that members of this department comply with the provisions of Government Code § 7071 with respect to military equipment.

##### **705.3 MILITARY EQUIPMENT COORDINATOR**

The Chief should designate a member of this department to act as the military equipment coordinator. The responsibilities of the military equipment coordinator include but are not limited to:

- (a) Acting as liaison to the governing body for matters related to the requirements of this policy.
- (b) Identifying department equipment that qualifies as military equipment in the current possession of the Department, or the equipment the Department intends to acquire that requires approval by the governing body.
- (c) Conducting an inventory of all military equipment at least annually.
- (d) Collaborating with any allied agency that may use military equipment within the jurisdiction of City of Sunnyvale Department of Public Safety (Government Code § 7071).
- (e) Preparing for, scheduling, and coordinating the annual community engagement meeting to include:
  - 1. Publicizing the details of the meeting.
  - 2. Preparing for public questions regarding the department's funding, acquisition, and use of equipment.
- (f) Preparing the annual military equipment report for submission to the Chief and ensuring that the report is made available on the department website (Government Code § 7072).
- (g) Establishing the procedure for a person to register a complaint or concern, or how that person may submit a question about the use of a type of military equipment, and how the Department will respond in a timely manner.

##### **705.4 MILITARY EQUIPMENT INVENTORY**

The following constitutes a list of qualifying equipment for the Department:

Sunnyvale DPS AB 481 Military Equipment List (2022)

##### **705.5 APPROVAL**

The Chief or the authorized designee shall obtain approval from the governing body by way of an ordinance adopting the military equipment policy. As part of the approval process, the Chief or the authorized designee shall ensure the proposed military equipment policy is submitted to the governing body and is available on the department website at least 30 days prior to any public hearing concerning the military equipment at issue (Government Code § 7071). The military

**City of Sunnyvale Department of Public Safety**

## Department Policies

***Military Equipment***

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equipment policy must be approved by the governing body prior to engaging in any of the following (Government Code § 7071):

- (a) Requesting military equipment made available pursuant to 10 USC § 2576a.
- (b) Seeking funds for military equipment, including but not limited to applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.
- (c) Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.
- (d) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the jurisdiction of this department.
- (e) Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body.
- (f) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of military equipment.
- (g) Acquiring military equipment through any means not provided above.
- (h) Using military equipment and/or collaborating with another law enforcement agency in the deployment or use of their military equipment not authorized by this policy which may be justified in the event of exigent circumstances. The Chief will provide justification to the governing body within 30 days after the incident.
- (i) Using military equipment and/or collaborating with another law enforcement agency in the deployment or use of additional quantities of similar authorized military equipment for pre-planned events. The Chief will provide justification to the governing body within 30 days after the deployment.

**705.6 COORDINATION WITH OTHER JURISDICTIONS**

Military equipment should not be used by any other law enforcement agency or member in this jurisdiction unless the military equipment is approved for use in accordance with this policy.

**705.7 MAINTENANCE OF MILITARY USE SUPPLY LEVELS**

When stocks of military equipment have reached significantly low levels or have been exhausted, the Department may order up to 30% of stock in a calendar year without city council approval to maintain essential availability for the Department's needs.

**705.8 ANNUAL REPORT**

Upon approval of a military equipment policy, the Chief or the authorized designee should submit a military equipment report to the governing body for each type of military equipment approved within one year of approval, and annually thereafter for as long as the military equipment is available for use (Government Code § 7072).

## City of Sunnyvale Department of Public Safety

### Department Policies

#### *Military Equipment*

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The Chief or the authorized designee should also make each annual military equipment report publicly available on the department website for as long as the military equipment is available for use. The report shall include all information required by Government Code § 7072 for the preceding calendar year for each type of military equipment in department inventory.

#### **705.9 COMMUNITY ENGAGEMENT**

Within 30 days of submitting and publicly releasing the annual report, the Department shall hold at least one well-publicized and conveniently located community engagement meeting, at which the Department should discuss the report and respond to public questions regarding the funding, acquisition, or use of military equipment.

Department Policies

## Attachments



Attachment

Department Policies

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## **AB 481 Military Equipment List.pdf**



## **SUNNYVALE DPS – AB 481**

### **Armored Personnel Vehicle ARV**

#### **1. Project Background and Description/Expected Lifespan**

The Sunnyvale Department of Public Safety (SDPS) Armored Rescue Vehicle (ARV) is an armored vehicle that is used for special operations that pose a high safety risk to officers or the public. The vehicle provides ballistic protection for the officers during dangerous law enforcement operations. The vehicle is also used to assist with the rescue and protection of civilians in harm's way during terrorist threats, hostage incidents, active shooter events, or other life-threatening situations.

The vehicle is designed to provide protection from a variety of small arms fire. The vehicle was built on the 2007 Ford F-550 Super Duty truck frame.

DPS believes that City Council can make the finding that the military equipment policy is intended to safeguard the public's welfare, safety, civil rights and civil liberties. DPS generally uses this type of equipment to avoid more lethal options, when available. The Policy provides that users of the equipment will be authorized and highly trained before using the equipment. It also ensures that the City Council will receive an annual report on all uses, and that also gives the public an opportunity to weigh in at a well-publicized community meeting. Lastly, DPS is prepared to receive complaints from members of the public on any violations of the policy by providing a direct link to the Office of Internal Affairs.

The vehicle has an expected lifespan of approximately 20 years.

#### **2. Purposes and Use**

To be used in response to critical incidents to enhance officer and community safety and assist in resolving critical incidents. The use of the ARV shall only be authorized by a supervisor. Sunnyvale DPS personnel are trained on the use of the ARV to help protect officers and civilians during a life-threatening emergency.

#### **3. Fiscal Impact**

The Sunnyvale ARV was purchased in 2006 using grant funding. The vehicle costs approximately \$292,000.

The City of Sunnyvale currently pays for routine maintenance and repairs made to the vehicle. The average annual cost to the City of Sunnyvale to maintain and repair the vehicle is \$4,000.

#### **4. Rules**

The Sunnyvale ARV is currently assigned to the Bureau of Police Services and is housed at Sunnyvale DPS headquarters. The vehicle is operated by trained Sunnyvale DPS personnel. The vehicle is equipped with emergency lights and sirens and is governed by all the normal rules of the roadway.

The Sunnyvale ARV is available to respond to any large-scale event in Sunnyvale or the greater Bay Area. The vehicle can be requested by any on-scene Incident Commander (supervisor) to help manage an event.

The following Sunnyvale DPS Lexipol Policies govern the use of the ARV:

##### **SUNNYVALE DPS LEXIPOL POLICY 308.3 EMERGENCY MODE**

Department emergency vehicles may be operated in emergency mode, as provided by 21055 CVC: In response to an emergency call, in pursuit of a suspected violator of the law, as directed by other DPS policy, or as directed by a supervisor.

Officers shall make assessments and inquiries regarding assignments before determining the need for emergency mode response.

Emergency mode drivers shall not overtake and pass other emergency mode vehicles unless there are two traffic lanes dedicated for vehicles in the direction of travel, and then only by passing to the left.

A police vehicle driven to a fire emergency should not be driven at a speed greater than that which is safe.

Emergency vehicle drivers shall drive with due regard for the safety of all persons and property (21056 & 21807 VC).

##### **SUNNYVALE DPS LEXIPOL POLICY 308.5 RESPONSIBILITIES OF RESPONDING OFFICERS**

Officers shall exercise sound judgment and care with due regard for life and property when responding to an emergency call. Officers shall reduce speed at all street intersections to such a degree that they shall have complete control of the vehicle.

The decision to continue a Code-3 response is at the discretion of the officer. If, in the officer's judgment, the roadway conditions or traffic congestion does not permit such a response without unreasonable risk, the officer may elect to respond to the call without the use of red

lights and siren at the legal speed limit. In such an event, the officer should immediately notify Dispatch. An officer shall also discontinue the Code-3 response when directed by a supervisor.

## **5. Training**

The Sunnyvale ARV is operated by Sunnyvale DPS personnel that have completed a 4-hour training course on the vehicle.

## **6. Compliance**

The Sunnyvale DPS SWAT Team Captain shall ensure all personnel authorized to operate the ARV will be properly trained and certified. The training will fall in line with our legal standards, department policies, and manufacturer's recommendations.

## **7. Complaints or Concerns**

Our department procedures regarding complaints are dictated in the Internal Affairs Investigations Standard Operating Procedures Manual:

The primary function of the Sunnyvale Department of Public Safety (SDPS) is to provide police, fire and emergency medical services (EMS) services to those who live, work and play in Sunnyvale. SDPS enjoys a high level of trust and satisfaction from our community. Continuously striving to maintain our community's trust and satisfaction is paramount to the provision of effective public safety services. As such, it is imperative that we maintain high ethical standards as professional Public Safety Department members, which in turn will help us provide the high-quality services our community members expect and deserve.

One of the most important ways to ensure we are developing and maintaining professional standards is to make certain our internal affairs (IA) policies and procedures that guide how we receive and investigate complaints against our Department's members are thorough, fair and objective to the complainants and Department personnel involved.

Our Lexipol Policy Manual outlines our required standards of conduct for Department members and the basic requirements for addressing complaints. The purpose of this Internal Affairs Investigations Standard Operating Procedures Manual (SOP or Manual) is to provide a more detailed guide designed to assist SDPS personnel and other Sunnyvale officials responsible for receiving, investigating and adjudicating complaints.

This Internal Affairs SOP is customized and designed to define our Department's official policies and procedures for receiving and investigating complaints. It serves as a guide for all who play a role in handling complaints brought against members of the SDPS, both sworn and non-sworn.

Adhering to the procedures and protocols outlined in this manual will help ensure that disciplinary measures taken to address misconduct are consistent and fair.

For more information on public safety accountability, please refer to our Public Safety Accountability page at:

<https://sunnyvale.ca.gov/government/safety/accountability.htm>



## **SUNNYVALE DPS – AB 481**

### **Energetic Breaching Program**

#### **1. Project Background and Description/Expected Lifespan**

The primary use of energetic breaching program is used by the Sunnyvale DPS SWAT team to provide an immediate, efficient, an unexpected strategic entry during an emergency operation. This calculated and surprise entry is intended to catch the suspect(s) off guard, permit swift ingress, and allow SWAT personnel to quickly locate and assess potential threats concealed in enclosed structures. Effective breaching techniques allows Sunnyvale SWAT personnel immediate entry with minimal risk to themselves, the victims and the suspects.

Energetic breaching is a non-lethal force option. Sunnyvale SWAT personnel assigned as breachers are tasked with the objective to affect an entry shall consider the safety of innocent persons inside the stronghold, the safety of the suspect, and the safety of the tactical officers conducting the operation.

Energetic Breaching is used when there are no other reasonable alternatives to rapidly breach a location. Energetic Breaching is only used when time is of the essence in order to preserve life. Without these items, peace officers may not be able gain access to a location in a safe and timely manner to engage in necessary police operations.

DPS believes that City Council can make the finding that the military equipment policy is intended to safeguard the public's welfare, safety, civil rights and civil liberties. DPS generally uses this type of equipment to avoid more lethal options, when available. The Policy provides that users of the equipment will be authorized and highly trained before using the equipment. It also ensures that the City Council will receive an annual report on all uses, and that also gives the public an opportunity to weigh in at a well-publicized community meeting. Lastly, DPS is prepared to receive complaints from members of the public on any violations of the policy by providing a direct link to the Office of Internal Affairs.

The energetic breaching equipment utilized by the Sunnyvale Department of Public Safety have an expected lifespan of approximately 5 years.

#### **2. Purposes and Use**

To safely make entry into a stronghold during an emergency situation. Energetic breaching will calculate the minimum amount of material needed to gain entry into a designated target without harming occupants inside the stronghold or the officers involved in the entry.

### 3. Fiscal Impact

The initial energetic breaching program was initiated several years ago. The startup costs and equipment have changed over the years. The initial costs for obtaining the equipment are based on 2020 prices:

|  |                      |                |                 |
|--|----------------------|----------------|-----------------|
| Detonation Cord:   | Price: \$1.00 a foot | Qty: 2000 feet | Total: \$ 2,000 |
| Detonators:  | Price: \$20.00       | Qty: 319       | Total: \$ 6,380 |
| Training of Personnel: Approximately \$4,000 to train two officers |                      |                |                 |
| Total approximate costs for the program: \$ 12,380                 |                      |                |                 |

The estimated annual costs to maintain, replenish, and service the energetic breaching program equipment is approximately:

|  |                      |                |                 |
|--|----------------------|----------------|-----------------|
| Detonation Cord:   | Price: \$1.00 a foot | Qty: 1000 feet | Total: \$ 1,000 |
| Detonators:  | Price: \$20.00       | Qty: 100       | Total: \$ 2,000 |
| Training of Personnel: Approximately \$4,000 to train two officers |                      |                |                 |
| Total approximate annual costs for the program: \$ 7,000           |                      |                |                 |

ATF energetic purchase coupons are not needed because DPS is a government agency.

### 4. Rules

835a PC dictates that officers who use deadly force shall "... evaluate each situation in light of the particular circumstances of each case and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer."

The Sunnyvale DPS SWAT energetic breaching team will be composed of two energetic breachers. The team will have an energetic breaching team leader and a primary energetic breacher. In order to maintain proficiency and to ensure the minimum number of breachers are always available, two members of the SWAT team will be assigned as assistant breachers

An OSHA blaster's license is required for energetic breaching operations, both training and mission specific. A licensed blaster has to be present at all energetic breaching operations. It shall be the intent of the SDPS SWAT team to constantly have two personnel trained and licensed with an OSHA blaster's license.

A U.S. Department of Justice, ATF Energetic License or Limited Permit does not need to be applied for every year. As a government Law Enforcement agency, SDPS is exempt and does

not need to possess an ATF permit to purchase or use energetics for breaching operations. All energetic purchases, materials used during training and operations, all need to be recorded and records kept for ATF inspection. A running total of energetic materials stored at SDPS needs to be logged and available for ATF audit at all times.

The Sunnyvale Fire Marshall needs to approve storage containers, storage site and approve energetic material inventory.

The policy detailed above is based on the policies, procedures, and practices of police SWAT teams that continue to successfully utilize energetic breaching techniques in their operations. These police departments include the Los Angeles Sheriff's Office (SEB) Special Enforcement Bureau, the Santa Clara Police Department SWAT Team, the San Jose Police Department MERGE Unit, and the Monterey County Sheriff's Office SWAT Team.

### Storage

The U.S. DOJ Department of Alcohol, Tobacco, and Firearms regulate and license the purchase, storage, and use of energetic materials. Energetic breaching personnel will store energetics in accordance with ATF-Energetics Law and Regulations (ATF P 5400.7, Subpart K- Storage).

The energetics will be stored in ATF approved magazines, at a specific site designated by the Sunnyvale Fire Marshall. Energetic breaching personnel will maintain a magazine log to record amounts of energetic materials received and stored, amounts used in training and missions, along with running totals of each type of energetic material. The log will include specific dates and will be posted next to each storage magazine.

In the event of a magazine break in and theft of energetic material, an accurate inventory will be reported to the ATF within 24 hours by calling the Stolen Energetics Hotline at 888-283-2662 (after hours, weekends call 888-ATF-BOMB).

ATF approved Type 2 storage magazines will be the primary source of storage for the energetic material. An ATF type 3 magazine (day box) may be used for attended and temporary storage of energetic material for such activities as SWAT operations/callouts, and training.

ATF storage requirements can be found at the following link:

<https://www.atf.gov/energetics/energetic-storage-requirements>

ATF Inventory requirements for annual inspections can be found at the following link:

<https://www.atf.gov/energetics/energetic-storage-requirements-recordkeeping-storage-variances>



## 5. Training

Given the complex nature and variety of skills that must be mastered and maintained, the high level of performance required, and perishable nature of these skills, each energetic breacher must maintain a minimum standard of ten hours of energetic training every month to include:

1. Work with detonators and firing assemblies
2. Construction and detonation of breaching charges
3. Review of energetic composition theories and properties
4. Review of all related calculations and formulas needed for the development of breaching plans
5. Review of all processed objective data
6. Review and debrief of other unit operations and research information

There should also be at least ten additional hours every year devoted to full mission profile training. This should include all members of the SWAT team as required.

All energetic breachers will attend an accredited "Basic Explosive Breaching" course taught by the Los Angeles Sheriff's Office (LASD). The course consists of a minimum of 40 hours. The course of instruction must include all areas of energetic science, blast pressure, blasting regulations and compliance requirements, documentation and charge configurations as required of a contemporary energetic breaching program.

Prior to performing an operational breach of any kind, all energetic breachers will be required to participate in a minimum of 25 documented training "shots" with the unit and at least one training breach utilizing the entire SWAT team.

The energetic breaching unit will maintain a breaching log which documents every energetic breach, training or operational. The designated energetic breacher of each entry point shall be responsible for completing a breaching report in a timely manner whenever energetic breaching charges are used.

The energetic breaching team leader works directly with the other SWAT team leaders during critical incidents and training events. He/she is responsible for:

1. The readiness of energetic breaching equipment and personnel.
2. Maintaining all training records and operational documents.
3. Evaluating all tactical information and working with the SWAT team leader to develop, prepare, and execute the entry plan utilizing the energetic breaching team.

4. Maintaining data of operation methods and crisis site information for future reference and use.
5. Briefing command staff on the team's breaching capabilities
6. Continually evaluating the SWAT team's mission and assignments to ensure the energetic breaching team is in a constant state of readiness.

### ***Energetic Breach After-Action Report***

Following all tactical team operations and significant training events, a written after-action report shall be prepared by the energetic breaching team leader and submitted to the SWAT team leader.

The critique shall include:

- A description of crime scene information availability, accuracy, collection methods, and timing of dissemination.
- A description of the planning and preparation phase.
- A description of the execution of the operation.
- A description of the team's performance.
- Documentation of the objective layout and construction in writing, photographs, and video if possible.

This report should identify deficiencies and corrective actions as necessary for each phase and a recommendations section for actions needed to eliminate deficiencies in the future.

These reports shall be maintained indefinitely for future reference and historical data.

## **6. Compliance**

The Sunnyvale DPS SWAT Team Captain shall ensure all personnel authorized to conduct energetic breaching will be properly trained and certified. The training will fall in line with our legal standards, department policies, and manufacturer's recommendations.

## **7. Complaints or Concerns**

Our department procedures regarding complaints are dictated in the Internal Affairs Investigations Standard Operating Procedures Manual:

The primary function of the Sunnyvale Department of Public Safety (SDPS) is to provide police, fire and emergency medical services (EMS) services to those who live, work and play in Sunnyvale. SDPS enjoys a high level of trust and satisfaction from our community. Continuously

striving to maintain our community's trust and satisfaction is paramount to the provision of effective public safety services. As such, it is imperative that we maintain high ethical standards as professional Public Safety Department members, which in turn will help us provide the high-quality services our community members expect and deserve.

One of the most important ways to ensure we are developing and maintaining professional standards is to make certain our internal affairs (IA) policies and procedures that guide how we receive and investigate complaints against our Department's members are thorough, fair and objective to the complainants and Department personnel involved.

Our Lexipol Policy Manual outlines our required standards of conduct for Department members and the basic requirements for addressing complaints. The purpose of this Internal Affairs Investigations Standard Operating Procedures Manual (SOP or Manual) is to provide a more detailed guide designed to assist SDPS personnel and other Sunnyvale officials responsible for receiving, investigating and adjudicating complaints.

This Internal Affairs SOP is customized and designed to define our Department's official policies and procedures for receiving and investigating complaints. It serves as a guide for all who play a role in handling complaints brought against members of the SDPS, both sworn and non-sworn. Adhering to the procedures and protocols outlined in this manual will help ensure that disciplinary measures taken to address misconduct are consistent and fair.

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## SUNNYVALE DPS – AB 481

### Less-Lethal Launcher

#### 1. Project Background and Description/Expected Lifespan

The less-lethal launcher is a launching platform that uses a 37mm or 40mm rubber "baton" generally at distances around 10-20 yards. It is designed to be used on extremities such as arms or legs, similar to a handheld wooden baton, and is effective in suppressing events or incidents where the use of lethal force is not an appropriate response. Public Safety currently deploys the less-lethal launcher in patrol vehicles and reserves the more versatile 40mm launcher for SWAT operations.

The less-lethal launcher expands the department's capability to responding to situations where officers face non-lethal situations where subjects are not complying with orders/directions. The less-lethal launcher can potentially prevent a deadly force encounter.

DPS believes that City Council can make the finding that the military equipment policy is intended to safeguard the public's welfare, safety, civil rights and civil liberties. DPS generally uses this type of equipment to avoid more lethal options, when available. The Policy provides that users of the equipment will be authorized and highly trained before using the equipment. It also ensures that the City Council will receive an annual report on all uses, and that also gives the public an opportunity to weigh in at a well-publicized community meeting. Lastly, DPS is prepared to receive complaints from members of the public on any violations of the policy by providing a direct link to the Office of Internal Affairs.

The less-lethal launchers utilized by the Sunnyvale Department of Public Safety have an expected lifespan of approximately 5 years.

#### 2. Purposes and Use

The less-lethal launcher is used as a non-lethal option to offer law enforcement officers to deliver a less than lethal projectile to a subject in a potentially violent encounter. The less-lethal launcher system is a de-escalation tool used to avoid further injuries or lethal options on a subject.

#### 3. Fiscal Impact

The Sunnyvale Department of Public Safety currently has two models of the less-lethal launcher: the 37mm SAGE Deuce and the 40mm Penn Arms launcher.

SAGE Deuce 37mm Patrol Basic Launcher (Patrol Vehicles): Price: \$ 3,390 Qty: 6  
Total: \$ 20,340

SAGE Deuce 37mm launcher munitions: Price: \$ 3,980 Qty: 190

Penn Arms 40mm Launcher (SWAT) Price: \$ 2,348 Qty: 2 Total: \$ 4,696

Penn Arms 40mm launcher munitions: Price: \$1,466 Qty: 70

Total approximate initial costs for the less-lethal system: \$11,184

The replacement cost for this program is \$25,000.

The City of Sunnyvale currently pays for routine maintenance and repairs made to the less-lethal launchers. These costs vary depending on needs.

#### 4. Rules

835a PC dictates that officers who use deadly force shall "... evaluate each situation in light of the particular circumstances of each case and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer." Other available resources include de-escalation tools such as the SAGE launcher.

Other legal guidelines involve the use of kinetic energy projectiles and/or chemical agents such as 13652PC. It discusses when and when not to use kinetic energy projectiles and/or chemical agents during assemblies, protests, and/or demonstrations.

The following Sunnyvale DPS Lexipol Policies govern the deployment of less-lethal launchers:

SUNNYVALE DPS LEXIPOL POLICY 302.9 Kinetic Energy Projectile Guidelines:

This department is committed to reducing the potential for violent confrontations. Kinetic energy projectiles, when used properly, are less likely to result in death or serious physical injury and can be used in an attempt to de-escalate a potentially deadly situation.

SUNNYVALE DPS LEXIPOL POLICY 302.9.1 Deployment and Use:

Only department-approved kinetic energy munitions shall be carried and deployed. Approved munitions may be used to compel an individual to cease his/her actions when such munitions present a reasonable option.

Officers are not required or compelled to use approved munitions in lieu of other reasonable tactics if the involved officer determines that deployment of these munitions cannot be done safely. The safety of hostages, innocent persons and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior.

- a. Circumstances appropriate for deployment include, but are not limited to, situations in which:
- b. The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved munitions.
- c. The suspect has made credible threats to harm him/herself or others.
- d. The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers.

There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders.

#### SUNNYVALE DPS LEXIPOL POLICY 302.9.2 Deployment Considerations:

Before discharging projectiles, the officer should consider such factors as:

- a. Distance and angle to target.
- b. Type of munitions employed.
- c. Type and thickness of subject's clothing.
- d. The subject's proximity to others.
- e. The location of the subject.
- f. Whether the subject's actions dictate the need for an immediate response and the use of control devices appears appropriate.

A verbal warning of the intended use of the device should precede its application, unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances. The purpose of the warning is to give the individual a reasonable opportunity to voluntarily comply and to warn other officers and individuals that the device is being deployed.

Officers should keep in mind the manufacturer's recommendations and their training regarding effective distances and target areas. However, officers are not restricted solely to use according

to manufacturer recommendations. Each situation must be evaluated on the totality of circumstances at the time of deployment.

The need to immediately incapacitate the subject must be weighed against the risk of causing serious injury or death. The head and neck should not be intentionally targeted, except when the officer reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the officer or others.

## **5. Training**

Officers receive training on the proper use of the less-lethal launching systems by current manufacturer certified instructors. The training includes when the less-lethal launchers can be deployed, targeting areas, and reporting requirements.

Our procedural guidelines for training are dictated in the Sunnyvale DPS policy Manual:

### **SUNNYVALE DPS LEXIPOL POLICY 302.10 Training for Control Devices:**

The Police Training Coordinator shall ensure that all personnel who are authorized to carry a control device have been properly trained and certified to carry the specific control device and are retrained or recertified as necessary.

Proficiency training shall be monitored and documented by a certified, control-device weapons or tactics instructor.

All training and proficiency for control devices will be documented in the officer's training file.

Officers who fail to demonstrate proficiency with the control device or knowledge of this agency's Use of Force Policy will be provided remedial training. If an officer cannot demonstrate proficiency with a control device or knowledge of this agency's Use of Force Policy after remedial training, the officer will be restricted from carrying the control device and may be subject to discipline.

### **SUNNYVALE DPS LEXIPOL POLICY 302.11 Reporting Use of Control Devices and Techniques:**

Any application of a control device or technique listed in this policy shall be documented in the related incident report and reported pursuant to the Use of Force Policy.

## **6. Compliance**

Per Lexipol policy 302.10 (Training for Control Devices), the Training Coordinator shall ensure all personnel authorized to carry any control devices will be properly trained and certified. The

training will fall in line with our legal standards, department policies, and manufacturer's recommendations.

## **7. Complaints or Concerns**

Our department procedures regarding complaints are dictated in the Internal Affairs Investigations Standard Operating Procedures Manual:

The primary function of the Sunnyvale Department of Public Safety (SDPS) is to provide police, fire and emergency medical services (EMS) services to those who live, work and play in Sunnyvale. SDPS enjoys a high level of trust and satisfaction from our community. Continuously striving to maintain our community's trust and satisfaction is paramount to the provision of effective public safety services. As such, it is imperative that we maintain high ethical standards as professional Public Safety Department members, which in turn will help us provide the high-quality services our community members expect and deserve.

One of the most important ways to ensure we are developing and maintaining professional standards is to make certain our internal affairs (IA) policies and procedures that guide how we receive and investigate complaints against our Department's members are thorough, fair and objective to the complainants and Department personnel involved.

Our Lexipol Policy Manual outlines our required standards of conduct for Department members and the basic requirements for addressing complaints. The purpose of this Internal Affairs Investigations Standard Operating Procedures Manual (SOP or Manual) is to provide a more detailed guide designed to assist SDPS personnel and other Sunnyvale officials responsible for receiving, investigating and adjudicating complaints.

This Internal Affairs SOP is customized and designed to define our Department's official policies and procedures for receiving and investigating complaints. It serves as a guide for all who play a role in handling complaints brought against members of the SDPS, both sworn and non-sworn.



Adhering to the procedures and protocols outlined in this manual will help ensure that disciplinary measures taken to address misconduct are consistent and fair.

For more information on public safety accountability, please refer to our Public Safety Accountability page at:

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## **SUNNYVALE DPS – AB 481**

### **Mobile Emergency Operations Center (MEOC)**

#### **1. Project Background and Description/Expected Lifespan**

In 2009, the Sunnyvale Department of Public Safety (DPS) received grant funding to design and procure a mobile platform to deliver interoperable command/control, communication and data management assets to an operational scene to support all-risk operations. This Mobile Emergency Operations Center (MEOC) is available for deployment to numerous jurisdictions within the Bay Area region. The vehicle helps strengthen information sharing, collaboration, and command and control, between numerous agencies during large scale emergencies. Additionally, the design of the vehicle complements mobile command centers and tactical assets being used by the Cities of Palo Alto and Santa Clara.

The MEOC is an unarmored vehicle similar to a large commercial recreational vehicle. The MEOC also serves as an emergency dispatch center in the event of a catastrophic failure of the dispatch center housed within the DPS building.

This equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety. The MEOC utilized by the Sunnyvale Department of Public Safety has no offensive capabilities.

DPS believes that City Council can make the finding that the military equipment policy is intended to safeguard the public's welfare, safety, civil rights and civil liberties. DPS generally uses this type of equipment to avoid more lethal options, when available. The Policy provides that users of the equipment will be authorized and highly trained before using the equipment. It also ensures that the City Council will receive an annual report on all uses, and that also gives the public an opportunity to weigh in at a well-publicized community meeting. Lastly, DPS is prepared to receive complaints from members of the public on any violations of the policy by providing a direct link to the Office of Internal Affairs.

The Sunnyvale DPS MEOC has an expected lifespan of approximately 20 years.

#### **2. Purposes and Use**

The Sunnyvale Department of Public Safety (DPS) is a unique agency in the Bay Area. Sunnyvale DPS is the only fully integrated Police, Fire, and EMS provider in the region. The MEOC provides

seamless interoperable communications, data management, and command/control abilities during an emergency.

### **3. Fiscal Impact**

The initial cost of the MEOC in 2012 was \$400,000 dollars which was paid through grant funding. The City of Sunnyvale currently pays for routine maintenance and repairs made to the vehicle. The average annual cost to the City of Sunnyvale to maintain and repair the vehicle is \$5,200.

### **4. Rules**

The MEOC is currently assigned to the Bureau of Fire Services and is housed at Sunnyvale Fire Station 5. The vehicle requires a class C driver's license with a firefighter endorsement to operate. The vehicle is equipped with emergency lights and sirens and is governed by all the normal rules of the roadway.

The following Sunnyvale DPS Lexipol Policies govern the use of the MEOC:

#### **SUNNYVALE DPS LEXIPOL POLICY 308.3 EMERGENCY MODE**

Department emergency vehicles may be operated in emergency mode, as provided by 21055 CVC: In response to an emergency call, in pursuit of a suspected violator of the law, as directed by other DPS policy, or as directed by a supervisor.

Officers shall make assessments and inquiries regarding assignments before determining the need for emergency mode response.

Emergency mode drivers shall not overtake and pass other emergency mode vehicles unless there are two traffic lanes dedicated for vehicles in the direction of travel, and then only by passing to the left.

A police vehicle driven to a fire emergency should not be driven at a speed greater than that which is safe.

Emergency vehicle drivers shall drive with due regard for the safety of all persons and property (21056 & 21807 VC).

#### **SUNNYVALE DPS LEXIPOL POLICY 308.5 RESPONSIBILITIES OF RESPONDING OFFICERS**

Officers shall exercise sound judgment and care with due regard for life and property when responding to an emergency call. Officers shall reduce speed at all street intersections to such a degree that they shall have complete control of the vehicle.

The decision to continue a Code-3 response is at the discretion of the officer. If, in the officer's judgment, the roadway conditions or traffic congestion does not permit such a response without unreasonable risk, the officer may elect to respond to the call without the use of red lights and siren at the legal speed limit. In such an event, the officer should immediately notify Dispatch. An officer shall also discontinue the Code-3 response when directed by a supervisor.

## **5. Training**

The MEOC is operated by Sunnyvale DPS personnel that have completed a 4-hour training course on the vehicle.

Our procedural guidelines for training are dictated in the Sunnyvale DPS Policy Manual:

### **SUNNYVALE DPS LEXIPOL POLICY 501.2 POLICY**

It is the policy of the City of Sunnyvale Department of Public Safety that all members who operate firefighting equipment, including tiller operators, shall successfully complete driver training that meets or exceeds the requirements of the State Fire Marshal Fire Apparatus Driver/Operator 1A course (Vehicle Code § 12804.11).

All Bureau of Fire Services supervisors shall plan, organize and coordinate training for members of their command. The main intent shall be such that personnel become thoroughly familiar with and be able to effectively operate apparatus and equipment to which they are assigned.

The evaluation of individual and company training effectiveness shall be based on actual performance demonstration. This may be observed at routine drills, calls for service, and the ability to successfully complete Department of Public Safety Certifications. Officers, regardless of tenure, who are deficient in performing these standards will be required to demonstrate proficiency as a part of a mandatory improvement plan.

The Fire Training Program for fire-based personnel has been formulated to provide direction for training PSO's assigned to the Bureau of Fire Services for the first time and for those returning after a long absence.

### **SUNNYVALE DPS LEXIPOL POLICY 501.3 PROCEDURES**

All members who operate firefighting equipment shall have a valid class A, B or C California Driver License (CDL), with a firefighter endorsement. To qualify for a firefighter endorsement, the member shall complete the following (Vehicle Code § 12804.11):

Provide the California Department of Motor Vehicles (DMV) with proof of current employment as a firefighter by providing a letter from the Director of Public Safety or the authorized designee.

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All members who operate firefighting equipment shall have a valid class A, B or C California Driver License (CDL), with a firefighter endorsement. To qualify for a firefighter endorsement, the member shall complete the following (Vehicle Code § 12804.11):

Provide the California Department of Motor Vehicles (DMV) with proof of current employment as a firefighter by providing a letter from the Director of Public Safety or the authorized designee.

Provide the DMV with proof of successful completion of either the Fire Apparatus Driver/Operator 1A course taught by an instructor registered with the Office of the State Fire Marshal or fire department driver training that meets all of the requirements in Vehicle Code §

12804.11. This proof should be in the form of a letter from the Director of Public Safety or the authorized designee.

Pass the appropriate written firefighter examination(s) that have been developed by the DMV with the cooperation of the Office of the State Fire Marshal.

Submit a report of medical examination on a form approved by the DMV.

A member is not required to obtain and maintain a firefighter endorsement if the member is operating the firefighting equipment for training purposes, during a non-emergency or while under the direct supervision of a member who is properly licensed to operate the equipment and is authorized by the Department to provide training (Vehicle Code § 12804.11).

## **6. Compliance**

### **SUNNYVALE DPS LEXIPOL POLICY 501.4 TRAINING LIEUTENANT RESPONSIBILITIES**

It shall be the responsibility of the Fire Training Lieutenant to ensure that any member required to drive fire apparatus as a part of his/her normal duties has received the mandated training. The Fire Training Lieutenant shall coordinate with the department member appointed to monitor driver license status to ensure members have valid driver licenses with the proper endorsements, in accordance with the Driver License Requirements Policy.

The training will fall in line with our legal standards, department policies, and manufacturer's recommendations

## **7. Complaints or Concerns**

Our department procedures regarding complaints are dictated in the Internal Affairs Investigations Standard Operating Procedures Manual:

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One of the most important ways to ensure we are developing and maintaining professional standards is to make certain our internal affairs (IA) policies and procedures that guide how we receive and investigate complaints against our Department's members are thorough, fair and objective to the complainants and Department personnel involved.

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## SUNNYVALE DPS – AB 481 MP7 Specialized Firearms

### 1. Project Background and Description/Expected Lifespan

The Heckler & Koch MP7 rifles are smaller more compact firearms that can fit in confined spaces. Officers assigned to the Sunnyvale Traffic Unit ride motorcycles during their daily shifts. These officers are in full uniform and shall carry all safety equipment on their motorcycles. Due to the maneuverability and speed of the Sunnyvale DPS Traffic Officers are dispatched to in-progress calls for service where the subject could be armed. During these dangerous events, Traffic Unit Officers need to have access to a rifle should the event require that level of firearm (ie. active shooters).

The MP7 weapon system is mounted inside the side compartment or to the side of their motorcycle. These officers cannot carry an AR15 rifle on their person while driving and cannot conceal an AR15 rifle anywhere on a motorcycle, thereby compromising their safety and duties.

The primary use of a MP7 provides an officer assigned to a motorcycle with the ability to engage a threat from a safer distance if needed. The weapon system can also be used with two hands for better accuracy and is collapsible to maintain concealment while operating a motorcycle.

DPS believes that City Council can make the finding that the military equipment policy is intended to safeguard the public's welfare, safety, civil rights and civil liberties. DPS generally uses this type of equipment to avoid more lethal options, when available. The Policy provides that users of the equipment will be authorized and highly trained before using the equipment. It also ensures that the City Council will receive an annual report on all uses, and that also gives the public an opportunity to weigh in at a well-publicized community meeting. Lastly, DPS is prepared to receive complaints from members of the public on any violations of the policy by providing a direct link to the Office of Internal Affairs.

The Hecker & Kock MP7 have an expected lifespan of approximately 10 years.



## **2. Purposes and Use**

The purpose and use of short barreled, collapsible weapon systems such as the Heckler & Koch MP7 provide officers with the necessary concealment and protection needed during undercover and traffic enforcement assignments. All officers utilizing these systems are specifically trained on proper use, functionality and maintenance.

## **3. Fiscal Impact**

The department firearms program was initiated several years ago. The initial costs for obtaining the equipment are based on 2020 prices:

|   |                |           |                |
|---|----------------|-----------|----------------|
| Heckler & Koch MP7:                                 | Price: \$1,500 | Qty: 5    | Total: \$7,500 |
| Ammunition (4.6 cal.)                               |                | Qty: 1500 | Total: \$1,200 |
| Total approximate costs for the program: \$ \$8,700 |                |           |                |

## **4. Rules**

835a PC dictates that officers who use deadly force shall "... evaluate each situation in light of the particular circumstances of each case and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer."

While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this department is expected to use these guidelines to make such decisions in a professional, impartial, and reasonable manner (Government Code 7286).

The following Sunnyvale DPS Lexipol Policies govern the deployment of firearms:

### **SUNNYVALE DPS LEXIPOL POLICY 300.1.1 DEFINITIONS**

Deadly force - Any use of force that creates a substantial risk of causing death or serious bodily injury, including but not limited to the discharge of a firearm (Penal Code § 835a).

### **SUNNYVALE DPS LEXIPOL POLICY 300.4 DEADLY FORCE APPLICATIONS**

Where feasible, the officer shall, prior to the use of deadly force, make reasonable efforts to identify him/herself as a peace officer and to warn that deadly force may be used,

unless the officer has objectively reasonable grounds to believe the person is aware of those facts (Penal Code 835a).

If an objectively reasonable officer would consider it safe and feasible to do so under the totality of the circumstances, officers shall evaluate and use other reasonably available resources and techniques when determining whether to use deadly force. To the extent that it is reasonably practical, officers should consider their surroundings and any potential risks to bystanders prior to discharging a firearm (Government Code § 7286(b)).

The use of deadly force is only justified when the officer reasonably believes it is necessary in the following circumstances (Penal Code § 835a):

- a. An officer may use deadly force to protect him/herself or others from what he/she reasonably believes is an imminent threat of death or serious bodily injury to the officer or another person.
- b. An officer may use deadly force to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.

Officers shall not use deadly force against a person based on the danger that person poses to him/herself, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or to another person (Penal Code § 835a).

An "imminent" threat of death or serious bodily injury exists when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. An officer's subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention (Penal Code § 835a).

#### SUNNYVALE DPS LEXIPOL POLICY 305.3 AUTHORIZED FIREARMS, AMMUNITION AND OTHER WEAPONS

Officers shall only use firearms that are issued or approved by the Department and have been thoroughly inspected by the Armorer. Except in an emergency or as directed by a supervisor, no firearm shall be carried by an officer who has not qualified with that firearm at an authorized department range.

All other weapons not provided by the Department, including, but not limited to, edged weapons, chemical or electronic weapons, impact weapons or any weapon prohibited or restricted by law or that is not covered elsewhere by department policy, may not be carried by members in the performance of their official duties without the express written authorization of the Chief or designee. This exclusion does not apply to the carrying of a single folding pocketknife that is not otherwise prohibited by law.

Officers encountering a situation that warrants the use of firearm shall make a verbal report to his/her supervisor as soon circumstances permit.

#### SUNNYVALE DPS LEXIPOL POLICY 305.7 FIREARM DISCHARGE

Except during training or recreational use, any officer who discharges a firearm intentionally or unintentionally, on- or off-duty, shall make a verbal report to his/her supervisor as soon as circumstances permit. If the discharge results in injury or death to another person, additional statements and reports shall be made in accordance with the Officer-Involved Shootings and Deaths Policy. If a firearm was discharged as a use of force, the involved officer shall adhere to the additional reporting requirements set forth in the Use of Force/Response to Resistance Policy.

In all other cases, written reports shall be made as follows:

- a. If on-duty at the time of the incident, the officer shall file a written report with his/her supervisor or provide a recorded statement to investigators prior to the end of shift, unless otherwise directed.
- b. If off-duty at the time of the incident, the officer shall submit a written memo or provide a recorded statement no later than the end of the next regularly scheduled shift, unless otherwise directed by a supervisor.

A supervisor shall respond to all Use of Force incidents. A supervisor shall ensure that all notifications and reports are completed as required by the Use of Force Policy.

#### SUNNYVALE DPS LEXIPOL POLICY 300.7 SUPERVISOR RESPONSIBILITY

A supervisor shall respond to any reported use of force. The responding supervisor is expected to (Government Code § 7286(b)):

- a. Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- b. Ensure that any injured parties are examined and treated.
- c. When possible, separately obtain a recorded interview with the subject upon whom force was applied. If this interview is conducted without the person having voluntarily waived his/her Miranda rights, the following shall apply:
  1. The content of the interview should not be summarized or included in any related criminal charges.
  2. The fact that a recorded interview was conducted should be documented in a property or other report.
  3. The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.

- d. Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.
- e. Identify any witnesses not already included in related reports.
- f. Review and approve all related reports.
- g. Determine if there is any indication that the subject may pursue civil litigation.
  - 1. If there is an indication of potential civil litigation, the supervisor should complete and route a notification of a potential claim through the appropriate channels.
- h. In the event physical force is used, but no Offense Report is required, a memorandum to the Police Operations Team Captain is to be prepared. The following information is to be included:
  - 1. Type of force;
  - 2. Reason for the force;
  - 3. Extent of injury to the suspect and action taken to provide aid;
  - 4. Pertinent information deemed important by the officer.
- i. Evaluate the circumstances surrounding the incident and initiate an administrative investigation if there is a question of policy non-compliance or if for any reason further investigation may be appropriate.

In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

#### SUNNYVALE DPS LEXIPOL POLICY 300.6 MEDICAL CONSIDERATION

Once it is reasonably safe to do so, properly trained officers should promptly provide or procure medical assistance for any person injured or claiming to have been injured in a use of force incident (Government Code § 7286(b)).

#### SUNNYVALE DPS LEXIPOL POLICY 305.3 AUTHORIZED FIREARMS, AMMUNITION AND OTHER WEAPONS

Officers shall only use firearms that are issued or approved by the Department and have been thoroughly inspected by the Armorer. Except in an emergency or as directed by a supervisor, no firearm shall be carried by an officer who has not qualified with that firearm at an authorized department range.

All other weapons not provided by the Department, including, but not limited to, edged weapons, chemical or electronic weapons, impact weapons or any weapon prohibited or restricted by law or that is not covered elsewhere by department policy, may not be carried by members in the performance of their official duties without the express written authorization of the Chief or designee. This exclusion does not apply to the carrying of a single folding pocketknife that is not otherwise prohibited by law.

## **5. Training**

Only Officers who have completed the SDPS MP5 and MP7 firearms training and meet the required qualification standards will be authorized to carry the weapon systems.

### **SUNNYVALE DPS LEXIPOL POLICY 305.6 FIREARMS TRAINING AND QUALIFICATIONS**

All officers who carry a firearm while on-duty are required to successfully complete training annually with their duty firearms. In addition to annual training, all officers will qualify at least annually with their duty firearms. Officers will qualify with off-duty and secondary firearms at least once a year. Training and qualifications must be on an approved range course.

At least annually, all officers carrying a firearm should receive practical training designed to simulate field situations including low-light shooting.

## **6. Compliance**

### **SUNNYVALE DPS LEXIPOL POLICY 305.3 AUTHORIZED FIREARMS, AMMUNITION AND OTHER WEAPONS**

Officers shall only use firearms that are issued or approved by the Department and have been thoroughly inspected by the Armorer. Except in an emergency or as directed by a supervisor, no firearm shall be carried by an officer who has not qualified with that firearm at an authorized department range.

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## SUNNYVALE DPS LEXIPOL POLICY 305.6 FIREARMS TRAINING AND QUALIFICATIONS

All officers who carry a firearm while on-duty are required to successfully complete training annually with their duty firearms. In addition to annual training, all officers will qualify at least annually with their duty firearms. Officers will qualify with off-duty and secondary firearms at least once a year. Training and qualifications must be on an approved range course.

At least annually, all officers carrying a firearm should receive practical training designed to simulate field situations including low-light shooting.

### SUNNYVALE DPS LEXIPOL POLICY 305.6.1 NON-CERTIFICATION OR NON-QUALIFICATION

Those who fail to meet minimum standards or qualify on their first shooting attempt shall be provided remedial training and will be subject to the following requirements:

- a. Additional range assignments may be scheduled to assist the officer in demonstrating consistent firearm proficiency.
- b. Officers shall be given credit for a range training or qualification when obtaining a qualifying score or meeting standards after remedial training.
- c. No range credit will be given for the following:
  1. Unauthorized range make-up
  2. Failure to meet minimum standards or qualify after remedial training.

Officers who repeatedly fail to meet minimum standards will be removed from field assignment and may be subject to disciplinary action.

The training will fall in line with our legal standards, department policies, and manufacturer's recommendations.

## **7. Complaints or Concerns**

Our department procedures regarding complaints are dictated in the Internal Affairs Investigations Standard Operating Procedures Manual:

The primary function of the Sunnyvale Department of Public Safety (SDPS) is to provide police, fire and emergency medical services (EMS) services to those who live, work and play in Sunnyvale. SDPS enjoys a high level of trust and satisfaction from our community. Continuously striving to maintain our community's trust and satisfaction is paramount to the provision of effective public safety services. As such, it is imperative that we maintain high ethical standards as professional Public Safety Department members, which in turn will help us provide the high-quality services our community members expect and deserve.

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This Internal Affairs SOP is customized and designed to define our Department's official policies and procedures for receiving and investigating complaints. It serves as a guide for all who play a role in handling complaints brought against members of the SDPS, both sworn and non-sworn. Adhering to the procedures and protocols outlined in this manual will help ensure that disciplinary measures taken to address misconduct are consistent and fair.

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## SUNNYVALE DPS – AB 481

### Noise Flash Diversionary Device (NFDD)

#### 1. Project Background and Description/Expected Lifespan

The Sunnyvale Department of Public Safety (SDPS) SWAT team has the ability to deploy a diversionary device known as a Noise Flash Diversionary Device (NFDD). A NFDD is a non-bursting, non-fragmenting, device that produces a loud sound and bright light. Only specially trained SWAT personnel are allowed to deploy a NFDD devices. These devices are used during high-risk SWAT operations where the subject poses a significant threat to officers or the public.

The NFDD is considered a non-lethal use of force option. These devices can often lead to a safer resolution and allow officers to take a subject into custody without force.

DPS believes that City Council can make the finding that the military equipment policy is intended to safeguard the public's welfare, safety, civil rights and civil liberties. DPS generally uses this type of equipment to avoid more lethal options, when available. The Policy provides that users of the equipment will be authorized and highly trained before using the equipment. It also ensures that the City Council will receive an annual report on all uses, and that also gives the public an opportunity to weigh in at a well-publicized community meeting. Lastly, DPS is prepared to receive complaints from members of the public on any violations of the policy by providing a direct link to the Office of Internal Affairs.

The NFDDs utilized by the Sunnyvale Department of Public Safety have an expected lifespan of approximately 5 years.

#### 2. Purposes and Use

A NFDD is a non-bursting, non-fragmenting, device that produces a loud sound and bright light. The NFDD is used as diversion/distraction device during dangerous situations involving potentially violent subjects. The NFDD is only used by specially trained SWAT team members.

#### 3. Fiscal Impact/Inventory

|                        |              |                |
|------------------------|--------------|----------------|
| CTS NFDD model 7290M   | Quantity: 65 | Total: \$2,447 |
| CTS NFDD model 7290-2  | Quantity: 32 | Total: \$1,725 |
| CTS NFDD model 7290-9  | Quantity: 29 | Total: \$4,022 |
| CTS NFDD model 7290-50 | Quantity: 20 | Total: \$756   |
| CTS NFDD model 7290-1  | Quantity: 45 | Total: \$756   |
| CTS NFDD model 7290MT  | Quantity: 45 | Total: \$2,295 |



Total approximate costs for the program: \$ 12,000

The estimated annual costs to maintain and replenish supply used during operations or training is approximately: \$3,000

#### 4. Rules

As a law enforcement agency, SDPS is exempt and does not need to possess an ATF permit to purchase or use explosives for breaching operations. All explosive purchases and materials used during training and operations need to be recorded and a detailed record kept for ATF inspection.

The Sunnyvale Fire Marshall needs to approve storage containers and storage sites used by SDPS.

The following Sunnyvale DPS Lexipol Policies govern the deployment of NFDDs:

##### SUNNYVALE DPS LEXIPOL POLICY 300.3 USE OF FORCE

Officers shall use only that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to or perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose (Penal Code § 835a).

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain, and rapidly evolving.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident. Officers may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance (Government Code § 7286(b)).

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the approved tools, weapons, or methods provided by the Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be objectively reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

#### SUNNYVALE DPS LEXIPOL POLICY 300.3.1 USE OF FORCE TO AFFECT AN ARREST

Any peace officer may use reasonable force to affect an arrest, to prevent escape or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance on the part of the person being arrested; nor shall an officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest, prevent escape or to overcome resistance (Penal Code § 835a).

### 5. Training

All Sunnyvale DPS SWAT team members are trained on the proper use of the NFDDs during their P.O.S.T. Certified Basic 80-hour SWAT School. SWAT team members also participate in yearly re-certification on the use of the NFDDs.

#### SUNNYVALE DPS LEXIPOL POLICY 406.3.1 INITIAL TRAINING

SWAT team operators and SWAT supervisors should not be deployed until successful completion of the POST certified Basic SWAT Course or its equivalent.

- a. To avoid unnecessary or redundant training, previous training completed by members may be considered equivalent when the hours and content (topics) meet or exceed department requirements or POST standardized training recommendations.

#### SUNNYVALE DPS LEXIPOL POLICY 406.3.2 UPDATED TRAINING

Appropriate team training for the specialized SWAT functions and other supporting resources should be completed prior to full deployment of the team.

SWAT team operators and SWAT supervisors should complete POST certified updates or refresher training as mandated or as required by the SWAT Commander.

#### SUNNYVALE DPS LEXIPOL POLICY 406.3.3 SUPERVISION AND MANAGEMENT TRAINING

Command and executive personnel are encouraged to attend training for managing the SWAT function at the organizational level to ensure personnel who provide active oversight at the scene of SWAT operations understand the purpose and capabilities of the teams.

Command personnel who may assume incident command responsibilities should attend SWAT or Critical Incident Commander course or its equivalent. SWAT command personnel should attend a POST certified SWAT commander or tactical commander course, or its equivalent.

#### SUNNYVALE DPS LEXIPOL POLICY 406.3.6 SCENARIO BASED TRAINING

SWAT teams should participate in scenario-based training that simulates the tactical operational environment. Such training is an established method of improving performance during an actual deployment.

#### SUNNYVALE DPS LEXIPOL POLICY 406.3.7 TRAINING DOCUMENTATION

Individual and team training shall be documented and records maintained by the Training Unit. Such documentation shall be maintained in each member's individual training file. A separate agency SWAT training file, CNT training file, and TMT training file shall be maintained with documentation and records of all team training. The supervising Lieutenant(s) of each respective team is responsible for ensuring training records are updated monthly.

The policy detailed above is based on the policies, procedures, and practices of police SWAT teams that continue to successfully utilize NFDDs in their operations. These police departments include the Los Angeles Sheriff's Office (SEB) Special Enforcement Bureau, the Santa Clara Police Department SWAT Team, the San Jose Police Department MERGE Unit, and the Monterey County Sheriff's Office SWAT Team.

### **6. Compliance**

The Sunnyvale DPS SWAT Team Captain shall ensure all personnel authorized to use NFDDs will be properly trained and certified. The training will fall in line with our legal standards, department policies, and manufacturer's recommendations.

#### SUNNYVALE DPS LEXIPOL POLICY 406.8 SWAT TEAM ADMINISTRATIVE PROCEDURES

Continual evaluation of a team member's performance and efficiency as it relates to the positive operation of the unit shall be conducted by the SWAT Commander. The performance and efficiency level, as established by the team supervisor, will be met and maintained by all SWAT Team members. Any member of the SWAT Team who performs or functions at a level less than satisfactory shall be subject to dismissal from the team.

## **7. Complaints or Concerns**

Our department procedures regarding complaints are dictated in the Internal Affairs Investigations Standard Operating Procedures Manual:

The primary function of the Sunnyvale Department of Public Safety (SDPS) is to provide police, fire and emergency medical services (EMS) services to those who live, work and play in Sunnyvale. SDPS enjoys a high level of trust and satisfaction from our community. Continuously striving to maintain our community's trust and satisfaction is paramount to the provision of effective public safety services. As such, it is imperative that we maintain high ethical standards as professional Public Safety Department members, which in turn will help us provide the high-quality services our community members expect and deserve.

One of the most important ways to ensure we are developing and maintaining professional standards is to make certain our internal affairs (IA) policies and procedures that guide how we receive and investigate complaints against our Department's members are thorough, fair and objective to the complainants and Department personnel involved.

Our Lexipol Policy Manual outlines our required standards of conduct for Department members and the basic requirements for addressing complaints. The purpose of this Internal Affairs Investigations Standard Operating Procedures Manual (SOP or Manual) is to provide a more detailed guide designed to assist SDPS personnel and other Sunnyvale officials responsible for receiving, investigating and adjudicating complaints.

This Internal Affairs SOP is customized and designed to define our Department's official policies and procedures for receiving and investigating complaints. It serves as a guide for all who play a role in handling complaints brought against members of the SDPS, both sworn and non-sworn. Adhering to the procedures and protocols outlined in this manual will help ensure that disciplinary measures taken to address misconduct are consistent and fair.

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## **SUNNYVALE DPS – AB 481**

### **Pepper Projectile Systems**

#### **1. Project Background and Description/Expected Lifespan**

The Pepper Projectile System is not a firearm, but rather a non-lethal system that uses high pressure air to deliver PAVA powder projectiles from a safe distance. PAVA is based on one of the hottest of the six capsaicinoids found in pepper plants. The munitions contain only safe, pure, non-oil based PAVA and are non-flammable. The system was based off paintball launcher systems. The Pepper Projectile System has an expected lifespan of 10 years.

The Pepper Projectile System munition (inert): is a 68 caliber plastic (breakable) sphere which encapsulates a scented powder that is not a chemical agent. The inert munition is used for training purposes and has an expected lifespan of 3 years.

The Pepper Projectile System munition: is a 68 caliber plastic (breakable) sphere which encapsulates a 2% chemical agent (PAVA) payload. The munition is used as a non-lethal weapon designed de-escalate a potentially violent encounter. The munition has an expected lifespan of 3 years.

DPS believes that City Council can make the finding that the military equipment policy is intended to safeguard the public's welfare, safety, civil rights and civil liberties. DPS generally uses this type of equipment to avoid more lethal options, when available. The Policy provides that users of the equipment will be authorized and highly trained before using the equipment. It also ensures that the City Council will receive an annual report on all uses, and that also gives the public an opportunity to weigh in at a well-publicized community meeting. Lastly, DPS is prepared to receive complaints from members of the public on any violations of the policy by providing a direct link to the Office of Internal Affairs.

#### **2. Purposes and Use**

The Pepper Projectile System and munitions are used as a non-lethal option to offer law enforcement officers to deliver chemical agents and kinetic energy impacts to subjects in a potentially violent encounter. The proper use of the Pepper Projectile System is a de-escalation tool used to avoid further injuries or lethal options on a subject.

#### **3. Fiscal Impact**

The initial Pepper Projectile System program was initiated several years ago. The costs and equipment have changed over the years. The initial costs for obtaining the equipment are based on 2020 prices:

Pepper Projectile System FTC Basic Launcher (Patrol): Price: \$591 Qty: 6  
Total: \$3,546

Pepper Projectile System Munitions (Inert): Price: 375 per case Qty: 2,200 Total:  
\$1,938

Pepper Projectile System Munitions: Price: 375 per case Qty: 2,600 Total: \$6,832

Miscellaneous (backpack, munition holder, air tanks, etc.) Total: \$6000

Total approximate initial costs for the Pepper Projectile System: \$ 18,316

#### 4. Rules

835a PC dictates that officers who use deadly force shall "... evaluate each situation in light of the particular circumstances of each case and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer." Other available resources include de-escalation tools such as the Pepper Projectile System launcher.

Other legal guidelines involve the use of kinetic energy projectiles and/or chemical agents such as 13652PC. It discusses when and when not to use kinetic energy projectiles and/or chemical agents during assemblies, protests, and/or demonstrations.

The following Sunnyvale DPS Lexipol Policies govern the deployment of Pepper Projectile launchers:

##### SUNNYVALE DPS LEXIPOL POLICY 302.7.2 Pepper Projectile Systems:

Pepper projectiles are plastic spheres that are filled with a derivative of OC powder. Because the compressed gas launcher delivers the projectiles with enough force to burst the projectiles on impact and release the OC powder, the potential exists for the projectiles to inflict injury if they strike the head, neck, spine or groin. Therefore, personnel using a pepper projectile system should not intentionally target those areas, except when the officer reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the officer or others.

Only Officers who have completed the Department Pepper Projectile System/ Impact Projectile Launcher training will be authorized to use the Non-Lethal weapon system.

Officers encountering a situation that warrants the use of a pepper projectile system shall notify a supervisor as soon as practicable. A supervisor shall respond to all pepper projectile system incidents where the suspect has been hit or exposed to the chemical agent. The supervisor shall ensure that all notifications and reports are completed as required by the Use of Force Policy.

Each deployment of a pepper projectile system shall be documented. This includes situations where the launcher was directed toward the suspect, whether or not the launcher was used. Unintentional discharges shall be promptly reported to a supervisor and documented. Only non-incident use of a pepper projectile system, such as training and product demonstrations, is exempt from the reporting requirement.

**SUNNYVALE DPS LEXIPOL POLICY 302.7.3 Treatment for OC Spray Exposure:**

Persons who have been sprayed with or otherwise affected by the use of OC should be promptly provided with clean water to cleanse the affected areas. Those persons who complain of further severe effects shall be examined by appropriate medical personnel.

**SUNNYVALE DPS LEXIPOL POLICY 302.8 Post Application Notice:**

Whenever tear gas or OC has been introduced into a residence, building interior, vehicle or other enclosed area, officers should provide the owners or available occupants with notice of the possible presence of residue that could result in irritation or injury if the area is not properly cleaned. Such notice should include advisement that clean-up will be at the owner's expense. Information regarding the method of notice and the individuals notified should be included in related reports.

**SUNNYVALE DPS LEXIPOL POLICY 302.9 Kinetic Energy Projectile Guidelines:**

This department is committed to reducing the potential for violent confrontations. Kinetic energy projectiles, when used properly, are less likely to result in death or serious physical injury and can be used in an attempt to de-escalate a potentially deadly situation.

**SUNNYVALE DPS LEXIPOL POLICY 302.9.1 Deployment and Use:**

Only department-approved kinetic energy munitions shall be carried and deployed. Approved munitions may be used to compel an individual to cease his/her actions when such munitions present a reasonable option.

Officers are not required or compelled to use approved munitions in lieu of other reasonable tactics if the involved officer determines that deployment of these munitions cannot be done

safely. The safety of hostages, innocent persons and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior.

- a. Circumstances appropriate for deployment include, but are not limited to, situations in which:
- b. The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved munitions.
- c. The suspect has made credible threats to harm him/herself or others.
- d. The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers.

There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders.

#### SUNNYVALE DPS LEXIPOL POLICY 302.9.2 Deployment Considerations:

Before discharging projectiles, the officer should consider such factors as:

- a. Distance and angle to target.
- b. Type of munitions employed.
- c. Type and thickness of subject's clothing.
- d. The subject's proximity to others.
- e. The location of the subject.
- f. Whether the subject's actions dictate the need for an immediate response and the use of control devices appears appropriate.

A verbal warning of the intended use of the device should precede its application, unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances. The purpose of the warning is to give the individual a reasonable opportunity to voluntarily comply and to warn other officers and individuals that the device is being deployed.

Officers should keep in mind the manufacturer's recommendations and their training regarding effective distances and target areas. However, officers are not restricted solely to use according to manufacturer recommendations. Each situation must be evaluated on the totality of circumstances at the time of deployment.

The need to immediately incapacitate the subject must be weighed against the risk of causing serious injury or death. The head and neck should not be intentionally targeted, except when the officer reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the officer or others.



## **5. Training**

Officers receive training on the proper use of the Pepper Projectile System systems by current manufacturer certified instructors. The training includes when the Pepper Projectile System can be deployed, targeting areas, and reporting requirements.

Our procedural guidelines for training are dictated in the Sunnyvale DPS policy Manual:

SUNNYVALE DPS LEXIPOL POLICY 302.10 Training for Control Devices:

The Police Training Coordinator shall ensure that all personnel who are authorized to carry a control device have been properly trained and certified to carry the specific control device and are retrained or recertified as necessary.

Proficiency training shall be monitored and documented by a certified, control-device weapons or tactics instructor.

All training and proficiency for control devices will be documented in the officer's training file.

Officers who fail to demonstrate proficiency with the control device or knowledge of this agency's Use of Force Policy will be provided remedial training. If an officer cannot demonstrate proficiency with a control device or knowledge of this agency's Use of Force Policy after remedial training, the officer will be restricted from carrying the control device and may be subject to discipline.

SUNNYVALE DPS LEXIPOL POLICY 302.11 Reporting Use of Control Devices and Techniques:

Any application of a control device or technique listed in this policy shall be documented in the related incident report and reported pursuant to the Use of Force Policy.

## **6. Compliance**

Per Sunnyvale DPS Lexipol policy 302.10 (Training for Control Devices), the Training Coordinator shall ensure all personnel authorized to carry any control devices (Pepper Projectile Systems) will be properly trained and certified. The training will fall in line with our legal standards, department policies, and manufacturer's recommendations.

## **7. Complaints or Concerns**

Our department procedures regarding complaints are dictated in the Internal Affairs Investigations Standard Operating Procedures Manual:

The primary function of the Sunnyvale Department of Public Safety (SDPS) is to provide police, fire and emergency medical services (EMS) services to those who live, work and play in Sunnyvale. SDPS enjoys a high level of trust and satisfaction from our community. Continuously striving to maintain our community's trust and satisfaction is paramount to the provision of effective public safety services. As such, it is imperative that we maintain high ethical standards as professional Public Safety Department members, which in turn will help us provide the high-quality services our community members expect and deserve.

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## **SUNNYVALE DPS – AB 481**

### **Sunnyvale DPS SWAT Sniper Rifle**

#### **1. Project Background and Description/Expected Lifespan**

The Sunnyvale Department of Public Safety (SDPS) SWAT team is a highly trained unit formed to respond to violent tactical situations that pose a high-risk to civilian and officer safety. The SDPS SWAT sniper element deploys with the SDPS SWAT team with precision rifles and has the ability to engage and stop an armed violent subject at a safe distance.

Officers assigned to the Sunnyvale DPS SWAT Sniper team are required to pass rigorous testing and are required to attend a CA POST certified 40-hour Sniper School. These officers are in full uniform and shall carry all safety equipment on their person, including but not limited to less-lethal and lethal weapon systems. To protect lives, the Sunnyvale SWAT team may utilize a sniper team during pre-planned or spontaneous SWAT operations.

DPS believes that City Council can make the finding that the military equipment policy is intended to safeguard the public's welfare, safety, civil rights and civil liberties. DPS generally uses this type of equipment to avoid more lethal options, when available. The Policy provides that users of the equipment will be authorized and highly trained before using the equipment. It also ensures that the City Council will receive an annual report on all uses, and that also gives the public an opportunity to weigh in at a well-publicized community meeting. Lastly, DPS is prepared to receive complaints from members of the public on any violations of the policy by providing a direct link to the Office of Internal Affairs.

The rifles utilized by the Sunnyvale DPS SWAT team has an expected lifespan of approximately 10 years.

#### **2. Purposes and Use**

The purpose of the sniper rifle is to provide specially trained Sunnyvale DPS SWAT officers with the necessary capabilities of engaging threats from a safe distance. All Sunnyvale DPS SWAT officers utilizing these systems are specifically trained on proper use, functionality, maintenance, and shall qualify bi-yearly in accordance with Sunnyvale Lexipol policy.

#### **3. Fiscal Impact**

The department sniper team program was initiated several years ago. The initial costs for obtaining the equipment are based on 2020 prices:

|                         |                  |        |                 |
|-------------------------|------------------|--------|-----------------|
| Accuracy International: | Price: \$10,000  | Qty: 4 | Total: \$40,000 |
| JP Enterprise:          | Price: \$6,500   | Qty: 2 | Total: \$13,000 |
| Ammunition (.308 cal.)  | Qty: 4000 rounds |        | Total: \$5,200  |

Total approximate costs for the program: \$58,200

The annual replacement cost for this program is approximately \$5,200.

#### 4. Rules

835a PC dictates that officers who use deadly force shall "... evaluate each situation in light of the particular circumstances of each case and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer."

While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this department is expected to use these guidelines to make such decisions in a professional, impartial, and reasonable manner (Government Code 7286).

The following Sunnyvale DPS Lexipol Policies govern the deployment of firearms:

##### SUNNYVALE DPS LEXIPOL POLICY 300.1.1 DEFINITIONS

Deadly force - Any use of force that creates a substantial risk of causing death or serious bodily injury, including but not limited to the discharge of a firearm (Penal Code § 835a).

##### SUNNYVALE DPS LEXIPOL POLICY 300.4 DEADLY FORCE APPLICATIONS

Where feasible, the officer shall, prior to the use of deadly force, make reasonable efforts to identify him/herself as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts (Penal Code 835a).

If an objectively reasonable officer would consider it safe and feasible to do so under the totality of the circumstances, officers shall evaluate and use other reasonably available resources and techniques when determining whether to use deadly force. To the extent that it is reasonably practical, officers should consider their surroundings and any potential risks to bystanders prior to discharging a firearm (Government Code § 7286(b)).

The use of deadly force is only justified when the officer reasonably believes it is necessary in the following circumstances (Penal Code § 835a):

- a. An officer may use deadly force to protect him/herself or others from what he/she reasonably believes is an imminent threat of death or serious bodily injury to the officer or another person.
- b. An officer may use deadly force to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.

Officers shall not use deadly force against a person based on the danger that person poses to him/herself, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or to another person (Penal Code § 835a).

An "imminent" threat of death or serious bodily injury exists when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. An officer's subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention (Penal Code § 835a).

#### SUNNYVALE DPS LEXIPOL POLICY 305.3 AUTHORIZED FIREARMS, AMMUNITION AND OTHER WEAPONS

Officers shall only use firearms that are issued or approved by the Department and have been thoroughly inspected by the Armorer. Except in an emergency or as directed by a supervisor, no firearm shall be carried by an officer who has not qualified with that firearm at an authorized department range.

All other weapons not provided by the Department, including, but not limited to, edged weapons, chemical or electronic weapons, impact weapons or any weapon prohibited or restricted by law or that is not covered elsewhere by department policy, may not be carried by members in the performance of their official duties without the express written authorization of the Chief or designee. This exclusion does not apply to the carrying of a single folding pocketknife that is not otherwise prohibited by law.

Officers encountering a situation that warrants the use of firearm shall make a verbal report to his/her supervisor as soon circumstances permit.

#### SUNNYVALE DPS LEXIPOL POLICY 305.7 FIREARM DISCHARGE

Except during training or recreational use, any officer who discharges a firearm intentionally or unintentionally, on- or off-duty, shall make a verbal report to his/her

supervisor as soon as circumstances permit. If the discharge results in injury or death to another person, additional statements and reports shall be made in accordance with the Officer-Involved Shootings and Deaths Policy. If a firearm was discharged as a use of force, the involved officer shall adhere to the additional reporting requirements set forth in the Use of Force/Response to Resistance Policy.

In all other cases, written reports shall be made as follows:

- a. If on-duty at the time of the incident, the officer shall file a written report with his/her supervisor or provide a recorded statement to investigators prior to the end of shift, unless otherwise directed.
- b. If off-duty at the time of the incident, the officer shall submit a written memo or provide a recorded statement no later than the end of the next regularly scheduled shift, unless otherwise directed by a supervisor.

A supervisor shall respond to all Use of Force incidents. A supervisor shall ensure that all notifications and reports are completed as required by the Use of Force Policy.

#### SUNNYVALE DPS LEXIPOL POLICY 300.7 SUPERVISOR RESPONSIBILITY

A supervisor shall respond to any reported use of force. The responding supervisor is expected to (Government Code § 7286(b)):

- a. Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- b. Ensure that any injured parties are examined and treated.
- c. When possible, separately obtain a recorded interview with the subject upon whom force was applied. If this interview is conducted without the person having voluntarily waived his/her Miranda rights, the following shall apply:
  1. The content of the interview should not be summarized or included in any related criminal charges.
  2. The fact that a recorded interview was conducted should be documented in a property or other report.
  3. The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.
- d. Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.
- e. Identify any witnesses not already included in related reports.

- f. Review and approve all related reports.
- g. Determine if there is any indication that the subject may pursue civil litigation.
  - 1. If there is an indication of potential civil litigation, the supervisor should complete and route a notification of a potential claim through the appropriate channels.
- h. In the event physical force is used, but no Offense Report is required, a memorandum to the Police Operations Team Captain is to be prepared. The following information is to be included:
  - 1. Type of force;
  - 2. Reason for the force;
  - 3. Extent of injury to the suspect and action taken to provide aid;
  - 4. Pertinent information deemed important by the officer.
- i. Evaluate the circumstances surrounding the incident and initiate an administrative investigation if there is a question of policy non-compliance or if for any reason further investigation may be appropriate.

In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

#### *SUNNYVALE DPS LEXIPOL POLICY 300.6 MEDICAL CONSIDERATION*

Once it is reasonably safe to do so, properly trained officers should promptly provide or procure medical assistance for any person injured or claiming to have been injured in a use of force incident (Government Code § 7286(b)).

#### *SUNNYVALE DPS LEXIPOL POLICY 305.3 AUTHORIZED FIREARMS, AMMUNITION AND OTHER WEAPONS*

Officers shall only use firearms that are issued or approved by the Department and have been thoroughly inspected by the Armorer. Except in an emergency or as directed by a supervisor, no firearm shall be carried by an officer who has not qualified with that firearm at an authorized department range.

All other weapons not provided by the Department, including, but not limited to, edged weapons, chemical or electronic weapons, impact weapons or any weapon prohibited or restricted by law or that is not covered elsewhere by department policy, may not be carried by members in the performance of their official duties without the express written authorization

of the Chief or designee. This exclusion does not apply to the carrying of a single folding pocketknife that is not otherwise prohibited by law.

## **5. Training**

Only SWAT operators who have completed a CA POST certified 40 hours Sniper School and meet the Department's required qualification standards will be authorized to carry the sniper rifle weapon systems.

### **SUNNYVALE DPS LEXIPOL POLICY 305.6 FIREARMS TRAINING AND QUALIFICATIONS**

All officers who carry a firearm while on-duty are required to successfully complete training annually with their duty firearms. In addition to annual training, all officers will qualify at least annually with their duty firearms. Officers will qualify with off-duty and secondary firearms at least once a year. Training and qualifications must be on an approved range course.

At least annually, all officers carrying a firearm should receive practical training designed to simulate field situations including low-light shooting.

### **SUNNYVALE DPS LEXIPOL POLICY 406.3.4 SWAT/CNT/TMT ONGOING TRAINING**

Training shall be managed by the SWAT Commander. The SWAT, CNT, and TMT Lieutenants are responsible for the monthly and/or quarterly training assignments. The SWAT Commander may authorize monthly training exercises that include a review and critique of personnel and their performance in the exercise in addition to specialized training. Training for SWAT team members shall consist of the following:

- a. Each SWAT member shall pass a physical fitness test twice each year.
- b. Any SWAT team member failing to pass the physical fitness test will be notified of the requirement to retest. Within 30 days of the previous physical fitness test date, the member required to qualify shall report to a team supervisor and complete the entire physical fitness test. Failure to qualify after a second attempt may result in dismissal from the team.
- c. Those members who are on PTO or are on a protected leave status, shall be responsible for reporting to a team supervisor and taking the test within 30 days of their return to regular duty. Any member, who fails to arrange for and perform the physical fitness test within the 30-day period, shall be considered as having failed the test for that test period.



- d. Bi-yearly, each SWAT team member shall perform the mandatory SWAT handgun qualification course. The qualification course shall consist of the SWAT Basic Drill for the handgun. Failure to qualify will require that officer to seek remedial training from a team range master approved by the SWAT Commander. Team members who fail to qualify must retest within 30 days. Failure to qualify within 30 days with or without remedial training may result in dismissal from the team.
- e. Each SWAT team member shall complete the bi-yearly SWAT qualification course for any specialty weapon issued to, or used by, the team member during SWAT operations. Failure to qualify will require the team member to seek remedial training from the Armorer who has been approved by the SWAT Commander. Team members who fail to qualify on their specialty weapon may not utilize the specialty weapon on SWAT operations until qualified. Team members who fail to qualify must retest within 30 days. Failure to qualify with specialty weapons within 30 days may result in the team member being removed from the team or permanently disqualified from use of that particular specialty weapon.

## **6. Compliance**

### **SUNNYVALE DPS LEXIPOL POLICY 305.3 AUTHORIZED FIREARMS, AMMUNITION AND OTHER WEAPONS**

Officers shall only use firearms that are issued or approved by the Department and have been thoroughly inspected by the Armorer. Except in an emergency or as directed by a supervisor, no firearm shall be carried by an officer who has not qualified with that firearm at an authorized department range.

All other weapons not provided by the Department, including, but not limited to, edged weapons, chemical or electronic weapons, impact weapons or any weapon prohibited or restricted by law or that is not covered elsewhere by department policy, may not be carried by members in the performance of their official duties without the express written authorization of the Chief or designee. This exclusion does not apply to the carrying of a single folding pocketknife that is not otherwise prohibited by law.

### **SUNNYVALE DPS LEXIPOL POLICY 305.6 FIREARMS TRAINING AND QUALIFICATIONS**

All officers who carry a firearm while on-duty are required to successfully complete training annually with their duty firearms. In addition to annual training, all officers will qualify at least annually with their duty firearms. Officers will qualify with off-duty and secondary firearms at least once a year. Training and qualifications must be on an approved range course.

At least annually, all officers carrying a firearm should receive practical training designed to simulate field situations including low-light shooting.

#### SUNNYVALE DPS LEXIPOL POLICY 305.6.1 NON-CERTIFICATION OR NON-QUALIFICATION

Those who fail to meet minimum standards or qualify on their first shooting attempt shall be provided remedial training and will be subject to the following requirements:

- a. Additional range assignments may be scheduled to assist the officer in demonstrating consistent firearm proficiency.
- b. Officers shall be given credit for a range training or qualification when obtaining a qualifying score or meeting standards after remedial training.
- c. No range credit will be given for the following:
  1. Unauthorized range make-up
  2. Failure to meet minimum standards or qualify after remedial training.

Officers who repeatedly fail to meet minimum standards will be removed from field assignment and may be subject to disciplinary action.

The training will fall in line with our legal standards, department policies, and manufacturer's recommendations.

### **7. Complaints or Concerns**

Our department procedures regarding complaints are dictated in the Internal Affairs Investigations Standard Operating Procedures Manual:

The primary function of the Sunnyvale Department of Public Safety (SDPS) is to provide police, fire and emergency medical services (EMS) services to those who live, work and play in Sunnyvale. SDPS enjoys a high level of trust and satisfaction from our community. Continuously striving to maintain our community's trust and satisfaction is paramount to the provision of effective public safety services. As such, it is imperative that we maintain high ethical standards as professional Public Safety Department members, which in turn will help us provide the high-quality services our community members expect and deserve.

One of the most important ways to ensure we are developing and maintaining professional standards is to make certain our internal affairs (IA) policies and procedures that guide how we receive and investigate complaints against our Department's members are thorough, fair and objective to the complainants and Department personnel involved.

Our Lexipol Policy Manual outlines our required standards of conduct for Department members and the basic requirements for addressing complaints. The purpose of this Internal Affairs Investigations Standard Operating Procedures Manual (SOP or Manual) is to provide a more

detailed guide designed to assist SDPS personnel and other Sunnyvale officials responsible for receiving, investigating and adjudicating complaints.

This Internal Affairs SOP is customized and designed to define our Department's official policies and procedures for receiving and investigating complaints. It serves as a guide for all who play a role in handling complaints brought against members of the SDPS, both sworn and non-sworn.

Adhering to the procedures and protocols outlined in this manual will help ensure that disciplinary measures taken to address misconduct are consistent and fair.

For more information on public safety accountability, please refer to our Public Safety Accountability page at:

<https://sunnyvale.ca.gov/government/safety/accountability.htm>



## **SUNNYVALE DPS – AB 481**

### **DPS SWAT Rifles**

#### **1. Project Background and Description/Expected Lifespan**

The Sunnyvale DPS SWAT Daniel Defense MK rifles are smaller more compact rifles that are only used by specially trained SWAT officers assigned to the Sunnyvale SWAT team. Each member of the Sunnyvale DPS SWAT team attends monthly training that includes the practice firing of their rifles. This monthly training ensures that the SWAT team will be ready to handle a variety of high-risk situations like hostage-rescue situations, active shooter scenarios, high-risk search warrants, and armed barricaded suspects.

The Daniel Defense MK rifles have a thicker barrel that can better endure the large amount of ammunition fired during years of training. The Daniel Defense MK rifle is tooled to accept 5.56 mm NATO ammunition and the .223 cal. standard issue rifle ammunition used by patrol officers. Because the rifle is manufactured to endure both types of ammunition, the rifle has a longer lifespan and provides a more cost-effective solution to the Sunnyvale SWAT team. The Daniel Defense MK rifles are more reliable and durable than the standard issue rifles assigned to the Patrol Division. The Sunnyvale SWAT team only uses the standard .223 cal. ammunition in the Daniel Defense MK rifles.

DPS believes that City Council can make the finding that the military equipment policy is intended to safeguard the public's welfare, safety, civil rights and civil liberties. DPS generally uses this type of equipment to avoid more lethal options, when available. The Policy provides that users of the equipment will be authorized and highly trained before using the equipment. It also ensures that the City Council will receive an annual report on all uses, and that also gives the public an opportunity to weigh in at a well-publicized community meeting. Lastly, DPS is prepared to receive complaints from members of the public on any violations of the policy by providing a direct link to the Office of Internal Affairs.

The Daniel Defense MK rifle has an expected lifespan of approximately 10 years.

#### **2. Purposes and Use**

The Daniel Defense MK rifle is only used by specially trained Sunnyvale SWAT team personnel. The rifle is manufactured for SWAT teams and is extremely durable and reliable.

### 3. Fiscal Impact

The department firearms program was initiated several years ago. The initial costs for obtaining the equipment are based on 2020 prices:

Daniel Defense MK:            Price: \$2,963       Qty: 22            Total: \$65,201

\*Note: .223 cal. ammunition is used as standard issued ammunition for patrol rifles.

Total approximate costs for the program: \$ 65,201

### 4. Rules

835a PC dictates that officers who use deadly force shall "... evaluate each situation in light of the particular circumstances of each case and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer."

While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this department is expected to use these guidelines to make such decisions in a professional, impartial, and reasonable manner (Government Code 7286).

The following Sunnyvale DPS Lexipol Policies govern the deployment of firearms:

#### SUNNYVALE DPS LEXIPOL POLICY 300.1.1 DEFINITIONS

Deadly force - Any use of force that creates a substantial risk of causing death or serious bodily injury, including but not limited to the discharge of a firearm (Penal Code § 835a).

#### SUNNYVALE DPS LEXIPOL POLICY 300.4 DEADLY FORCE APPLICATIONS

Where feasible, the officer shall, prior to the use of deadly force, make reasonable efforts to identify him/herself as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts (Penal Code 835a).

If an objectively reasonable officer would consider it safe and feasible to do so under the totality of the circumstances, officers shall evaluate and use other reasonably available resources and techniques when determining whether to use deadly force. To the extent that it is reasonably practical, officers should consider their surroundings and any potential risks to bystanders prior to discharging a firearm (Government Code § 7286(b)).

The use of deadly force is only justified when the officer reasonably believes it is necessary in the following circumstances (Penal Code § 835a):

- a. An officer may use deadly force to protect him/herself or others from what he/she reasonably believes is an imminent threat of death or serious bodily injury to the officer or another person.
- b. An officer may use deadly force to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.

Officers shall not use deadly force against a person based on the danger that person poses to him/herself, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or to another person (Penal Code § 835a).

An "imminent" threat of death or serious bodily injury exists when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. An officer's subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention (Penal Code § 835a).

#### SUNNYVALE DPS LEXIPOL POLICY 305.3 AUTHORIZED FIREARMS, AMMUNITION AND OTHER WEAPONS

Officers shall only use firearms that are issued or approved by the Department and have been thoroughly inspected by the Armorer. Except in an emergency or as directed by a supervisor, no firearm shall be carried by an officer who has not qualified with that firearm at an authorized department range.

All other weapons not provided by the Department, including, but not limited to, edged weapons, chemical or electronic weapons, impact weapons or any weapon prohibited or restricted by law or that is not covered elsewhere by department policy, may not be carried by members in the performance of their official duties without the express written authorization of the Chief or designee. This exclusion does not apply to the carrying of a single folding pocketknife that is not otherwise prohibited by law.

Officers encountering a situation that warrants the use of firearm shall make a verbal report to his/her supervisor as soon circumstances permit.

#### SUNNYVALE DPS LEXIPOL POLICY 305.7 FIREARM DISCHARGE

Except during training or recreational use, any officer who discharges a firearm intentionally or unintentionally, on- or off-duty, shall make a verbal report to his/her

supervisor as soon as circumstances permit. If the discharge results in injury or death to another person, additional statements and reports shall be made in accordance with the Officer-Involved Shootings and Deaths Policy. If a firearm was discharged as a use of force, the involved officer shall adhere to the additional reporting requirements set forth in the Use of Force/Response to Resistance Policy.

In all other cases, written reports shall be made as follows:

- a. If on-duty at the time of the incident, the officer shall file a written report with his/her supervisor or provide a recorded statement to investigators prior to the end of shift, unless otherwise directed.
- b. If off-duty at the time of the incident, the officer shall submit a written memo or provide a recorded statement no later than the end of the next regularly scheduled shift, unless otherwise directed by a supervisor.

A supervisor shall respond to all Use of Force incidents. A supervisor shall ensure that all notifications and reports are completed as required by the Use of Force Policy.

#### SUNNYVALE DPS LEXIPOL POLICY 300.7 SUPERVISOR RESPONSIBILITY

A supervisor shall respond to any reported use of force. The responding supervisor is expected to (Government Code § 7286(b)):

- a. Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- b. Ensure that any injured parties are examined and treated.
- c. When possible, separately obtain a recorded interview with the subject upon whom force was applied. If this interview is conducted without the person having voluntarily waived his/her Miranda rights, the following shall apply:
  1. The content of the interview should not be summarized or included in any related criminal charges.
  2. The fact that a recorded interview was conducted should be documented in a property or other report.
  3. The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.
- d. Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.
- e. Identify any witnesses not already included in related reports.

- f. Review and approve all related reports.
- g. Determine if there is any indication that the subject may pursue civil litigation.
  - 1. If there is an indication of potential civil litigation, the supervisor should complete and route a notification of a potential claim through the appropriate channels.
- h. In the event physical force is used, but no Offense Report is required, a memorandum to the Police Operations Team Captain is to be prepared. The following information is to be included:
  - 1. Type of force;
  - 2. Reason for the force;
  - 3. Extent of injury to the suspect and action taken to provide aid;
  - 4. Pertinent information deemed important by the officer.
- i. Evaluate the circumstances surrounding the incident and initiate an administrative investigation if there is a question of policy non-compliance or if for any reason further investigation may be appropriate.

In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

#### SUNNYVALE DPS LEXIPOL POLICY 300.6 MEDICAL CONSIDERATION

Once it is reasonably safe to do so, properly trained officers should promptly provide or procure medical assistance for any person injured or claiming to have been injured in a use of force incident (Government Code § 7286(b)).

#### SUNNYVALE DPS LEXIPOL POLICY 305.3 AUTHORIZED FIREARMS, AMMUNITION AND OTHER WEAPONS

Officers shall only use firearms that are issued or approved by the Department and have been thoroughly inspected by the Armorer. Except in an emergency or as directed by a supervisor, no firearm shall be carried by an officer who has not qualified with that firearm at an authorized department range.

All other weapons not provided by the Department, including, but not limited to, edged weapons, chemical or electronic weapons, impact weapons or any weapon prohibited or restricted by law or that is not covered elsewhere by department policy, may not be carried by members in the performance of their official duties without the express written authorization



of the Chief or designee. This exclusion does not apply to the carrying of a single folding pocketknife that is not otherwise prohibited by law.

## **5. Training**

Only SWAT Officers who have completed the firearms training and meet the required qualification standards will be authorized to carry the weapon systems.

### **SUNNYVALE DPS LEXIPOL POLICY 305.6 FIREARMS TRAINING AND QUALIFICATIONS**

All officers who carry a firearm while on-duty are required to successfully complete training annually with their duty firearms. In addition to annual training, all officers will qualify at least annually with their duty firearms. Officers will qualify with off-duty and secondary firearms at least once a year. Training and qualifications must be on an approved range course.

At least annually, all officers carrying a firearm should receive practical training designed to simulate field situations including low-light shooting.

### **SUNNYVALE DPS LEXIPOL POLICY 406.3.4 SWAT/CNT/TMT ONGOING TRAINING**

Training shall be managed by the SWAT Commander. The SWAT, CNT, and TMT Lieutenants are responsible for the monthly and/or quarterly training assignments. The SWAT Commander may authorize monthly training exercises that include a review and critique of personnel and their performance in the exercise in addition to specialized training. Training for SWAT team members shall consist of the following:

- a. Each SWAT member shall pass a physical fitness test twice each year.
- b. Any SWAT team member failing to pass the physical fitness test will be notified of the requirement to retest. Within 30 days of the previous physical fitness test date, the member required to qualify shall report to a team supervisor and complete the entire physical fitness test. Failure to qualify after a second attempt may result in dismissal from the team.
- c. Those members who are on PTO or are on a protected leave status, shall be responsible for reporting to a team supervisor and taking the test within 30 days of their return to regular duty. Any member, who fails to arrange for and perform the physical fitness test within the 30-day period, shall be considered as having failed the test for that test period.
- d. Bi-yearly, each SWAT team member shall perform the mandatory SWAT handgun qualification course. The qualification course shall consist of the SWAT Basic Drill for the handgun. Failure to qualify will require that officer to seek remedial training from a

team range master approved by the SWAT Commander. Team members who fail to qualify must retest within 30 days. Failure to qualify within 30 days with or without remedial training may result in dismissal from the team.

- e. Each SWAT team member shall complete the bi-yearly SWAT qualification course for any specialty weapon issued to, or used by, the team member during SWAT operations. Failure to qualify will require the team member to seek remedial training from the Armorer who has been approved by the SWAT Commander. Team members who fail to qualify on their specialty weapon may not utilize the specialty weapon on SWAT operations until qualified. Team members who fail to qualify must retest within 30 days. Failure to qualify with specialty weapons within 30 days may result in the team member being removed from the team or permanently disqualified from use of that particular specialty weapon.

## **6. Compliance**

### **SUNNYVALE DPS LEXIPOL POLICY 305.6 FIREARMS TRAINING AND QUALIFICATIONS**

All officers who carry a firearm while on-duty are required to successfully complete training annually with their duty firearms. In addition to annual training, all officers will qualify at least annually with their duty firearms. Officers will qualify with off-duty and secondary firearms at least once a year. Training and qualifications must be on an approved range course.

At least annually, all officers carrying a firearm should receive practical training designed to simulate field situations including low-light shooting.

#### **SUNNYVALE DPS LEXIPOL POLICY 305.6.1 NON-CERTIFICATION OR NON-QUALIFICATION**

Those who fail to meet minimum standards or qualify on their first shooting attempt shall be provided remedial training and will be subject to the following requirements:

- a. Additional range assignments may be scheduled to assist the officer in demonstrating consistent firearm proficiency.
- b. Officers shall be given credit for a range training or qualification when obtaining a qualifying score or meeting standards after remedial training.
- c. No range credit will be given for the following:
  - 1. Unauthorized range make-up
  - 2. Failure to meet minimum standards or qualify after remedial training.

Officers who repeatedly fail to meet minimum standards will be removed from field assignment and may be subject to disciplinary action.

The training will fall in line with our legal standards, department policies, and manufacturer's recommendations.

## **7. Complaints or Concerns**

Our department procedures regarding complaints are dictated in the Internal Affairs Investigations Standard Operating Procedures Manual:

The primary function of the Sunnyvale Department of Public Safety (SDPS) is to provide police, fire and emergency medical services (EMS) services to those who live, work and play in Sunnyvale. SDPS enjoys a high level of trust and satisfaction from our community. Continuously striving to maintain our community's trust and satisfaction is paramount to the provision of effective public safety services. As such, it is imperative that we maintain high ethical standards as professional Public Safety Department members, which in turn will help us provide the high-quality services our community members expect and deserve.

One of the most important ways to ensure we are developing and maintaining professional standards is to make certain our internal affairs (IA) policies and procedures that guide how we receive and investigate complaints against our Department's members are thorough, fair and objective to the complainants and Department personnel involved.

Our Lexipol Policy Manual outlines our required standards of conduct for Department members and the basic requirements for addressing complaints. The purpose of this Internal Affairs Investigations Standard Operating Procedures Manual (SOP or Manual) is to provide a more detailed guide designed to assist SDPS personnel and other Sunnyvale officials responsible for receiving, investigating and adjudicating complaints.

This Internal Affairs SOP is customized and designed to define our Department's official policies and procedures for receiving and investigating complaints. It serves as a guide for all who play a role in handling complaints brought against members of the SDPS, both sworn and non-sworn. Adhering to the procedures and protocols outlined in this manual will help ensure that disciplinary measures taken to address misconduct are consistent and fair.

For more information on public safety accountability, please refer to our Public Safety Accountability page at:

<https://sunnyvale.ca.gov/government/safety/accountability.htm>



## SUNNYVALE DPS – AB 481

### Reconnaissance Robots

#### 1. Project Background and Description/Expected Lifespan

The Sunnyvale Department of Public Safety (SDPS) SWAT team is tasked with solving a variety of critical incidents that are so hazardous, complex, or unusual that they exceed the capabilities of patrol officers. The critical incidents include, but are not limited to, hostage taking, barricaded subjects, terrorist attacks, warrant services, and other high-risk incidents.

Due to the threat level of such incidents, any tool the SWAT team can utilize to come to a peaceful resolution is vital to the overall safety of the public, suspects, and officers. A reconnaissance robot is an effective tool in gathering information about a scene without exposing officers to physical confrontation with dangerous subjects.

DPS believes that City Council can make the finding that the military equipment policy is intended to safeguard the public's welfare, safety, civil rights and civil liberties. DPS generally uses this type of equipment to avoid more lethal options, when available. The Policy provides that users of the equipment will be authorized and highly trained before using the equipment. It also ensures that the City Council will receive an annual report on all uses, and that also gives the public an opportunity to weigh in at a well-publicized community meeting. Lastly, DPS is prepared to receive complaints from members of the public on any violations of the policy by providing a direct link to the Office of Internal Affairs.

The two reconnaissance robots utilized by the Sunnyvale Department of Public Safety have no offensive capabilities. They are used for information gathering only. The robots have an expected lifespan of approximately 5 years.

#### 2. Purposes and Use

In police tactical operations a robot can provide real-time reconnaissance during operations involving high-risk warrants, barricaded suspects and hostage rescues. A reconnaissance robot is an effective tool in gathering information about a scene without exposing officers to physical confrontation with dangerous subjects.

#### 3. Fiscal Impact

The costs of equipment have changed over the years due to the rapidly developing technology. All robots were purchased using grant funding.

The Sunnyvale Department of Public Safety currently has two reconnaissance robots:

- 1) 2014 Avatar III: This medium sized robot, weighing approximately 50 pounds, is utilized by the Sunnyvale SWAT team and the Sunnyvale Fire HAZMAT team to enter hazardous locations before humans to assess possible threats. The robot has several cameras and is remotely controlled.
- 2) Recon Scout Robot: The recon scout robot is a small robot designed to fit into an operative's pocket. It can be quickly and stealthily deployed by tossing it into a location and using the remote to maneuver it around. It can visually clear small or large spaces prior to an operative clearing it.

2014 Avatar III: Price: \$25000 Qty: 1 Total: \$25,000

\*The 2014 Avatar III is on the equipment schedule for replacement in 2024. DPS is exploring the replacement of the Avatar III with two smaller more capable robots. If two smaller robots are authorized in 2024 the cost will be \$50,000.\*

Recon Scout Robot Price: \$10,000 Qty: 2 Total: \$20,000

The replacement cost for this program is approximately \$70,000.

The City of Sunnyvale currently pays for routine maintenance and repairs made to the robots. These costs vary depending on needs.

#### 4. Rules

The following Sunnyvale DPS Lexipol Policies govern the deployment of SWAT/CNT/TMT:

##### SUNNYVALE DPS LEXIPOL POLICY 406.2.2 OPERATIONAL PROCEDURES

Operational procedures should be generally patterned after the National Tactical Officers Association Suggested SWAT Best Practices. Because such procedures are specific to SWAT/CNT/TMT members and will outline tactical and officer safety issues, they are not included within this policy. Operational procedures should include, at minimum, the following:

1. Designated personnel responsible for developing an operational or tactical plan prior to, and/or during SWAT operations (time permitting).
  - a. All SWAT team members should have an understanding of operational planning.

- b. SWAT team training should consider planning for both spontaneous and planned events.
    - c. SWAT teams should incorporate medical emergency contingency planning as part of the SWAT operational plan.
  2. Designated personnel responsible for developing an operational / medical plan prior to, and/or during TMT operations (time permitting).
    - a. All TMT members should have an understanding of operational/medical planning.
    - b. TMT training should consider planning for both spontaneous and planned events.
  3. Mission briefings conducted prior to an operation, unless circumstances require immediate deployment. On scene mission briefs should be conducted as soon as practical in immediate deployment situations.
    - a. When possible, briefings should include the specialized units and supporting resources.
  4. Protocols for a sustained operation which may include relief, rotation of personnel and augmentation of resources.
  5. A generic checklist, to be worked through during pre planned events, prior to initiating a tactical action as a means of conducting a threat assessment to determine the appropriate response and resources necessary, including the use of SWAT.
  6. The appropriate role for a trained negotiator.
  7. A standard method of determining whether a warrant should be regarded as high-risk.
  8. A method for deciding how best to serve a high-risk warrant with all reasonably foreseeable alternatives being reviewed in accordance with risk/benefit criteria prior to selecting the method of response.
  9. Post incident scene management including:
    - a. Documentation of the incident.
    - b. Transition to investigations and/or other units.
    - c. Debriefing after deployment of the SWAT team.
      1. After-action team debriefing provides evaluation and analysis of critical incidents and affords the opportunity for individual and team assessments, helps to identify training needs, and reinforces sound risk management practices.
      2. When appropriate, debriefing should include specialized units and resources.
      3. In order to maintain candor and a meaningful exchange, debriefing will generally not be recorded.
      4. Such debriefing should not be conducted until involved officers have had the opportunity to individually complete necessary reports or provide formal statements.
  10. Standardization of equipment deployed.

SUNNYVALE DPS LEXIPOL POLICY 406.9.2 APPROPRIATE SITUATIONS FOR USE OF  
SWAT/CNT/TMT UNIT

The following are examples of incidents which may result in the activation of the SWAT/CNT/TMT Unit:

- a. Barricaded suspects who refuse an order to surrender.
- b. Incidents where hostages are taken.
- c. Cases of suicide threats.
- d. Arrests of dangerous persons.
- e. Any situation that could enhance the ability to preserve life, maintain social order, and ensure the protection of property.

#### SUNNYVALE DPS LEXIPOL POLICY 406.9.5 MOBILIZATION OF SWAT/CNT/TMT UNIT

The On-Scene supervisor shall make a request to a Lieutenant for the SWAT/CNT Unit. The Lieutenant shall then notify the SWAT/CNT Commander. If unavailable, a team supervisor shall be notified. A current mobilization list shall be maintained by Communications Unit staff. The Lieutenant will then notify the Police Services Captain as soon as practical.

The Lieutenant or designee should provide the SWAT Commander with as much of the following information as available at the time:

- a. The number of suspects, known weapons and resources.
- b. If the suspect is in control of hostages.
- c. If the suspect is barricaded.
- d. The type of crime involved.
- e. If the suspect has threatened or attempted suicide.
- f. The location of the command post and a safe approach to it.
- g. The extent of any perimeter and the number of officers involved.
- h. Any other important facts critical to the immediate situation and whether the suspect has refused an order to surrender.

The SWAT Commander, Captain or supervisor shall then initiate the SWAT call-out procedures. A current mobilization list shall be maintained by Communications Unit staff. An immediate need request for the SWAT team will trigger a call out of the SWAT/CNT/TMT Unit.

#### **5. Training**

All Sunnyvale DPS SWAT team members are trained on tactical operations and the use of robots for intelligence gathering during their P.O.S.T. Certified Basic 80-hour SWAT School. SWAT team members also participate in monthly SWAT scenario based training .

#### SUNNYVALE DPS LEXIPOL POLICY 406.3.1 INITIAL TRAINING

SWAT team operators and SWAT supervisors should not be deployed until successful completion of the POST certified Basic SWAT Course or its equivalent.

- a. To avoid unnecessary or redundant training, previous training completed by members may be considered equivalent when the hours and content (topics) meet or exceed department requirements or POST standardized training recommendations.

#### SUNNYVALE DPS LEXIPOL POLICY 406.3.2 UPDATED TRAINING

Appropriate team training for the specialized SWAT functions and other supporting resources should be completed prior to full deployment of the team.

SWAT team operators and SWAT supervisors should complete POST certified updates or refresher training as mandated or as required by the SWAT Commander.

#### SUNNYVALE DPS LEXIPOL POLICY 406.3.3 SUPERVISION AND MANAGEMENT TRAINING

Command and executive personnel are encouraged to attend training for managing the SWAT function at the organizational level to ensure personnel who provide active oversight at the scene of SWAT operations understand the purpose and capabilities of the teams.

Command personnel who may assume incident command responsibilities should attend SWAT or Critical Incident Commander course or its equivalent. SWAT command personnel should attend a POST certified SWAT commander or tactical commander course, or its equivalent.

#### SUNNYVALE DPS LEXIPOL POLICY 406.3.6 SCENARIO BASED TRAINING

SWAT teams should participate in scenario-based training that simulates the tactical operational environment. Such training is an established method of improving performance during an actual deployment.

#### SUNNYVALE DPS LEXIPOL POLICY 406.3.7 TRAINING DOCUMENTATION

Individual and team training shall be documented and records maintained by the Training Unit. Such documentation shall be maintained in each member's individual training file. A separate agency SWAT training file, CNT training file, and TMT training file shall be maintained with documentation and records of all team training. The supervising Lieutenant(s) of each respective team is responsible for ensuring training records are updated monthly.

### **6. Compliance**

The Sunnyvale DPS SWAT Team Captain shall ensure all personnel authorized to conduct explosive breaching will be properly trained and certified. The training will fall in line with our legal standards, department policies, and manufacturer's recommendations.

#### SUNNYVALE DPS LEXIPOL POLICY 406.8 SWAT TEAM ADMINISTRATIVE PROCEDURES



Continual evaluation of a team member's performance and efficiency as it relates to the positive operation of the unit shall be conducted by the SWAT Commander. The performance and efficiency level, as established by the team supervisor, will be met and maintained by all SWAT Team members. Any member of the SWAT Team who performs or functions at a level less than satisfactory shall be subject to dismissal from the team.

## **7. Complaints or Concerns**

Our department procedures regarding complaints are dictated in the Internal Affairs Investigations Standard Operating Procedures Manual:

The primary function of the Sunnyvale Department of Public Safety (SDPS) is to provide police, fire and emergency medical services (EMS) services to those who live, work and play in Sunnyvale. SDPS enjoys a high level of trust and satisfaction from our community. Continuously striving to maintain our community's trust and satisfaction is paramount to the provision of effective public safety services. As such, it is imperative that we maintain high ethical standards as professional Public Safety Department members, which in turn will help us provide the high-quality services our community members expect and deserve.

One of the most important ways to ensure we are developing and maintaining professional standards is to make certain our internal affairs (IA) policies and procedures that guide how we receive and investigate complaints against our Department's members are thorough, fair and objective to the complainants and Department personnel involved.

Our Lexipol Policy Manual outlines our required standards of conduct for Department members and the basic requirements for addressing complaints. The purpose of this Internal Affairs Investigations Standard Operating Procedures Manual (SOP or Manual) is to provide a more detailed guide designed to assist SDPS personnel and other Sunnyvale officials responsible for receiving, investigating and adjudicating complaints.

This Internal Affairs SOP is customized and designed to define our Department's official policies and procedures for receiving and investigating complaints. It serves as a guide for all who play a role in handling complaints brought against members of the SDPS, both sworn and non-sworn. Adhering to the procedures and protocols outlined in this manual will help ensure that disciplinary measures taken to address misconduct are consistent and fair.

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## SUNNYVALE DPS – AB 481

### Tear Gas

#### Overview

#### 1. Project Background and Description/Expected Lifespan

Chemical agent munitions, which are commonly referred to as “tear gas,” are used by the Sunnyvale Department of Public Safety (SDPS) as a non-lethal tool to disperse unlawful groups and on barricaded suspects. SDPS uses chemical agents which are used by law enforcement across the United States: CS (2-Chlorobenzylidenemalononitrile) and OC (Oleoresin Capsicum). Both CS and OC are not actual gas but are micro-pulverized particles. These particles cause irritation and/or inflammation and are non-lethal.

CS is an irritating agent and lachrymator (irritates the eyes and causes tears to flow). CS has been medically tested in the UK and US, specifically by the U.S. Army. There are no known allergic reactions to CS.

OC was de-regulated in California in 1996, is endorsed by the FBI, and is available to civilians to legally possess (2.5oz or less). OC is an inflammatory agent which causes involuntary closure of eyes (open in 2-5 minutes) and respiratory inflammation (subsides in approximately 2 minutes).

Decontamination for both CS and OC is fresh air and cool, clean water.

The chemical agent munitions are delivered by throwing a canister or launching a canister using a specially modified shotgun. The specially modified shotgun is capable of launching a gas canister into a second or third floor window. The specially modified shotgun is only used by trained SDPS SWAT personnel.

The multiple types of munitions listed below, which are possessed and used by SDPS, are different models of cannisters which each disperse different gram weights of chemical agent “tear gas” and allow for different deployment methods (different devices or tools) based upon the circumstances of the event requiring use. Having the choice of multiple munitions also allows officers to control the amount (in grams) of chemical agent used during a deployment.

Our inventory of chemical agent munitions is as follows:

- 1) CTS 5230B (CS) (Expires 5-years) Inventory: 33
- 2) CTS 5230 (CS) (Expire 5-years) Inventory: 16
- 3) CTS 8230 (CS) (Expire 5-years) Inventory: 28

- 4) CTS 4331 (CS) (Expires 5-years) Inventory: 12
- 5) CTS 4330 (CS) (Expires 5-years) Inventory: 13
- 6) CTS 4233 (CS) (Expires 5-years) Inventory: 90
- 7) Deftech Fogger Aerosol (OC) (Expires 5-years) Inventory: 10
- 10) Specially modified SWAT shotgun – Inventory 2

DPS believes that City Council can make the finding that the military equipment policy is intended to safeguard the public's welfare, safety, civil rights and civil liberties. DPS generally uses this type of equipment to avoid more lethal options, when available. The Policy provides that users of the equipment will be authorized and highly trained before using the equipment. It also ensures that the City Council will receive an annual report on all uses, and that also gives the public an opportunity to weigh in at a well-publicized community meeting. Lastly, DPS is prepared to receive complaints from members of the public on any violations of the policy by providing a direct link to the Office of Internal Affairs.

The chemical agents utilized by the Sunnyvale Department of Public Safety have an expected lifespan of approximately 5 years.

## **2. Purposes and Use**

Chemical agent "tear gas" munitions are used as a non-lethal option in a potentially violent encounter during rioting crowds or barricaded suspects. The proper use of chemical agents provides for a de-escalation tool used to avoid further injuries or to avoid using lethal options on a suspect.

## **3. Fiscal Impact**

The Sunnyvale DPS SWAT team has three (3) personnel who are qualified by the California Association of Tactical Officer's / CA-POST Chemical Agent Instructor program in San Diego, California. Based on the instruction received and best-practices learned from the San Diego County Sheriff's Office, the Sunnyvale DPS SWAT team purchased the following equipment:

The list below are the approximate unit prices for the associated munitions in our inventory:

- 1) CTS 5230B (CS) (Expires 5-years) Inventory: 33 (\$1257)
- 2) CTS 5230 (CS) (Expires 5-years) Inventory: 16 (\$576)
- 3) CTS 8230 (CS) (Expires 5-years) Inventory: 28 (\$672)
- 4) CTS 4331 (CS) (Expires 5-years) Inventory: 12 (\$312)
- 5) CTS 4330 (CS) (Expires 5-years) Inventory: 13 (\$468)

- 6) CTS 4233 (CS) (Expires 5-years) Inventory: 90 (\$2097)
- 7) Deftech Fogger Aerosol (OC) (Expires 5-years) Inventory: 10 (\$450)
- 10) Specially modified SWAT shotgun – Inventory 2 (\$2000)

The estimated annual costs to maintain and replenish the chemical agent “tear gas” inventory is approximately \$1,500. On an approximate five (5) year cycle, the munitions expire and require replacement. The approximate cost of replacing the entire inventory at expiration is \$7,832.

#### 4. Rules

835a PC dictates that officers who use deadly force shall “... evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.” Other available resources include de-escalation tools such as chemical agents or “tear gas.”

Other legal guidelines involve the use of chemical agents such as Penal Code 13652. It discusses when and when not to use chemical agents during assemblies, protests, and/or demonstrations.

The Sunnyvale Department of Public Safety Special Weapons and Tactics Team (SWAT) is responsible for the storage, inventory, training, and use of chemical agents. The Sunnyvale SWAT utilizes the LCT50 formula (cu. ft. / grams of CS chemical agent x 0.71 constant variable = LCT50 in minutes) as a guideline only when determining the amount of CS chemical agent to introduce into a structure.

The following persons may authorize the deployment and use of chemical agents:

1. The Chief of Police, Deputy Chief, or Captain.
2. An Incident Commander.
3. The S.W.A.T. Team Captain.

The following Sunnyvale DPS Lexipol Policies govern the deployment of chemical agents:

#### SUNNYVALE DPS LEXIPOL POLICY 302.6 Tear Gas Guidelines:

Tear gas may be used for crowd control, crowd dispersal or against barricaded suspects based on the circumstances. Only the Lieutenant, Incident Commander or SWAT/CNT Commander may authorize the delivery and use of tear gas, and only after evaluating all conditions known at the time and determining that such force reasonably appears justified and necessary.

When practicable, fire personnel should be alerted or summoned to the scene prior to the deployment of tear gas to control any fires and to assist in providing medical aid or gas evacuation if needed.

SUNNYVALE DPS LEXIPOL POLICY 302.7.3 Treatment for OC Spray Exposure:

Persons who have been sprayed with or otherwise affected by the use of OC should be promptly provided with clean water to cleanse the affected areas. Those persons who complain of further severe effects shall be examined by appropriate medical personnel.

SUNNYVALE DPS LEXIPOL POLICY 302.8 Post Application Notice:

Whenever tear gas or OC has been introduced into a residence, building interior, vehicle or other enclosed area, officers should provide the owners or available occupants with notice of the possible presence of residue that could result in irritation or injury if the area is not properly cleaned. Such notice should include advisement that clean up will be at the owner's expense. Information regarding the method of notice and the individuals notified should be included in related reports.

SUNNYVALE DPS LEXIPOL POLICY 302.9 Kinetic Energy Projectile Guidelines:

This department is committed to reducing the potential for violent confrontations. Kinetic energy projectiles, when used properly, are less likely to result in death or serious physical injury and can be used in an attempt to de-escalate a potentially deadly situation.

SUNNYVALE DPS LEXIPOL POLICY 302.9.1 Deployment and Use:

Only department-approved kinetic energy munitions shall be carried and deployed. Approved munitions may be used to compel an individual to cease his/her actions when such munitions present a reasonable option.

Officers are not required or compelled to use approved munitions in lieu of other reasonable tactics if the involved officer determines that deployment of these munitions cannot be done safely. The safety of hostages, innocent persons and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior.

Circumstances appropriate for deployment include, but are not limited to, situations in which:

- a. The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved munitions.
- b. The suspect has made credible threats to harm him/herself or others.

- c. The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers.
- d. There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders.

#### SUNNYVALE DPS LEXIPOL POLICY 302.9.2 Deployment Considerations:

Before discharging projectiles, the officer should consider such factors as:

- a. Distance and angle to target.
- b. Type of munitions employed.
- c. Type and thickness of subject's clothing.
- d. The subject's proximity to others.
- e. The location of the subject.
- f. Whether the subject's actions dictate the need for an immediate response and the use of control devices appears appropriate.

A verbal warning of the intended use of the device should precede its application unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances. The purpose of the warning is to give the individual a reasonable opportunity to voluntarily comply and to warn other officers and individuals that the device is being deployed.

Officers should keep in mind the manufacturer's recommendations and their training regarding effective distances and target areas. However, officers are not restricted solely to use according to manufacturer recommendations. Each situation must be evaluated on the totality of circumstances at the time of deployment.

The need to immediately incapacitate the subject must be weighed against the risk of causing serious injury or death. The head and neck should not be intentionally targeted, except when the officer reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the officer or others.

#### SUNNYVALE DPS LEXIPOL POLICY 302.9.3 SHOTGUN SAFETY PROCEDURES

Shotguns assigned to SWAT specifically designated for use with kinetic energy projectiles will be specially marked in a manner that makes them readily identifiable as such.

Officers will inspect the shotgun and projectiles as needed to ensure that the shotgun is in proper working order and the projectiles are of the approved type and appear to be free from defects.

When it is not deployed, the shotgun will be unloaded and properly and secured in the SWAT armory. When deploying the kinetic energy projectile shotgun, the officer shall visually inspect the kinetic energy projectiles to ensure that conventional ammunition is not being loaded into the shotgun.

Absent compelling circumstances, officers who must transition from conventional ammunition to kinetic energy projectiles will employ the two-person rule for loading. The two-person rule is a safety measure in which a second officer watches the unloading and loading process to ensure that the weapon is completely emptied of conventional ammunition.

## **5. Training**

Personnel assigned to the Sunnyvale DPS SWAT team receive training on the proper use of chemical agents by certified instructors. The training includes when chemical agents can be deployed, how to handle and deploy the munitions, air purifying respirator (APR) use, personnel and structure decontamination, and reporting requirements. Chemical Agent Training also includes a yearly exposure to the chemical agents. There are currently ten (10) Chemical Agent Instructors (CA POST-Certified) within the Sunnyvale DPS SWAT Team.

S.W.A.T. Team personnel who have completed a POST Certified Chemical Agent Instructor Course shall be responsible for providing training in the use of chemical agents to maintain the proficiency of Officers assigned to S.W.A.T. Assigned S.W.A.T. personnel should familiarize Command Staff with the use and deployment of Chemical Agents. S.W.A.T. personnel shall conduct Chemical Agent training annually.

- A. Training shall be documented, and records maintained of such trainings.
- B. Officers shall clean and inspect the Chemical Agent delivery system after each deployment.
- C. The Chemical Agent Cadre of the S.W.A.T. Team shall be responsible for maintaining control of all Chemical Agents and their respective delivery systems. The Cadre shall be responsible for inventorying and updating deployable Chemical Agent munitions.

Our procedural guidelines for training are dictated in the Sunnyvale DPS policy Manual:

**SUNNYVALE DPS LEXIPOL POLICY 302.10 Training for Control Devices:**

The Police Training Coordinator shall ensure that all personnel who are authorized to carry a control device have been properly trained and certified to carry the specific control device and are retrained or recertified as necessary.

Proficiency training shall be monitored and documented by a certified, control-device weapons or tactics instructor.



All training and proficiency for control devices will be documented in the officer's training file.

Officers who fail to demonstrate proficiency with the control device or knowledge of this agency's Use of Force Policy will be provided remedial training. If an officer cannot demonstrate proficiency with a control device or knowledge of this agency's Use of Force Policy after remedial training, the officer will be restricted from carrying the control device and may be subject to discipline.

#### SUNNYVALE DPS LEXIPOL POLICY 302.11 Reporting Use of Control Devices and Techniques:

Any application of a control device or technique listed in this policy shall be documented in the related incident report and reported pursuant to the Use of Force Policy. The documentation shall include the following information

1. Who authorized the use of Chemical Agents.
2. Facts surrounding their use.
3. Was a warning given prior to the Chemical Agent deployment (when applicable)?
4. The type of chemical agent and delivery system used.
5. Name of Officer who deployed the Chemical Agent.

#### **6. Compliance**

Per Lexipol policy 302.10 (Training for Control Devices), the Training Coordinator shall ensure all personnel authorized to carry any control devices will be properly trained and certified.

Additionally, the Sunnyvale DPS SWAT Team Captain shall ensure all personnel authorized to use chemical agents will be properly trained and certified.

The training will fall in line with our legal standards, department policies, and manufacturer's recommendations.

#### **7. Complaints or Concerns**

Our department procedures regarding complaints are dictated in the Internal Affairs Investigations Standard Operating Procedures Manual:

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effective public safety services. As such, it is imperative that we maintain high ethical standards as professional Public Safety Department members, which in turn will help us provide the high-quality services our community members expect and deserve.

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## **SUNNYVALE DPS – AB 481**

### **Unmanned Aircraft Systems (UAS)**

#### **1. Project Background and Description/Expected Lifespan**

Small Unmanned Aircraft Systems (UAS) are portable systems flown autonomously without a pilot onboard and controlled from an operator on the ground. They have shown to be a valuable resource to police and fire organizations by providing a bird's eye view of crime and/or disaster scenes that may not otherwise be seen. The UAS has the ability to launch quickly in dangerous situations, locate survivors, and send data about their whereabouts to responders on the ground.

Any use of a UAS will be in strict accordance with constitutional and privacy rights and Federal Aviation Administration (FAA) regulations. Safety, above all else, is the primary concern in every operation, regardless of the nature of the mission.

DPS believes that City Council can make the finding that the military equipment policy is intended to safeguard the public's welfare, safety, civil rights and civil liberties. DPS generally uses this type of equipment to avoid more lethal options, when available. The Policy provides that users of the equipment will be authorized and highly trained before using the equipment. It also ensures that the City Council will receive an annual report on all uses, and that also gives the public an opportunity to weigh in at a well-publicized community meeting. Lastly, DPS is prepared to receive complaints from members of the public on any violations of the policy by providing a direct link to the Office of Internal Affairs.

The UAS utilized by the Sunnyvale Department of Public Safety have an expected lifespan of approximately 5 years.

#### **2. Purposes and Use**

The UAS utilized by the Sunnyvale Department of Public Safety are used to assist in search and rescue missions, fire investigations, HAZMAT response, barricaded suspects, hostage situations and other high-risk tactical operations to reduce risk to department personnel, suspects and community members.

#### **3. Fiscal Impact**

The Sunnyvale Department of Public Safety UAS program was initially funded by a grant funding. The Sunnyvale Department of Public Safety currently utilizes two UAS platforms:

DJI Matrice 210: This UAS is a large platform outfitted with several high-resolution cameras and thermal imaging cameras. The DJI Matrice 210 has a longer flight time and is used for planned operations.

DJI Mavic 2 Enterprise: This UAS is a smaller, foldable, portable platform outfitted with limited cameras. The DJI Mavic 2 Enterprise is commonly used to gain access into smaller locations (i.e. indoors) or for unplanned rapid deployments.

|                         |                  |        |                  |
|-------------------------|------------------|--------|------------------|
| DJI Matrice 210 UAS:    | Price: \$ 35,000 | Qty: 1 | Total: \$ 35,000 |
| DJI Mavic 2 Enterprise: | Price: \$ 5,000  | Qty: 1 | Total: \$ 5,000  |

The replacement cost for this program is \$40,000.

The City of Sunnyvale currently pays for routine maintenance and repairs made to both UAS systems. These costs vary depending on needs.

#### 4. Rules

The following Sunnyvale DPS Lexipol Policies govern the deployment of UAS systems:

##### SUNNYVALE DPS LEXIPOL POLICY 357.3 PRIVACY

The department recognizes that use of a UAS involves potential privacy considerations and is committed to using UAS in a manner that respects privacy rights. UAS operators and observers will consider citizens' civil rights and reasonable expectations of privacy as key components of any decision made to deploy the vehicle.

UAS operators and observers will ensure, and will be held accountable for ensuring, that operations of the UAS appropriately balance operational needs with maintaining public privacy and freedom from intrusion. To ensure that legitimate privacy considerations are observed, UAS operators and observers will:

- a. Absent a warrant or exigent circumstances, adhere to FAA altitude regulations and shall not intentionally record or transmit images of any location where a person would have a reasonable expectation of privacy (e.g., residence, yard, enclosure).
- b. Take reasonable precautions to avoid inadvertently recording or transmitting images of areas where there is a reasonable expectation of privacy.
- c. During flight, direct onboard cameras so as to face away from occupied structures not related to the mission, to minimize the inadvertent capture of video or still images of uninvolved persons.
- d. Maintain all video and still images in strict compliance with State law and Sunnyvale DPS policies and procedures.
- e. Operate strictly within the law and regulations pertaining to UAS. Whenever required by policy or law, operators will ensure that warrants are obtained prior to deploying the UAS.
- f.

**SUNNYVALE DPS LEXIPOL POLICY 357.10 USE OF UAS**

Only authorized operators who have completed the required training shall be permitted to operate the UAS. All use shall be authorized by the Program Coordinator.

The authorized missions for UAS use are:

- a. Search and Rescue Missions
- b. Response to Fires or Post-Fire Investigations
- c. HAZMAT response
- d. Barricaded Suspects, Hostage Situations and other high-risk Tactical Operations to reduce risk to department personnel, suspects and community members.
- e. Disaster Response (i.e. flood, earthquake)
- f. Video/Photograph documentation of Crime Scenes
- g. Training Flights as required to meet FAA and Department certification standards
- h. Used in accordance with a court order or search warrant

**SUNNYVALE DPS LEXIPOL POLICY 357.11 PROHIBITED USE**

The UAS video surveillance equipment shall not be used:

- To conduct random surveillance activities.
- To target a person based solely on actual or perceived characteristics, such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, or disability.
- To harass, intimidate, or discriminate against any individual or group.
- To conduct personal business of any type.

The UAS shall not be weaponized.

**SUNNYVALE DPS LEXIPOL POLICY 357.18 UAS DEPLOYMENT PROCEDURES**

- a. Initial requests to use the UAS will be screened by a Patrol Lieutenant. If unavailable, a Team Captain or B/C shall be notified. The approving supervisor will have Dispatch contact the Program Coordinator or Manager to request deployment of the UAS. The request will be screened based on the following:
  1. Is the proposed use of the UAS within the capabilities of the UAS equipment and personnel?
  2. Does the proposed use of the UAS fall within FAA and Department policies and regulations for UAS deployment?
  3. Can the UAS be deployed safely given current weather conditions?
  4. If the UAS deployment requires a warrant, has one been requested and approved?

5. Are sufficient trained and qualified personnel available to safely operate the UAS?
  - b. The UAS Program Coordinator or Manager will either accept or decline the request for UAS support. If the request is denied, a reason will be provided for declining the request to Dispatch, who will provide the requestor this information along with the reason for declining. If the Coordinator or Manager accepts the support request, a UAS pilot will be assigned who will be provided all available mission information.
  - c. The UAS pilot will contact a certified observer from the list of available trained observers and arrange for the observer to meet the pilot at the scene. The UAS pilot is responsible for transporting the UAS and all required equipment.
  - d. Upon arriving at the requested location, the UAS pilot will contact the on-scene Incident Commander, check in, and receive a briefing on the mission requested. The UAS operators will make an on-scene determination of the ability of the UAS to perform the requested mission safely and within department and FAA policies and procedures.
  - e. If the UAS operators determine that the use of the UAS would violate department policy or directives, they will inform the Incident Commander of the potential conflict along with recommendations for modifying the requested mission to conform with department policies and procedures. As this is a change from the original approved mission, the UAS pilot will contact the UAS unit chain of command for direction on how to proceed. As soon as possible after the completion of the mission, the UAS pilot will make a full report of the circumstances and their concern through the chain of command.
  - f. UAS operators will have discretion for declaring safety or violation of FAA rules. If UAS operators determine that a requested mission would violate FAA rules or endanger civilians, the UAS pilot will respectfully inform the Incident Commander of the reason(s) for refusing to operate the UAS and contact the UAS chain of command immediately. The UAS will not be flown in this circumstance, and the authority of the UAS pilot is absolute.
  - g. If the UAS pilot determines that the requested mission will potentially damage the UAS or its associated equipment, the UAS pilot will inform the Incident Commander of their concern and suggest mission parameter changes. The UAS pilot is the final authority regarding UAS operations.

#### SUNNYVALE DPS LEXIPOL POLICY 357.19 DOCUMENTATION AND EVIDENCE

- a. Prior to every flight, a flight log shall be initiated for documentation.
- b. Inspection and weather will be documented prior to flight within the log book.
- c. After each flight, the operator will complete a statement documenting the UAS operations.
- d. After each deployment, video obtained by the UAS Operation will be submitted to evidence in accordance with Department policies and procedures.
- e. Aerial photography (still or video) shall be stored with digital evidence in accordance with Department policy and procedure.

- f. The pilot of the UAS is responsible for evidence handling as well as writing any supporting documentation for the incident.

## 5. Training

### SUNNYVALE DPS LEXIPOL POLICY 357.6 TRAINING NEEDS ASSESSMENT

The UAS Program Manager and Program Coordinator shall conduct an annual needs assessment to ensure that training is conducted within unit capabilities, department policy, and training guidelines as established by the FAA.

### SUNNYVALE DPS LEXIPOL POLICY 357.7 INITIAL TRAINING

- a. Upon selection to the collateral assignment of UAS Operator, new members shall acquire an FAA Remote Pilot Certificate, or higher.
- b. Observers must have completed sufficient training to communicate to the pilot any instructions required to remain clear of conflicting traffic. This training, at a minimum, shall include knowledge of the rules and responsibilities described in 14 CFR 91.111, Operating Near Other Aircraft; 14 CFR 91.113, Right-of-Way Rules: Except Water Operations; and 14 CFR 91.155, Basic VFR Weather Minimums; knowledge of air traffic and radio communications, including the use of approved ATC/pilot phraseology; and knowledge of appropriate sections of the Aeronautical Information Manual.
- c. Before a member can be authorized to conduct flight operations as a UAS pilot, they must complete at least eight hours of flight training with UAS instructors to show proficiency of the flight training exercises and the airframe. This must be accomplished to show their ability and knowledge of the UAS.

### SUNNYVALE DPS LEXIPOL POLICY 357.8 RECURRENT TRAINING

- a. To maintain a level of proficiency with the UAS, operators shall be required to attend regular training. Training will be coordinated through the Program Coordinator.
- b. All members in the assignment shall maintain proficiency in their pilot/observer abilities. Members who do not have any documented training or flight time within a span of 6 months will need to demonstrate proficiency before being a pilot/observer during a deployment or exercise.
- c. Recurrent training is not limited to actual piloting/observer skills but includes knowledge of all pertinent UAS/aviation matters.
- d. Failure to demonstrate proficiency can result in removal from UAS responsibilities.

### SUNNYVALE DPS LEXIPOL POLICY 357.9 TRAINING RECORDS

- a. All members will have a training file on record that details training history. This training file will be held in conjunction with the member's normal training file per Department policy.

- b. All deployments or exercises will be documented and count towards a member's training.
- c. It is the member's responsibility to verify their training file contains all pertinent information.

## **6. Compliance**

### **SUNNYVALE DPS LEXIPOL POLICY 357.4 PROGRAM MANAGER**

The Chief will appoint a Program Manager who will be responsible for the overall direction and management of the UAS program. The Program Manager will have the following responsibilities:

- Ensuring that policies and procedures conform to current laws, regulations and best practices.
- Ensuring that established protocols are followed by monitoring and providing periodic reports on the program to the Chief.

### **SUNNYVALE DPS LEXIPOL POLICY 357.5 PROGRAM COORDINATOR**

The Director of Public Safety will appoint a Program Coordinator who will be responsible for direct supervision of the UAS Program and its personnel. The Program Coordinator will have the following additional responsibilities:

- Coordinating the FAA Certificate of Waiver or Authorization (COA) application process and ensuring that the COA is current.
- Maintaining contact with the FAA and familiarity with pertinent FAA regulations.
- Ensuring that all authorized operators and required observers have completed all required FAA and Department approved training in the operation, applicable laws, policies and procedures regarding use of the UAS.
- Developing a UAS inspection, maintenance and record-keeping protocol to ensure continuing airworthiness of a UAS, up to and including its overhaul or life limits.
- Facilitating law enforcement access to images and data captured by the UAS.
- Recommending program enhancements, particularly regarding safety and information security.
- Ensuring that all training, flight and maintenance records for each operator and airframe are maintained.

The training will fall in line with our legal standards, department policies, and manufacturer's recommendations.



## **7. Complaints or Concerns**

Our department procedures regarding complaints are dictated in the Internal Affairs Investigations Standard Operating Procedures Manual:

The primary function of the Sunnyvale Department of Public Safety (SDPS) is to provide police, fire and emergency medical services (EMS) services to those who live, work and play in Sunnyvale. SDPS enjoys a high level of trust and satisfaction from our community. Continuously striving to maintain our community's trust and satisfaction is paramount to the provision of effective public safety services. As such, it is imperative that we maintain high ethical standards as professional Public Safety Department members, which in turn will help us provide the high-quality services our community members expect and deserve.

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