



City of Alameda

Staff Report

File Number:2021-987

City Council

Agenda Date: 7/20/2021

File Type: Regular Agenda Item

Agenda Number: 6-D

Recommendation to Authorize the Chief of Police to Update the Existing Alameda Police Department Policy Manual to be Current with Existing Best Practices and Statutory Requirements. (Police 3112)
[Not heard on July 6, 2021]

To: Honorable Mayor and Members of the City Council

EXECUTIVE SUMMARY

The Alameda Police Department (PD) contracts with Lexipol for the generation, retention, updating, and publishing of our policy manual. Part of the contract includes periodic review and revision of the policy manual to reflect current best practices, emerging case law, and new legislative changes/mandates. Based on these factors, Lexipol has identified nineteen policies in need of or recommended for updating based in part on changes in State law.

BACKGROUND

Before Lexipol, PD operated on a set of General Orders that functioned as a policy manual for the Police Department. Under the General Orders concept, the policy manual was a paper document. PD and the City Attorney's Office were required to monitor evolving best practices, new case law, and changes in legislation. Those new practices and laws would then have to be distilled into a new or modified General Order, which would then be printed and disseminated for training at the PD. This was a time-consuming and cumbersome process that required a tremendous amount of City of Alameda (City) resources.

Approximately ten years ago, the PD entered into an agreement with Lexipol to create, maintain, update and publish a policy manual. Lexipol is a risk management company that specializes in the creation of electronic public safety policy manuals. It currently serves approximately 8,100 public safety agencies/municipalities. Last year, Lexipol reviewed about 9,000 legislative and regulatory changes to ensure the policy manuals it manages stay as current and comprehensive as possible. The pooling of resources caused by having so many public agencies obtaining their policy manuals from a single source and utilizing an easily changeable electronic format allows for near real-time policy manual updating and instantaneous notification to employees of updates. In short, using Lexipol has resulted in the PD's policy manual remaining more up-to-date, more easily accessible, and constantly reviewed by industry experts outside of the PD.

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On June 14, 2020, the City Council directed that no changes be made to the PD Policy Manual without bringing the changes before the City Council for discussion. This report is presenting 19 policies that have been flagged by Lexipol for review and update.

DISCUSSION

Lexipol initiated all updates to comply with current best practices, case law, legislative updates, or to fix grammatical errors. The language used below was taken from the proposed Lexipol updates.

Policies recommended for updates:

APD Policy #300- Use of Force:

This policy has been updated because legislative action impacts its content. 2019 CA-AB 1196, effective Jan. 1, 2021, enacted statutory provisions that law enforcement agencies shall not authorize the use of a carotid restraint or a chokehold. This policy contained a subsection permitting the use of carotid control holds in certain circumstances. In light of the state law, this practice is no longer an accepted force technique. Accordingly, we have updated the subsection regarding carotid control holds. Note that the purpose of this policy is to provide guidelines for reasonable uses of force. This policy does not address misconduct that is covered in the Standards of Conduct Policy. As no policy can realistically predict every possible situation a law enforcement officer might encounter, members are entrusted to use well-reasoned discretion and consider the guidance in the policy manual as a whole when determining the appropriate use of force in each incident. The policy update is being made in order to be consistent with State law. A working group has been set up to evaluate and revise the Use of Force policy.

APD Policy #314- Vehicle Pursuits:

A review of this policy has resulted in an update to one subsection. Changes include: SECONDARY UNIT RESPONSIBILITIES has been updated for clarity.

APD Policy #320- Domestic Violence:

This policy has been updated to address protected-class language. Changes include: In Investigations, additions have been made for consistency with other policies that include protected-class language. Non-protected-class language has been moved to a separate item in the list, and punctuation has been corrected.

APD Policy #324- Temporary Custody of Juveniles:

This policy has been updated because legislative action impacts its content. The update should be

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accepted and implemented with California law, CA 823 removed sections from Welfare and Institutions Code § 207.1, so the statute's sections were renumbered. Changes include: In DEFINITIONS, a citation has been updated, and a definition has been updated for clarity. Citations have been updated in CUSTODY OF JUVENILES, JUVENILE CUSTODY LOGS, NO-CONTACT REQUIREMENTS, and LOCKED ENCLOSURES to avoid future updates based solely upon the renumbering of the statute's sections. ADVISEMENTS has been updated for clarity, and a citation has been updated.

Unrelated to the legislative update, additional changes include: An applicable citation has been added in CUSTODY OF JUVENILE NON-OFFENDERS. CUSTODY OF JUVENILE OFFENDERS has been updated for clarity.

APD Policy #326- Adult Abuse:

This policy has been updated because legislative action impacts its content. The update should be accepted and implemented as soon as possible. 2019 CA SB 338 requires all law enforcement agencies that adopt or revise a policy regarding elder or dependent adult abuse or senior and disability victimization to include specified provisions, protocols, and attachments related to investigations. The legislation added Penal Code § 368.6, which may also be cited as the Senior and Disability Justice Act. This policy has been updated to include related policy provisions of the bill and certain pending guidelines from the POST Senior and Disability Victimization Policy Guidelines. Agencies are required to develop protocols and procedures for policy areas that would be agency-specific (which you may already have implemented) and to include them in this policy as an appendix. Lexipol recommends that agencies review the Senate Bill carefully in order to develop and include the required protocols and procedures that are appropriate for your agency.

APD Policy #328- Discrimination Harassment:

This policy has been updated because legislative action impacts its content. The update should be accepted and implemented as soon as possible. 2020 CA REG TEXT 557586 amended a regulation related to this policy and requires that a policy provide a hyperlink to the Department of Fair Employment & Housing (DFEH) website for sexual harassment online training courses created by DFEH. Changes to this policy include: STATE-REQUIRED TRAINING has been updated to include a hyperlink and a citation.

APD Policy #344- Report Preparation:

This policy is being updated as a result of the title change of the Adult Abuse Policy to Senior and Disability Victimization Policy. Changes include: A policy reference has been changed in CRIMINAL ACTIVITY.

APD Policy #362- Adult Abuse:

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This policy has been updated because legislative action impacts its content. The update should be accepted and implemented as soon as possible. 2019 CA SB 338 requires all law enforcement agencies that adopt or revise a policy regarding elder or dependent adult abuse or senior and disability victimization to include specified provisions, protocols, and attachments related to investigations. The legislation added Penal Code § 368.6, which may also be cited as the Senior and Disability Justice Act. This policy has been updated to include related policy provisions of the bill and certain pending guidelines from the POST Senior and Disability Victimization Policy Guidelines. Agencies are required to develop protocols and procedures for policy areas that would be agency-specific (which you may already have implemented) and to include them in this policy as an appendix. Lexipol recommends that agencies review the Senate Bill carefully in order to develop and include the required protocols and procedures that are appropriate for your agency.

APD Policy #380- Child and Dependent Adult Safety:

This policy is being updated as a result of the title change of the Adult Abuse Policy to Senior and Disability Victimization Policy. Changes include: A policy reference has been changed in PURPOSE AND SCOPE.

APD Policy #393- Gun Violence Restraining Orders:

This policy has been updated because legislative action impacts its content. 2019 CA AB 2617, effective Jan. 1, 2021, changed some of the requirements and processes for gun violence restraining orders. Changes include: In PURPOSE AND SCOPE, the Edit Level has been updated from "Best Practice" to "State." In GUN VIOLENCE RESTRAINING ORDERS, content related to temporary orders has been moved to TEMPORARY EMERGENCY GUN VIOLENCE RESTRAINING ORDERS. SERVICE OF ORAL GUN VIOLENCE RESTRAINING ORDERS has been renamed to TEMPORARY EMERGENCY GUN VIOLENCE RESTRAINING ORDERS. This subsection addresses and clarifies the requirements for a temporary emergency gun violence restraining order. Content regarding filing with the court and databases has been combined and pertinent content has been moved to RECORDS HEAD RESPONSIBILITIES. RECORDS HEAD RESPONSIBILITIES has been updated to reflect requirements for temporary orders. The name of this section is based on a text entity and may vary depending on how you answered the General Information Questionnaire.

APD Policy #420- Cite and Release:

This policy has been updated because legislative action impacts its content. 2017 CA AB 1065 amended law regarding crimes of organized retail theft and when a police officer may retain a person arrested for a misdemeanor. These changes pursuant to AB 1065 remain in effect until July 1, 2021, at which time the changes are repealed; Penal Code § 490.4 will also be repealed. Changes to this policy include: In REASONS FOR NON-RELEASE, content has been removed accordingly, and pronouns have been updated to gender-neutral alternatives to be consistent with the statute.

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Unrelated to the legislative update, additional changes include: In RELEASE BY CITATION, REASONS FOR NON-RELEASE, MISDEMEANOR WARRANTS, and REQUESTING CASE NUMBERS, pronouns and related grammar have been updated to be gender-neutral for consistency. Punctuation and style corrections have also been made in these sections.

APD Policy #442- Criminal Organizations:

This policy has been updated because regulatory action impacts its content. The update should be accepted and implemented as soon as possible. The California Department of Justice adopted regulations through 2020 CA REG TEXT 523780 governing the use, operation, and oversight of shared gang databases. Authorized agency users must be trained in the use and operations of such databases. Changes to this policy include: A citation has been added in GANG DATABASES, and punctuation and capitalization have been corrected. SHARED GANG DATABASE TRAINING has been added as a new subsection in TRAINING to address the new training requirement.

APD Policy #464- Homeless Persons:

This policy is being updated as a result of the title change of the Adult Abuse Policy to Senior and Disability Victimization Policy. Changes include: A policy reference has been changed in OTHER CONSIDERATIONS.

APD Policy #600- Investigation and Prosecution:

This policy is being updated as a result of the title change of the Adult Abuse Policy to Senior and Disability Victimization Policy. Changes include: A policy reference has been changed in DISCONTINUATION OF INVESTIGATIONS, and serial commas have been added.

APD Policy #602- Sexual Assault Investigations:

This policy is being updated as a result of the title change of the Adult Abuse Policy to Senior and Disability Victimization Policy. Changes include: A policy reference has been changed in **PURPOSE AND SCOPE**.

APD Policy #612- Brady Material Disclosure:

A review of this policy has resulted in updates to two sections: Disclosure of Investigative information has been updated to clarify examples of investigative information that are considered confidential or privileged, and the personnel files example has been deleted because these files are addressed in other sections of this policy. Minor punctuation corrections have been made in Disclosure of Personnel Information.

APD Policy #614- Operations Planning and De-Confliction:

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This policy is being updated as a result of the title change of the Adult Abuse Policy to Senior and Disability Victimization Policy. Changes include: In OPERATIONS PLAN, a policy reference has been changed, serial commas have been added, and punctuation has been corrected.

Unrelated to the update of the Adult Abuse Policy reference, additional changes include: A policy reference has been corrected in MEDIA ACCESS.

APD Policy #810- Records Maintenance and Release:

This policy is being updated as a result of terminology changes in the Senior and Disability Victimization Policy. Changes include: Terminology has been updated in RELEASE RESTRICTIONS. 2020 CA AB 2425, effective Jan. 1, 2021, added and amended law regarding juvenile arrest records, regarding the release of records, and sealing records. Changes to this policy include: A citation has been added in RELEASE RESTRICTIONS. SEALED JUVENILE ARREST RECORDS has been added as a new subsection in SEALED ARRESTS RECORDS to include additional responsibilities to seal juvenile arrest records when required.

APD Policy #812- Protected Information:

This policy has been updated after reviewing the California Department of Justice CLETS/CJIS Encryption Bulletin, dated Oct. 12, 2020. The update should be accepted and implemented as soon as possible.

APD Policy #1000- Recruitment and Selection:

This policy has been updated because legislative action impacts its content. 2020 CA AB 846, effective Jan. 1, 2021, amended law that requires peace officers meet minimum standards used in recruitment and hiring. Penal Code § 13651 requires all agencies that employ peace officers to review the job description used in the recruitment and hiring of peace officers and make appropriate changes that emphasize community-based policing, familiarization between law enforcement and community residents, and collaborative problem solving, while de-emphasizing the paramilitary aspects of the job. Changes to this policy include: STANDARDS FOR OFFICERS has been updated to include the new minimum standards. The name of the subsection is based on a text entity and may vary depending on how you answered the General Information Questionnaire.

APD Policy #1014- Sick Leave:

This policy has been updated because legislative action impacts its content. 2019 CA AB 2992, effective Jan. 1, 2021, expanded leave protections afforded to an employee who is a victim of domestic violence, sexual assault, or stalking to an employee who is a victim of a crime, as specified, and to an employee whose immediate family member is deceased as a direct result of a crime.

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Changes to this policy include: PURPOSE AND SCOPE has been updated accordingly.

APD Policy #1046- Uniform Regulations:

This policy has been updated because legislative action impacts its content. 2019 CA SB 480, effective Jan. 1, 2021, added a section to the Penal Code that prohibits, with certain exceptions, a law enforcement agency from authorizing or allowing its employees to wear a uniform that is made from a camouflage print or patterned material or a uniform that is substantially similar to a uniform of the United States Armed Forces or state active militia. It does not apply to members of a Special Weapons and Tactics (SWAT) team, sniper team, or tactical team engaged in a tactical response or operation. Changes to this policy include: A citation has been added to Wearing and condition of uniform and equipment and the edit level has been changed from "Discretionary" to "State." Also, a serial comma has been added and grammar has been corrected. Unrelated to the legislative update, changes include: Citation style has been updated in Political Activities, Endorsements, and advertisements. Line spacing issues have been corrected throughout the policy.

ALTERNATIVES

- Approve all policy updates
- Approve only some of the updates and request review/revision on the unapproved updates
- Do not approve any of the updates

FINANCIAL IMPACT

There is no financial impact from approving the policy updates from Lexipol. Funding for the Lexipol contract is currently included under the Police Administrative Services division budget.

MUNICIPAL CODE/POLICY DOCUMENT CROSS REFERENCE

The policies referenced are from the APD Policy Manual, as published by Lexipol. See the Discussion section for individual policy numbers.

ENVIRONMENTAL REVIEW

The California Environmental Quality Act (CEQA) applies only to projects that have the potential for causing a significant effect on the environment. This action is not a project pursuant to Public Resources Code section 21065 and CEQA Guidelines section 15378.

CLIMATE IMPACT

There are no identifiable climate impacts or climate action opportunities associated with the subject of this report.

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RECOMMENDATION

Authorize the Chief of Police to update the existing Alameda Police Department Policy Manual to be current with existing best practices and statutory requirements.

CITY MANAGER RECOMMENDATION

The City Manager concurs with the Police Chief's recommendation.

Respectfully submitted,
Nishant Joshi, Chief of Police

By,
Jeffery Emmitt, Police Captain

Financial Impact section reviewed,
Annie To, Finance Director

Exhibits:

1. Senate Bill 823 - Related to Policy 324
2. Senate Bill 338, Penal Code 368.6 - Related to Policy 326
3. Assembly Bill 2617 - Related to Policy 393
4. Assembly Bill 2425 - Related to Policy 810
5. CLETS/CJIS Encryption Bulletin from DOJ - Related to Policy 812
6. Assembly Bill 846 - Related to Policy 1000
7. Assembly Bill 2992 - Related to Policy 1014
8. Senate Bill 480 - Related to Policy 1046
9. Assembly Bill 1065-Related to Policy 420
10. Policy 300 Use of Force
11. Policy 314 Vehicle Pursuits
12. Policy 320 Domestic Violence
13. Policy 324 Temporary Custody of Juveniles
14. Policy 326 Senior and Disability Victimization
15. Policy 328 Discriminatory Harassment
16. Policy 344 Report Preparation
17. Policy 380 Child and Dependent Adult Safety
18. Policy 393 Gun Violence Restraining Orders
19. Policy 420 Cite and Release
20. Policy 442 Criminal Organizations
21. Policy 464 Homeless Persons
22. Policy 600 Investigation and Prosecution

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- 23. Policy 602 Sexual Assault Investigations
- 24. Policy 612 Brady Material Disclosure
- 25. Policy 614 Operations Planning and Deconfliction
- 26. Policy 810 Records Maintenance and Release
- 27. Policy 812 Protected Information
- 28. Policy 1000 Recruitment and Selection
- 29. Policy 1014 Sick Leave
- 30. Policy 1046 Uniform Regulations

cc: Eric Levitt, City Manager