

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	CASE NO.: 1:15-CV-01046
	)	
Plaintiff,	)	
	)	JUDGE SOLOMON OLIVER, JR.
vs.	)	
	)	<b><u>MOTION TO APPROVE REVISED USE</u></b>
CITY OF CLEVELAND	)	<b><u>OF FORCE POLICIES</u></b>
	)	
Defendant.	)	
	)	
	)	

Pursuant to Paragraphs 49 through 83, 87 through 92, and 341 through 349 of the Consent Decree and the Fourth-Year Monitoring Plan in the above-captioned matter, the City of Cleveland (the “City”), on behalf of the Cleveland Division of Police (“CDP” or “Division”), submitted four revised Use of Force policies: (1) Definitions; (2) General; (3) Intermediate Weapons; and (4) Reporting, attached hereto as Exhibits A through D, respectively. No changes to the existing Use of Force – De-Escalation Policy are proposed.

The Monitoring Team has carefully reviewed the revised Use of Force policies. The Team has determined that the modifications to the policies—mostly minor in nature, relating to correcting certain language discrepancies and enhancing the consistency of terminology across the Division’s General Police Orders—help to improve understanding of CDP expectations around

the use of force. There also are a number of substantive changes around CDP's use of force protocols that are reasonable and practical. The Monitoring Team therefore recommends that the Court approve CDP's revised Use of Force policies.

## **I. SUMMARY OF CONSENT DECREE REQUIREMENTS REGARDING USE OF FORCE POLICIES**

The Consent Decree contains a host of substantive requirements regarding CDP's Use of Force policies, addressing such issues as firearms, intermediate weapons, and reporting. Dkt. 7-1 at ¶¶ 49-83, 87. In addition to the substantive requirements around the use of force, the Division must, "[a]s needed, . . . develop, revise, and implement policies and procedures to fully incorporate the terms of this Agreement and comply with applicable law . . . [and] ensure that its policies and procedures are plainly written, logically organized, and use terms that are clearly defined." *Id.* at ¶ 342. The Division must "review each policy or procedure related to this Agreement six months after it is implemented and annually thereafter, to ensure that the policy or procedure provides effective direction to CDP personnel and remains consistent with this Agreement, and current law." *Id.* at ¶ 347.

## **II. PROCEDURAL HISTORY**

CDP previously revised its Use of Force policies, working closely with the Community Police Commission, the Department of Justice, and the Monitoring Team, to meet the requirements of the Consent Decree. By participating in various community engagement efforts, Cleveland residents had ample opportunities to shape the policies during the drafting process. The revised policies were submitted to the Court for approval in November 2016. Dkt. 83. The policies were fully implemented in the field, following officer training, on January 1, 2018. No changes were proposed or contemplated after six months, per Paragraph 347.

In early 2019, CDP reviewed and proposed some changes to four of its Use of Force policies: (1) Definitions; (2) General; (3) Intermediate Weapons; and (4) Reporting. The Monitoring Team and Department of Justice regularly reviewed drafts and shared feedback with the City and Division. On March 8, 2019, the Division submitted proposed final drafts of the four revised Use of Force policies.

### **III. STANDARD OF REVIEW**

The Monitoring Team's role is to "assess and report whether the requirements" of the Consent Decree "have been implemented." Dkt. 7-1 at ¶ 351; *accord id.* ¶ at 352 (requiring the Monitor to "review . . . policies, procedures, practices, training curricula, and programs developed and implemented under" the Decree). The task of the Monitoring Team here is to determine whether the four revised policies comply with the Consent Decree's requirements.

### **IV. ANALYSIS OF THE REVISED USE OF FORCE POLICIES**

The four revised Use of Force policies contain minor modifications that improve terminology consistency across the Division's General Police Orders, such as changing the word "must" to "shall" (Ex. B. at 2-3) and the phrase "witness narrative" to "Witness Statement Form" (Ex. D. at 3-4).

The Definitions policy removes the term "Officer-Involved Shooting" and introduces the term "Critical Firearm Discharge," defined as the "[d]ischarge of a firearm by a member including, but not limited to accidental discharges, discharges at animals, other than to euthanize, and discharges at individuals where no one is struck, as well as discharges by officers employed by an outside law enforcement agency within the jurisdiction of the Division of Police." Ex. A. at 1. This definition expressly includes accidental firearm discharges, unlike the "Officer-Involved Shooting" definition in the former policy. One consequence of this new definition is that the

Division's Force Investigation Team (or a subset of the Team, as determined by the Internal Affairs Superintendent and the Bureau of Special Investigations Commander) will investigate accidental firearm discharges going forward.

In the General policy, revisions include a change as to when a supervisor is required to respond to the scene of a reportable use of force incident. Under the revised policy, officers need not request a supervisor to respond to the scene following the pointing of a firearm at an individual; rather, officers "shall notify a supervisor and the officer shall complete the proper use of force entry." Ex. B. at 4.

Under the Intermediate Weapons policy, CDP officers may deploy oleoresin capsicum (OC or pepper spray) and ASP baton/impact weapons "[w]here grounds for an arrest or detention are present and the subject is actively or aggressively resisting and lesser means would be ineffective[.]" Ex. C. at 2-3. Previously, officers could deploy only controlled electrical weapons (Tasers), and not OC spray or impact weapons, as an intermediate weapon under such circumstances.

Under the Reporting policy, the un-holstering of a firearm "is subject to the data collection process and shall be included in the officer's disposition when clearing an assignment using the Computer Aided Dispatch System." Ex. D. at 4. This language provides more clarity to the former Reporting policy, which referenced only a "future data collection process."

These various proposed changes come from real-world lessons learned and issues that have surfaced as the Division has proceeded to implement the policies. Altogether, they are reasonable changes to policies that the Monitoring Team had previously described as "consistent with the Consent Decree because they promote officer and public safety, enhance effective and proactive

law enforcement, and advance constitutional policing in a manner consistent with the values of Cleveland's communities[.]” Dkt. 83 at 2.

**V. CONCLUSION**

The task of the Monitoring Team is to duly consider whether the City's four revised Use of Force policies satisfy the terms of the Consent Decree. The Monitoring Team concludes that the policies meet the terms of the Consent Decree. Accordingly, the Monitor approves the revised Use of Force policies in their entirety and requests that this Court order them effective immediately.

Respectfully submitted,

/s/ Matthew Barge

MATTHEW BARGE  
Monitor  
40 Washington Square South  
New York, New York 10012  
Tel: (202) 257-5111  
Email: matthew.barge@21cpsolutions.com

**CERTIFICATE OF SERVICE**

I hereby certify that on April 12, 2019, I served the foregoing document entitled Motion to Approve Revised Use of Force Policies via the court's ECF system to all counsel of record.

/s/ Matthew Barge  
MATTHEW BARGE