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CITY of DAYTON, OHIO
OFFICE OF THE CITY COMMISSION

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March 27, 2021

To: Mayor Nan Whaley
Commissioner Matt Joseph
Commissioner Christopher L. Shaw
Commissioner Darryl Fairchild

From: Commissioner Jeffrey J. Mims, Jr.

Re: Police Reform Working Group Recommendations

On March 25, 2021, the Use of Force working group voted to put forward the following recommendation to the Dayton City Commission.

1. Revise the use of force policy to adopt a statement of core principles with sections on sanctity of human life, public cooperation, de-escalation, use of force: objectively reasonable, necessary, and proportional, medical attention, duty to intervene and report, and use of force prohibitions. (See proposed language attached).

Per the working group's charter, the Dayton City Commission has 30 days to respond to the group with one of three options: accept the recommendation, reject the recommendation, or ask the group for further information to be able to evaluate the recommendation.

Accepting this recommendation does not mean that it will be implemented within the 30 day time window. Instead, it means that the City Commission directs the City Manager, Dayton Police Department, or other applicable entity to take action to implement this recommendation as soon as is practicable.

Thank you for your consideration of this recommendation.

Sincerely,

A handwritten signature in blue ink, reading "Jeffrey J. Mims, Jr." with a stylized, cursive script.

Jeffrey J. Mims, Jr.
City Commissioner

Cc: Ms. Dickstein
Mr. Parlette
Ms. Lofton
Ms. Doseck
Ms. Walker
Chief Biehl

I. CORE PRINCIPLES

Sound judgment and the appropriate exercise of discretion will always be the foundation of police officer decision making in the broad range of possible use of force situations. It is not possible to entirely replace judgment and discretion with detailed policy provisions. Nonetheless, this policy is intended to ensure that de-escalation techniques are used whenever feasible, that force is only used when necessary, that the amount of force used is proportionate to the situation that an officer encounters, and that force is objectively reasonable based upon the standard described herein.

In addition to officer safety, the Department's core use of force principles are as follows:

A. SANCTITY OF HUMAN LIFE

1. The Department's highest priority is the sanctity of human life. In all aspects of their conduct, Department members will act with the foremost regard for the preservation of human life and the safety of all persons involved.
2. The Dayton Police Department seeks to gain the voluntary compliance of subjects, when consistent with personal safety, to eliminate the need to use force or reduce the force that is needed.

B. PUBLIC COOPERATION

1. A strong partnership with the public is essential for effective law enforcement.
2. Inappropriate or excessive uses of force damage that partnership and diminish the public trust that is a cornerstone of policing in a free society.
3. Officers will act:
 - i. with a high degree of ethics, professionalism, and respect for the public.
 - ii. in a manner that promotes trust between the Department and the communities that it serves.

C. USE OF FORCE: OBJECTIVELY REASONABLE, NECESSARY, AND PROPORTIONAL

1. OBJECTIVE REASONABLENESS STANDARD

- i. ALL FORCE MUST BE OBJECTIVELY REASONABLE.
- ii. Objectively reasonable Force is a level of force that is appropriate when analyzed from the perspective of a reasonable officer on scene, rather than with 20/20 hindsight. Objective reasonableness takes into account, where appropriate, the fact that officers must make rapid decisions regarding the amount of force to use in tense, uncertain, and rapidly evolving situations. All uses of

force are analyzed under the Fourth Amendment as guided by the United States Supreme Court. Graham v. Connor, 490 U.S. 386 (1989).

- iii. Officers shall assess each incident and determine based on law, policy, training, and experience, which level of force should be used to control the situation in the safest manner for all individuals involved. Reasonable and sound judgment will dictate the force option to be deployed.
- iv. The reasonableness inquiry with respect to force is an objective one, whether the officer's actions are objectively reasonable in light of the facts and circumstances confronting and reasonably known to the officer at the time of the incident. These factors include, but are not limited to the following:
 - 1. the severity of the crime at issue;
 - 2. whether the subject is posing an imminent threat to the officer or others;
 - 3. whether the subject is actively resisting or attempting to evade arrest by flight;
 - 4. the subject's proximity or access to weapons.

2. NECESSITY

- i. OFFICERS SHOULD USE ONLY THE AMOUNT OF FORCE NECESSARY TO ACHIEVE A LAWFUL OBJECTIVE.
- ii. Officers should not exercise force unless it is necessary and as a last resort.
- iii. Officers should exhaust all other reasonable means before resorting to the use of force.
 - 1. Using force only as a last resort means that officers will not engage in unnecessary, overly aggressive, or otherwise improper actions that create a situation where force becomes needed.
 - 2. Using force only as a last resort also means that an officer shall not use force if a safe alternative would achieve the law enforcement objective.
- iv. Officers may use force only to accomplish specific law enforcement objectives to include:
 - 1. To overcome resistance directed at the officer or others;
 - 2. To prevent physical harm to the officer or to another person, including intervening in

- a suicide or other attempt to self-inflict injury; or
- 3. To protect the officer, or a third party, from unlawful force.

3. PROPORTIONALITY

- i. ALL FORCE MUST BE PROPORTIONAL TO THE LEVEL OF THE SUBJECT'S RESISTANCE.
- ii. Officers will use only the force that is proportional to the threat, actions, and level of resistance offered by a subject. This may include using greater force or a different type of force than that used by the subject. The greater the threat and the more likely that the threat will result in death or serious physical injury, the greater the level of force that may be necessary to overcome it. When or if the subject offers less resistance, however, the officer will decrease the amount or type of force accordingly. Force used by an officer shall proportionally decrease as the level of resistance by the subject decreases.

D. MEDICAL ATTENTION

- 1. Once the scene is safe and as soon as practical, whenever an individual is injured, complains of injury, or requests medical attention, officers will immediately request appropriate medical aid for the injured person and may provide appropriate medical care consistent with their training to any individual who has visible injuries, complains of being injured, or requests medical attention. This may include providing first aid and/or arranging for transportation to an emergency medical facility.
- 2. Officers will treat injured persons, whether another officer, a member of the public, or a subject, with dignity and respect.

E. DUTY TO INTERVENE AND REPORT

- 1. Any officer present and observing another officer engaging in an unauthorized use of force must, when in a position to do so safely, intervene to prevent the violation. Failure to do so may result in disciplinary action up to and including dismissal. Officers must promptly report any such violations to a supervisor.

F. USE OF FORCE-PROHIBITIONS

- 1. Officers may not use or threaten to use force for the following reasons:
 - i. To resolve a situation more quickly, unless the extended delay would risk the safety of the person involved, officers, or others, or would significantly interfere with other legitimate law enforcement objectives;
 - ii. To subdue a person who is not suspected of any criminal conduct, other than to protect that person's, an officer's or another person's safety;
 - iii. To retaliate against a person (which includes, but is not limited to, force in excess of what is objectively reasonable to prevent an escape, force to punish individuals for fleeing or otherwise resisting arrest, force used to punish an

- individual for disrespecting officers, and other such circumstances);
- iv. To prevent a person from resisting or fleeing in the future;
 - v. Against persons who only verbally confront officers and are not involved in criminal conduct;
 - vi. Against persons who are handcuffed, and/or restrained and compliant, where their actions present no substantial risk of escape, injury, and/or property damage;
 - vii. Against persons engaged in the lawful exercise of First Amendment rights (e.g., protected speech, lawful demonstrations, observing or filming police activity, or criticizing an officer or the department);
 - viii. Based on bias against a person's race, ethnicity, nationality, religion, disability, sex, gender identity, sexual orientation, or any other protected characteristic.

Use a chokehold or any form of vascular neck restraint except where deadly force would be authorized and where necessary to protect an officer or member of the public from an imminent threat of death or serious physical harm. This prohibition includes any incident where an individual attempts to ingest narcotics or other evidence. Any subject that ingests evidence will be taken immediately to the nearest hospital