

# Public Report on Independent Civilian Review of the Sebastopol Police Department



June 3, 2021  
Law Office of Jerry Threet

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# Introduction

In the summer of 2020, Sebastopol officials were in the midst of a series of transitions for the City’s Police Department (“SPD,” or “the Department”), as well as intense public interest in policing generally, including some interest in reimagining how policing is done and how public health and safety can be best achieved. The previous SPD chief had retired in 2018 after serving two years in the position. This followed the retirement in 2017 of a well-respected Chief who had served in that position since 2003. The Department was under the direction of an Acting Chief, who continued to perform the duties of lieutenant and covered responsibilities of a sergeant who was out on leave. The City began a search for a new leader in early 2020, which was halted by the COVID pandemic, and was about to be restarted.

Local public attention on policing had increased dramatically in the wake of George Floyd’s killing by Minneapolis police officers in May of 2020. And the Black Lives Matter protests that swept the nation also were occurring at the local level. While the catalyst for such attention was the Floyd killing, local demonstrations also related to Sonoma County’s history of troubling incidents involving local law enforcement agencies. These included the killings of 17-year-old Jeremiah Chass outside Sebastopol in 2007, 13-year-old Andy Lopez in Moorland in 2013, Branch Wroth in Rohnert Park in 2017, and David Ward near Sebastopol in 2019. There were expressions of public concern over possible SPD involvement in policing of Black Lives Matter protests in Sant Rosa in the summer of 2020.

In light of these events, it appeared that there was a significant public interest in more information about how SPD was operating. The general question posed was whether the Department was serving the local community’s values and whether it might be experiencing any issues that fit into broader, concerning narratives about American law enforcement agencies. City officials decided that this was a good opportunity to look at how SPD was operating, what it was doing well, and what areas might be improved. The City Council, therefore, contracted for a comprehensive independent review of SPD.

Soon after this Review was underway, the City replaced the Acting Chief with a retired chief recruited from outside the Department. Also, the City restarted its recruitment process for a permanent Chief, eventually offering the position to an external candidate who accepted in November 2020, but then withdrew his

acceptance after several weeks. The City again restarted the process and went back to its applicant pool. Fortunately, a favored candidate who had earlier withdrawn from consideration renewed his interest in the position. This candidate from UCLA was selected, bringing to an end a period of challenging uncertainty about the Department's direction. The new Chief comes to the job highly regarded by all those who reviewed his qualifications and appears to be a good fit for a small-town department with a strong community policing ethos.

This Review takes place against a backdrop of general public support for SPD.<sup>1</sup> An apparent significant number of residents within the City support the local police – both quietly and more overtly. And several outreach initiatives, started under previous chiefs but halted more recently, and universally supported by staff, show a desire to connect positively with the local community outside of enforcement contexts. Yet, some question the need for policing, generally, and others desire enhanced transparency and accountability for their local police force. Many community members lament the decrease in community engagement by the Department. There has been internal conflict within the police force for some time, both between some employees and management and between employee factions. Therefore, Sebastopol city government leaders decided that the time was right to take a closer look into how the Department operates, given the public interest at this time of Department transition.

Within this overall context, the City commissioned the Law Office of Jerry Threet to conduct an independent review of SPD, focused not on any specific incident, but instead on the Department's overall policies, practices, training, and organizational culture. The City sought an objective review and analysis that puts SPD's operations into a broader framework of best practices and potential reforms. This report is the product of that independent Review. It was prepared by Jerry Threet, who specializes in reviewing police practices and the civilian oversight of law enforcement.<sup>2</sup> Mr. Threet is the retired director and founder of the Sonoma County Independent Office of Law Enforcement Review & Outreach (IOLERO) and currently serves as an independent investigator of alleged police misconduct for the Richmond, California Community Police Review Commission. Mr. Threet also has consulted with City officials and community members in jurisdictions across the state who are considering setting up civilian oversight of their police departments. He is a regular presenter of civilian oversight training for the National Association for Civilian Oversight of Law Enforcement. He has presented several trainings on community policing for cadet classes at the Santa Rosa Junior College Public Safety Training Academy.

As discussed below, this Review's results are generally positive, with multiple areas of suggested improvement. SPD and its staff do many things right and are to be commended overall for their commitment to community-oriented policing. At the same time, this report recommends several new, attainable best practices gleaned from other law enforcement and oversight agencies' experiences. A strong foundation of public support for SPD within Sebastopol already exists – and at the same time, changes in systems and shifts in resources would provide a basis for strengthened community relationships and beneficial new approaches to improve and modernize the Department.

The Department's accountability systems need serious strengthening in several respects. Concerning administrative investigations of possible employee misconduct, the system should be made predictable, fair, consistent, and efficient, for the benefit of all stakeholders.

In addition, employee evaluations recently were introduced to SPD, a change that should strengthen employee accountability as it takes hold and becomes standard operating procedure. The City should support the evaluation processes through additional training and some possible fine-tuning to make it a better fit for the law enforcement environment. The process would also greatly benefit from public input mechanisms on issues like customer service and impartial policing. The Department has begun to make such changes.

Relatedly, a lack of training has left some specialized SPD functions performed by employees who would benefit from more training in these areas. Also, sparse training has resulted in a sole focus on POST-required perishable skills, such as the use of force, thereby neglecting the increasingly important aspects of training officers in de-escalation, implicit bias, and customer service. The Department should enhance training and work to establish an annual training plan for each employee that meets both the agency's and employees' goals. Success in this area will depend in significant part on budgetary support from elected officials. Employee hiring and promotional processes have been, until recently, informal and subjective, which has undermined staff confidence in the objectivity of internal decision-making and negatively impacted employee morale. These processes, too, need continued fortification to enhance their adherence to fairness and impartiality and to ensure to the extent possible that the Department hires only those who are fit for the challenging work they will undertake as peace officers. Interim Chief Mort made significant improvements in this area, and the Department should continue these efforts moving forward.

A key challenge at SPD that permeates many other issues identified in this report is an ongoing staffing shortage that impacts most Department operations. For some time now, SPD has not had a full complement of able staff on active duty to fill all shift positions on the schedule. This has meant that employees face regular mandatory overtime, which impacts their personal lives and families and the Department's ability to operate effectively. On at least one occasion, these shortages have resulted in the Department contracting with the Sonoma County Sheriff's Office for coverage to provide policing services for some shifts.

Long-term overtime means employees are overworked, impacting their performance and morale. It also makes injuries more likely, creating a vicious circle causing a need for more overtime to fill shifts for employees on injury leave. This condition also makes it difficult to provide necessary or recommended training opportunities, as an officer in training is an officer not working a regular shift. Finally, staff shortages make it much more challenging for the Department to engage the community in a non-enforcement setting. Addressing this issue will be vital in resolving many of the issues identified in this report. The Department is actively recruiting now to address this issue, at least in part.

Both SPD staff and the community appear to strongly support greater community engagement by the Department. Staff shortages and COVID restrictions have severely curtailed such opportunities over the last years, to the detriment of the Department and the community. As the Department reaches full staffing and COVID restrictions ease in the future, the Department would benefit greatly from a renewed emphasis on robust community engagement in many ways outlined in this Report. SPD is committed to this approach and has implemented some measures to improve community engagement, and will implement others as COVID precautions allow.

SPD employees clearly love their work for the community and are dedicated and passionate about community service. Yet, several factors have significantly impacted employee morale over the last few years. One factor has been ongoing uncertainty about who will lead the Department. Internal conflicts between management and staff and between employee factions have also hurt morale. Another significant factor has been employee perceptions of increasing public disdain for police work. Interviews with Department employees and management have shown that all involved are ready for a period of stability, increased transparency and accountability, and robust community engagement. In this regard, staff desires appear to align with those of the public. With the hiring of a new chief, these hopes could now be fulfilled.

The recommendations of this Review fall into several categories:

- To reform internal accountability systems to ensure internal and external procedural justice, thereby enhancing the confidence of both staff and the public in these systems;
- To enhance an internal agency culture that values and promotes a community-oriented approach to policing;
- To strengthen officer performance by formalizing supervisory review processes across critical areas and strengthening mechanisms for public input into these systems; and
- To increase transparency and public trust through policy changes, new types of outreach, and the creation of a fitting form of independent oversight.

The timing is good for achieving these goals. After this work began, a community-oriented Interim Chief from outside the Department was hired to improve the Department's internal process. Interim Chief Mort collaborated closely with the author of this Review, and there is much agreement on the recommendations that could help move SPD toward improved operations. The City's new permanent Chief began his tenure in March, with transitional assistance from Interim Chief Mort, and will be aided by the information provided by this Review. By all accounts, the new Chief enters office with a strong community engagement philosophy entirely consistent with this Review's recommendations. Hopefully, this Review will serve as part of the foundation for building success for the new Chief and helping the Department move beyond past challenges into a strong future of progressive, community-oriented policing.

# INDEPENDENT REVIEW METHODS

The period of focus for this Review was 2014 through 2020. This independent review process involved multiple stages. Initially, City Council leadership contacted the auditor to discuss a possible independent review of the police department after receiving repeated constituent communications requesting more information about how the Sebastopol Police Department operates. These inquiries followed the Black Lives Matter protests in the summer of 2020. The conversation soon included the entire City leadership team, consisting of the Mayor, Vice Mayor, City Manager, Assistant City Manager, and Acting Police Chief. It moved to discussions of a valuable scope for an independent review of the Department and what community engagement might be advisable.

As a first step, the City contracted for a public process at the City Council to discuss possible ways to move forward public discussion around policing in Sebastopol. After a presentation by the auditor of options during two consecutive City Council meetings on June 30 and July 21, 2020, the Council voted to contract for a formal independent review of SPD. The nature and scope of the review was informed by feedback from council members and the public during the City Council meetings. Also, the Council indicated it intended to begin a public process to gather input from community members about the issues around policing in the community and the desires of the community for its police force. That process was intended to feed into the independent Review, to help answer whether SPD operates in a manner consistent with Sebastopol community values.

The City contracted with the auditor as an attorney for the City. After signing the legal services agreement, on July 31, 2020, the author began in earnest the process of this Review, beginning with informing the City Manager about access needs during the process and arranging for appropriate contact points to ensure that access.

The first two meetings requested by the author were with then Acting Chief DeVore and with the leadership of the Sebastopol Police Officers' Association, and took place on August 5 and 11, 2020. The Acting Chief was very forthcoming about his views and committed to allowing the auditor to view copies of any records he needed to review, but only at the SPD headquarters. In addition, the Acting Chief declined to encourage staff members to cooperate with the Review. Soon thereafter, the auditor began work at the Department.

The August 11, 2020, initial meeting with the Sebastopol POA meeting was productive. The SPOA leadership described their concerns about the Department's issues, providing an important starting point in understanding how staff perceived the challenges and advantages facing the agency. It is fair to say that the auditor made some progress at this meeting in calming the skepticism of union leaders about the Review. More work was needed to fully overcome their reluctance to participate in the process, and some individual union leaders declined in the end.

The auditor began work at the Department with regular hours on-site beginning on August 13, 2020. Initially, the work focused on preparation and planning with the Acting Chief, staging the work in ways that allowed the audit's needs to be satisfied while not interfering with the other duties of staff assigned to help with the audit. Soon after the work began, the City hired Don Mort as Interim Chief, with DeVore returning to his Lieutenant position. Interim Chief Mort proved to have a collaborative approach with the Review and provided ready access to all information requested by the auditor. His approach greatly assisted the process.

The first order of business was to inform SPD leadership of the records the auditor would need to complete this independent Review. Those records included (but were not limited to) the following categories:

- Use of force reports gleaned from a keyword search of the database containing incident reports, over a four-year period (necessary because SPD has not separately tracked or reviewed uses of force unless they are the subject of a complaint);
- Performance evaluation records for all employees;
- Training records for all employees;
- Scheduling policies and schedules;
- The Department's official employee policy manual;
- Files and records for all internal affairs investigations, findings, and discipline for the last four years; and
- Reports from the Department database that evidenced what tasks employees spent their time on over the previous two years.

The goal of reviewing these records was to gain a fuller understanding of SPD's guiding policies, operations, and internal systems. Interim Chief Mort fully facilitated the auditor's needs, providing responsive materials over several weeks, resulting in the auditor's ability to gather important information from which to form conclusions about SPD. Of course, records only provide part of the story, so the auditor collected additional information in other ways.

The initial records reviewed included all performance evaluations completed for employees since the Department instituted the new evaluation process in 2019 and all training records for all employees. These reviews provided valuable insight into how performance is measured, what factors go into such evaluations, and how consistently they are applied across supervisors and employees. They also provided important information about what types of skills the Department most valued in offering training to its employees and what level of training was being provided. Recommendations intended to build upon existing strengths and fortify weaknesses flowed from this information.

Next up was reviewing the records available for every single internal affairs investigation in the custody and control of SPD from 2014-2020, a total of 32 investigations. Given this universe of records over a representative time period, the auditor could draw firm conclusions about this aspect of the SPD employee accountability systems and make well-supported recommendations to improve that system.

After that, the auditor turned to a review of SPD's policy manual then in effect<sup>3</sup> and a comparative analysis of whether Departmental policies live up both to minimal baseline policies released by Lexipol<sup>4</sup>, as well as best practices across the country in some critical areas. This Review did not examine every policy but instead focused on areas of significant public interest, such as policies on use of force, implicit bias, crowd control and protest policing, community policing, and guidelines for interactions with vulnerable populations. While this Review was underway, Interim Chief Mort revised some key policies to bring them up in standard so that they at least satisfied the minimum requirements of Lexipol policy recommendations. This Review provided many opportunities to recommend improvements to the Department's approach in critical areas.

With a baseline understanding gleaned from the records review, the auditor then turned to interviews of the Department's active staff and management. Initially, many staff members were reluctant to speak with the auditor and share their viewpoints and experiences. Nevertheless, enough staff members agreed to interviews that word spread in the Department that the auditor was interested in and would include employee perspectives as an essential component of this Report. Encouragement of staff by Interim Chief Mort helped more employees decide to sit for an interview. In the end, the auditor reached out to a final reluctant staff cohort and provided them with the interview questions and an explanation of how the information from responses would be used, and assurances that individual responses would be held confidential in the report. At the time of interviews, the

Department employed 23 regular employees. Additionally, four reserve officers occasionally provided services to the Department. The auditor interviewed 14 of the 23 employees and one of the four reserve officers. Ultimately, a majority of the Department's regular employees were interviewed as part of this Review. Some regular employees were not interviewed due to a variety of competing circumstances, many of which were outside of the auditor's control. In addition to the regular employees interviewed, the auditor also interviewed one part-time, volunteer reserve officer. Because the majority of the regular employees were interviewed and their views were consistent with the information from the records review, the auditor is confident in the findings and recommendations offered in this Report.

The information shared by employees was extremely valuable in fully understanding the Department's working environment during the transitions from Chief Weaver to Interim Chief Mort. It added greatly to the dry accounts of the records reviewed by the auditor and was consistent with preliminary conclusions formed from those record reviews. The employees who spoke with the auditor clearly are hard-working, community service-oriented professionals dedicated to the Department and the City. They were generous in sharing their perspectives, despite acknowledged frustrations with increased outside criticism and skepticism about any reforms recommended by a civilian outsider. The auditor is grateful for the cooperation staff offered.

In addition, informal discussions and formal interviews with Interim Chief Mort and Lieutenant Ron Nelson further solidified conclusions drawn from the records review and staff interviews. Taken together, the consistency of information has allowed the auditor to draw firm conclusions and make well-supported recommendations for moving SPD toward its full potential to serve the community of Sebastopol.

Near the end of the review process, the auditor reviewed incident reports from the SPD database gathered through keyword searches designed to find uses of force. While likely incomplete due to the nature of the records keeping and the search, this information was helpful in evaluating internal review processes for use of force and analyzing whether individual uses of force should receive further internal review. Overall, the SPD review process for use of force needs greater robustness to ensure consistent tracking and management review. It would also benefit from robust criteria for reviewing whether any particular use of force was advisable and compliant with policy and law.

Finally, the auditor reviewed information pulled from the SPD database that provides some limited evidence of what functions employees spend their time on. This area was a key focus of interest of both the City Council and the public, for various reasons. However, it proved as challenging to analyze as the auditor predicted during the City Council discussion prior to this Review. Like most police departments, SPD does not keep detailed time records for its employee tasks each day. There are limited records in the database that reflect when employees perform broad categories of functions, such as responding to a call, patrolling while not on a call, or working in the office (which can cover many different tasks, such as report writing, taking calls from the public, and taking complaints).

While some tentative conclusions can be drawn in broad categories, this information is not very useful in determining what percentage of time employees spend responding to homeless complaints, conducting traffic enforcement, or getting a cat out of a tree for a neighbor. Such an analysis would likely require a time-intensive process of employees logging time diaries over an extended period or instituting a detailed time billing system. What appears true from the information available is that much of the time employees spend in the station involves necessary and valuable work related to officer enforcement tasks. However, a closer analysis would require a more concerted effort and deeper dive than was possible with the information available.

While the auditor drafted parts of this Review incrementally, as he completed the focus area research, he turned his full attention to preparing this report in late December of 2020. Personal circumstances took the auditor entirely away from this project for four weeks in February, but he returned to its completion as March approached.

The initial plan was for the City to separately convene community meetings with various stakeholder groups to better understand Sebastopol's overall community values around policing to allow the auditor to compare the values evident in SPD policing with the community's values. For various reasons, the community process has not taken place as initially intended. Therefore, this Review is presented without that baseline of comparison. Once offered, this report may be the focus of further community meetings and focus groups that will seek to gauge community values and evaluate how closely SPD's operations meet those values and what, if anything, might help bring them closer together.

The auditor offers thanks to the City's leadership team, Lt. DeVore, Interim Chief Mort, Lt. Nelson, Dispatch Supervisor Tracy Peters, the Sebastopol POA, and the dedicated employees of SPD for their collaboration and assistance in facilitating

this independent Review of the Department and this resultant Report. The author sincerely hopes it is helpful to the City, SPD's newly hired Police Chief, and the entire Department and its staff.

# **PART ONE: The Sebastopol Police Department: Historical Context**

Although an interesting and worthy project, a complete history of the Sebastopol Police Department is beyond the scope of this Review. Nevertheless, it is helpful to acknowledge some key parts of that recent history to provide an appropriate context for this report's findings. Most notably, the Department had three different Chiefs (two interim acting Chiefs and an appointed permanent Chief) after Chief Weaver's retirement in 2017. These quick transitions have sometimes been related to conflict within the Department, which has added to a sense of change and unpredictability in the agency.

As can be expected, each Chief brings distinct personality traits, leadership styles, and priorities to the agency. That is a tremendous amount of change for a small organization in a short amount of time, and it appears to have created significant challenges for the organization. The period from the summer of 2020 until now has also been relatively calm and stable, with new systems introduced and staff concerns acknowledged and addressed. This necessary course correction should help provide a foundation for continued improvements as this report is released and the new Chief takes the helm at SPD.

As mentioned above, Jeff Weaver retired as Chief in 2017. Chief Weaver served as Chief for over 13 years before his retirement. He was very popular with the public and significantly responsible for SPD's reputation as a community-oriented organization. Weaver was also popular with SPD staff, who viewed him as having the best interests of SPD employees at heart. Notably, Weaver hired most of the Department's current employees, and these employees had an opportunity to serve under his leadership. Consequently, any Chief succeeding him was likely to be compared by SPD staff to Weaver, at least in part, but the intervening years of transition may have weakened that tendency to some degree.

Weaver's retirement led to SPD Lieutenant James Connor's appointment as Chief in November of 2017, without a formal recruitment effort or competitive application process. Connor had worked for SPD since 1996 and served four years as Captain, then the second in command in SPD's two-person management structure. Chief Connor's management style was in stark contrast to that of Chief Weaver. Connor's short tenure as SPD Chief was controversial. Chief Connor announced his retirement, effective December 2019, after only two years in the

position. In December 2019, Connor was replaced by Greg DeVore as Acting Chief.

Under Acting Chief DeVore, from December of 2019 to August of 2020, SPD's internal controversy continued. Before becoming Acting Chief, DeVore had served as Connor's second-in-command and managed internal affairs investigations during Connor's tenure as Chief. The Sebastopol POA lodged grievances against DeVore on several issues, as they had against Connor. In addition, an officer has filed litigation against the City alleging harassment. In August of 2020, the City replaced DeVore as Acting Chief and continued his service as a Lieutenant.

Taking over as Acting Chief beginning in August of 2020, Don Mort brought extensive experience running a small department and a strong philosophy of community-oriented policing. Interim Chief Mort had served as a peace officer for over twenty-three years and as Chief of the Dixon Police Department for over six years. Mort soon hired Ron Nelson, a well-respected, retired Santa Rosa Police Department Lieutenant, to serve as Interim Lieutenant for SPD during this transition period. The combined experience of the two new managers and their outside perspective allowed them to immediately begin assessing how to best meet the challenges of the Department.

Together, Mort and Nelson spoke with all employees and analyzed what organizational shifts were necessary to best meet the needs of the moment. Mort and Nelson soon gained SPD employees' trust, including those who began with extreme skepticism, and started implementing beneficial changes. Mort and Nelson also worked in full collaboration with this Review, encouraging staff cooperation with the auditor, satisfying all requests for information, and sitting down to discuss issues and proposals to address challenges. In the end, it appears there is general alignment between the views of Interim Chief Mort and those of the author of this report. From the perspective of the auditor, this consistency from different sources strengthens the credibility of both.

The City had been in the process of recruiting for a new, permanent Police Chief since Connor retired in December of 2019. The initial recruitment effort was put on hold when COVID restrictions went into place in February-March of 2020. The City then reopened recruitment again in the early Fall of 2020, resulting in an offer to a candidate who accepted in November of 2020. Unfortunately, that candidate withdrew his acceptance in December of 2020, leaving the City again without a permanent successor in place. This turn of events was hard on staff morale, but employees were happy with Mort and remained hopeful that an appointment would

come soon. The City again opened up the recruitment and went back to the applicant pool. The previous favorite candidate of most reviewers, who had withdrawn his candidacy before selection, expressed strong interest. He was interviewed, offered the job, and on March 1, 2021, Kevin Kilgore began his work as the new SPD Chief.

Chief Kilgore comes to Sebastopol after serving almost four years as a Lieutenant in the University of California, Los Angeles Police Department. He has served over fifteen years in university police departments, including UCLA and UC Santa Barbara. Kilgore has been a peace officer for more than 24 years. He brings a strong philosophy of community-oriented policing and created a state-approved police training course in procedural justice and implicit bias, teaching the class to police officers and community members throughout the state. The new Chief reportedly is interested in settling in for the long term as a resident of the greater Sebastopol area, a welcome promise that SPD leadership will again be stable for an extended period.

Also, it is important to highlight other changes that have occurred within SPD over the last four years. SPD has not been fully staffed for some time, resulting in strains on employees and challenges in facilitating training for employees. Mandatory overtime has been persistent, contributing to morale challenges. Overtime also tends to increase the incidence of injuries, which has been an issue in the Department. When employees are out on injury leave, they cannot be replaced, which again exacerbates overtime needs. The staff shortage and past leadership decisions, and most recently COVID, have significantly decreased non-enforcement interactions between SPD employees and the community. All of these factors have put strains on the Department and impacted community-police relationships. These factors provide essential context for further discussions of possible reimagining policing proposals and the ability of a small department like SPD to achieve success on other public goals.

Finally, this Review comes in the midst of one of the most intense episodes of recurring, critical attention to policing in this country and this county. This focus is especially keen regarding the intersection of racial inequities and policing's impacts on Black, Indigenous, and People of Color (BIPOC) communities. Law enforcement officers almost universally describe today's social environment as one of the most challenging in their lifetimes for those who serve as police officers. SPD staff generally agree with that perspective. Some of the stories shared by SPD staff about their feelings of disregard by some community members have been truly heartbreaking. Yet, those same employees remain committed to the career

choice of public service that they made when joining SPD and look forward to working under a Chief who will support them and strengthen relationships between SPD and the communities it serves.

# **PART TWO: Staff Views of SPD Challenges and Opportunities**

## **Overview**

No review of the Sebastopol Police Department could be complete without input from the professionals most familiar with the Department's policies, practices, culture, leadership, challenges, and assets: those who work there. While there are also benefits from seeking such input from past employees and SPD management, that feedback was not sought in this review for several reasons. First, this review is intended to be forward-looking, looking at recent issues as a means of focusing on what can be done to improve operations moving forward. Current employees' views are most important for this task, including their opinions on how current operations were affected by what has happened in the recent past. Second, existing employees continue to influence the Department's culture, and thus also are a powerful influence on how it operates. Third, limiting feedback to current staff facilitated honest and direct feedback on both the pluses and minuses of past leadership decisions which helped the Department arrive at where it is today.

Therefore, this Review has included input from the Department's current staff who were willing to share their views. The questions covered the period 2014 through 2020. Each employee was asked to respond to the same set of general questions about SPD operations in several broad areas. While most employees generously shared their knowledge and views of the Department, a few entirely declined that opportunity. While every effort was made to explain to reluctant employees that it was in their professional interest to have their feedback included in this review, in the end, it was their choice to decline that opportunity.

Nevertheless, the robust input offered by most employees proved very helpful in shaping conclusions in this review. Across the board, most feedback from Department employees was consistent with and reinforced conclusions derived from independent assessments of the Department's records and systems. This consistency helped fortify many of this review's recommendations and findings and gave them greater validity overall.

This section will cover several inquiry areas raised in the interviews with employees, aggregating and summarizing staff feedback. Where employee(s) views differed from those of most other employees, such dissent from the

consensus also will be noted. Each question area will be set out separately below, and aggregate answers provided under each question.

### **Employee Interest in Working in Policing and at SPD**

Most current SPD employees became involved in police work because of their keen interest in community service and helping others. Many employees first became involved at SPD through volunteer positions in rangers or reserve officer programs. Some employees had always been interested in SPD because they or their families lived here. Most were interested in police work in a small-town environment that facilitated a community-oriented approach to policing. Some employees also mentioned that they were not successful applying to other local agencies and therefore applied to SPD in the hopes of being employed at a smaller agency where there was less competition for hiring.

### **Employee Tenure in the Department**

There is a wide variation in tenure among employees of the Department, from two to twenty-four years. The years of employee tenure are evenly distributed within that range. Many SPD employees worked for several years under Chief Weaver. Chief Weaver hired most newer employees, but they have worked under multiple leaders since their hiring, during a period of change and uncertainty.

### **SPD Work Environment**

Universally, employees interviewed described this period as one of repeated change and uncertainty, both in terms of leadership of the Department and public perceptions of policing and SPD. Also, most described the internal work environment over this period as characterized by poor morale among employees. Many of those interviewed lamented internal conflicts during this period among different employee “cliques” within the Department. In addition, most described a decline in training and community engagement, and an increase in mandatory overtime, during this period, as contributing to the sense of challenges with employee morale. All employees described the environment as improving significantly under Interim Chief Mort and Lt. Nelson's leadership.

### **Employee Morale**

When explicitly asked about morale among employees over time, employees agreed that morale has been poor for several years, although there have been ebbs

and flows in the level of morale. When asked to name causes of poor morale, employees offered several explanations, all of which probably contributed somehow, and some of which interacted with one another to make the cumulative effect on morale greater than it otherwise might be for any one factor. Most employees named the frequent changes in leaders and leadership styles and expectations as critical in lowering morale.

Sustained mandatory overtime, with its attendant negative impacts on employees' personal lives, ability to obtain desired training, and community engagement opportunities, also has lowered employee morale in the view of many. Many employees pointed to an increase in negative statements and treatment by some community members as a critical factor in reducing their morale. Some employees identified specific criticisms of individual leaders of the Department since 2017 as factors that lowered their morale. Taken together, it is not surprising that these factors have led to many employees experiencing challenges. Nevertheless, employees also generally stated that morale improved considerably in the last six months under Interim Chief Mort's leadership.

## **Hiring Processes**

Many employees described a process for hiring and promotions that, until recently, lacked features designed to ensure objectivity and fairness in the process. With hiring, many employees described an informal process that involved a personal interview with the Chief, followed by completion of hiring paperwork. Several officers described applying as a reserve officer, which is essentially a volunteer assignment, followed by the background investigation, and then working as a reserve officer. Also, some employees stated that they had issues in their background that caused difficulties with their attempts to be hired by other agencies, yet were not barriers at SPD. Multiple officers initially brought on under reserve officer status were subsequently allowed to apply for permanent paid officer positions without competition from a wider public recruitment of applicants.

In addition, several dispatchers described having done a walk-in, "cold call" inquiry about the possibility of employment, and then completing an application. In some cases, dispatchers also applied through a standard recruitment process, were not selected initially, but then were called back when the first-choice candidate did not work out.

Concerning background investigations, employees generally described going through a normal background process.

### **Processes for Awarding Promotions and Collateral Assignments**

When it comes to the process for awarding promotions or desired collateral assignments (such as firearms or defensive tactics instructor), again, there was a diversity of opinion among those interviewed. Six of the employees had no view about the process because they had not gone through it. Several employees felt that the process was overly subjective, allowing personal favoritism, to influence selection. Some employees attributed the perception of favoritism and lack of objectivity over time as increasing morale issues among employees. Two employees saw the promotional process as fair. Noteworthy in connection to this question is that there are fewer opportunities for promotion in a small agency like SPD, absent supervisory employees leaving the agency through retirement or lateral hires.

### **Training Opportunities**

Most employees agreed that there had not been sufficient staff opportunities to receive adequate training to do their jobs most effectively over the period from 2014 through 2020. Several highlighted that it was challenging for employees to obtain even the basic training designated as “perishable skills” required by the California Commission on Peace Officer Standards and Training. Other employees pointed to the desirability of at least some employees receiving specialized training in subjects like traffic enforcement, sexual assault investigations, domestic violence, homicide investigations, and the like. Some employees explained that a lack of understanding gained from such training could result in compromising criminal cases. Also, some reported that an employee's inability to obtain desired training and meet their professional goals hurts the Department.

### **Leadership Development**

Related to training, employees generally agree that there have been few Departmental efforts to develop future leaders within the Department, although a few officers were sent to a leadership training to help them prepare for potential promotion to sergeant. Leadership development measures can include working with each employee to develop a career and training plan with goals to meet along the way. Such programs would allow both the Department and its employees to project needs in advance and work toward them. From an employee's perspective,

such a plan conveys that the organization supports their professional development and values their contributions and potential. From an organizational perspective, such plans help the agency develop training and staffing budgets more efficiently and help employee retention.

## **Performance Evaluations**

Employees almost uniformly agreed that the new performance evaluation process was a fair and beneficial improvement for the Department. Eleven employees believed the process was fair and objective, although one of those employees thought it was unfair to another employee. One employee believed that the process was unjust for them, although it may have been fair for others. Three employees who had not yet been evaluated did not have an opinion on the process's fairness.

Some employees felt that specific aspects of the evaluation process could use fine-tuning. Among the suggested improvements offered by interviewed employees were the following: make the criteria for evaluation less general and more specific to their job functions; include input into an assessment from other employees and supervisors who work directly with the employee; include input from members of the public into an evaluation of employees; and lessen the burden on the employee currently created by the self-evaluation process. Some of these suggestions will be further discussed below.

## **Scheduling**

Employees universally saw the Department scheduling process as fair. This is significant, as these issues can sometimes cause conflict within an agency.

## **Internal Affairs Investigations**

Concerning perceptions of the internal affairs investigation process, a thin majority (eight) of employees interviewed had no view, attributing that answer to their lack of experience with the process. This perception in itself could be a positive sign, assuming that the lack of complaints against these employees reflects an absence of any actions that may have violated agency policies. The remaining seven interviewed employees who expressed a view of the IA process had varying opinions of the process ranging from fair and objective to biased and unfair.

Some employees expressed a belief that not holding some employees accountable for their actions has caused some to expect that their actions would have few if any

consequences and to not follow policy. This impression is consistent with the findings of the independent audit of internal affairs investigations, described later in this report.

### **The Role of the Union**

Employees had a variety of attitudes about the role of the employee union in the Department's work environment. Most employees felt that the union has little real power to affect the work environment, but has done its best to represent employees' interests. Some employees viewed the union as sometimes reflecting the personal interests of its leaders more than the interests of other union members. A minority of employees believed that the union was a disruptive element in the workplace and that some union leaders bullied employees.

### **Bias Among Employees/Management at SPD**

When asked if they had experienced or witnessed racial or ethnic bias against members of the public or staff at SPD, most employees (14/15) firmly said they had not. The employee who clearly stated that they had witnessed such bias attributed it to a minority of officers and said it happened due to a lack of accountability for such behavior.

Similarly, when asked if they had experienced or witnessed gender bias among SPD staff, most employees (14/15) firmly said they had not.

### **Homelessness Enforcement**

Enforcement of laws around homelessness can sometimes negatively impact a law enforcement agency. Usually, this results from elected officials asking the agency to use criminal laws to move vulnerable people without homes out of a particular area for reasons other than helping those vulnerable people. Fortunately, this does not seem to be a significant issue in Sebastopol. SPD officers are sometimes asked to address problems caused by a few people without traditional homes, such as dumping sewage or crimes against other people. Yet, SPD officers do not see their role as making the homeless feel uncomfortable in Sebastopol.

Most officers agree that their role in connection to Sebastopol's unhoused residents is the same as for other residents: enforcing against violation of criminal laws. Also, most employees support greater reliance on social service workers to address some homeless individuals' particular mental health needs. Employees look

forward with anticipation to the expansion of the hours of the County's Mobile Support Team. They agree that the MST can provide services to address mental health needs much more effectively than police officers.

## **Public Perceptions of the Department**

These interviews provided an interesting range of responses about how employees see public perceptions of the Department. Most employees (12/15) believe that the public generally views SPD positively and appreciates the service that employees provide. Some of those with that view of public perceptions also thought a minority of the community sees SPD negatively. There are a variety of employee opinions about how significant that minority is. One employee felt that the community perception of the Department was relatively mixed at this point. And two employees believed that the general public perception of the Department was negative. Employees' perceptions also seemed to have a strong correlation with how the public has treated them personally and some correlation with the function they perform for the Department. Many employees expressed their belief that some community members' negative views are primarily due to overall negativity in the country toward policing, generally, and not about the performance of SPD, specifically. However, one employee believed that the public has a negative view of SPD due to some SPD employees' actions.

## **Job Satisfaction**

The interviews asked about employee job satisfaction in two different questions: 1) are you satisfied with your job; and 2) have you considered leaving your position in the last six years. There were only twelve answers to this question because it excluded temporary hires and a reserve officer. Of these twelve employees, only three stated that they were fully satisfied with their job; the remaining nine employees had periods of significant dissatisfaction at one time or another during this period. Similarly, nine of the twelve employees have considered leaving their SPD positions during the last few years. These are concerning results for an agency that has faced significant instability, and they deserve more careful attention.

**RECOMMENDATION 1:** Given the significant value of the staff interviews conducted as a part of this review to fully understanding the challenges and opportunities of the Department, SPD and the City should consider establishing a process for a periodic, confidential consultation with SPD employees designed to gather such information into a report for use by SPD and City management. In

addition, SPD should institute a process for exit interviews of all employees who leave the Department to obtain similar information

**SPD RESPONSE 1:** Interim Chief Mort implemented monthly sergeants' meetings, bi-weekly check-in meetings with SPOA, and other employees one-on-one meetings. One employee resigned during Mort's tenure and an exit interview was completed by Interim Chief Mort. No formal process or policy has been defined. This process will continue under Chief Kilgore.

# **PART THREE: General Department Operations**

## **Employee Recruitment, Hiring, and Retention**

Perhaps the clearest finding of this review is that the Department's most significant need is full active staffing for all shifts in all positions. SPD staff and management agree on this need and that it will improve operations in multiple ways. And the auditor entirely agrees that bringing active staffing to budgeted levels would help resolve many, although not all, of the challenges that have faced the Department over the last seven years.

As is clear from SPD employee interviews, staffing shortages have placed a significant burden on existing active employees. Employees describe working while exhausted at times, missing important family functions, being unable to take needed or desired training, and lacking the ability to engage with the community. Mandatory overtime has been a significant contributor to a lack of job satisfaction and could soon lead to employee retention issues.

Full staffing will reduce the burden on employees of persistent, mandatory overtime. It would allow the Department to prioritize once again the training needs of the agency and individual employees. And it would enable officers to engage with the community in congenial ways that do not involve enforcement operations. Finally, by helping in these ways, full staffing would improve overall morale among SPD staff. Well rested, happy employees perform better overall, making them better representatives of the Department. That means when calls for service come in, officers are more likely to respond with care and patience and hopefully bring the incident to a safe conclusion.

On at least one occasion recently, staffing shortages have led to SPD contracting with the Sonoma County Sheriff for policing services to supplement staffing where SPD could not cover employee shifts adequately. This arrangement brings with it inherent downsides from the perspective of policing that reflects Sebastopol community values. When Sonoma Sheriff's deputies provide policing in Sebastopol, they bring with them that agency's approach to policing, including its training and policies in use of force and other essential areas. Therefore, it is clear that full staffing also is imperative to Sebastopol receiving policing services that reflect this community's values.

A commitment to full staffing can contribute to making Sebastopol a more desirable destination for potential applicants. Police work in a small city is not for every potential applicant, but some seek out the opportunities that come with a small-town environment. Applicants who want to work in small towns are often interested in true community policing, where employees interact with the community outside of enforcement contexts regularly. While pay and benefits are significant factors in deciding where to apply, so are working conditions. And full staffing is a critical component in whether applicants view those working conditions positively or negatively. On the flip side, it also makes it less likely that existing staff will consider making a lateral move to another department. As staff interviews revealed, most SPD employees have considered leaving SPD over the last few years.

Another issue that affects recruitment is whether the community and the Department welcome and promote diversity within the Department's ranks. As a general matter, Sebastopol is a city that celebrates diversity but lacks demographic diversity among residents. However, a very diverse population works and travels through the City, which is an intersection of two state highways. SPD has not always had much diversity in its workforce. And a more diverse Department workforce can help SPD efforts to recruit applicants who support a progressive approach consistent with small-town community policing.

There is increasing evidence that a diverse workforce, including gender and race/ethnicity diversity, helps improve department performance in areas such as customer service and resolving incidents peacefully. Hopefully, the message of change inherent in hiring the new Chief will continue with improved diversity in hiring and all that flows from that. To be clear, this is not a matter of meeting hiring quotas. Instead, experience shows that individuals from different backgrounds bring different skills and experiences to the table. That breadth of experience enhances a department's ability to relate to and interact with more parts of the community.

**RECOMMENDATION 2:** The City should ensure that SPD is able to fully staff its budgeted positions, so that SPD is able to attract and retain employees, adequately train employees, and support robust community engagement.

**SPD RESPONSE 2:** The Department is actively recruiting staff to fill positions.

**RECOMMENDATION 3:** The Department should engage in targeted recruitment of applicants designed to increase the diversity of its workforce.

**SPD RESPONSE 3:** The Department has broadened its recruiting processes to reach a diverse pool of potential applicants within Sonoma County, surrounding counties, and communities within the state. The broadened recruitment processes include visits to regional academies throughout northern California and advertisements that reach communities and academies throughout the state.

### **Employee Performance Evaluations**

Regular employee performance evaluations are a vital feature of any effective, professional organization. Evaluations keep employees apprised of their standing in the organization, their strengths in contributing to the agency, and their challenges that need attention. A sound evaluation system can bolster employee morale by demonstrating that decisions on collateral assignments and promotions are based on fair and objective criteria that have been documented over time. Likewise, such a system can help identify areas where an employee may need greater attention and help them get help in those areas. Properly structured, such an approach also provides a mechanism by which officers' interactions with the public can be objectively assessed and includes input from community members with whom officers have interacted.

Until recently, SPD did not utilize any formal, written performance evaluations for employees. While managers may have communicated feedback on performance to employees periodically, no formal system was in place for documenting that feedback for use in future employment decisions. Absent such documentation, both managers and employees are left to rely on memory in making decisions such as promotions and collateral assignments, which largely depend on an assessment of an employee's past performance. Also, agency managers sometimes consider an employee's performance in deciding an appropriate discipline after a finding of misconduct. A disciplinary decision that points to a written performance evaluation under such circumstances tends to be more defensible than one that relies on a manager's memory.

Over the last year, the Department began conducting formal written evaluations for all employees, following a lengthy meet and confer process with the Police Officers' Association representing most agency employees. The performance evaluation process is standardized across all City departments, and the same form is used for all positions in every Department. Formal written evaluations are a good step in the right direction toward greater professionalism and improved internal legitimacy in SPD. Yet, using the same criteria, even for specialized

positions such as police officers and dispatchers, carries significant challenges in making the evaluations meaningful. A review of those evaluations also reveals room for improvement in several areas.

First, the criteria under which employees are evaluated could be adjusted to better reflect the agency's community policing mission. Second, the criteria could be made more objective and less reliant on the evaluators' subjective perceptions. Third, the evaluator responses could be made more transparent in documenting the sources of certain conclusions about performance in some areas. Fourth, the evaluations should consider feedback from both peers and “customers” to provide more direct information to guide rankings by evaluators. Fifth, the Department could do more to train and provide guidance to evaluators so that evaluations are done more consistently across different supervisors and employees.

Concerning sworn officers, line officers are evaluated by their supervising sergeants. A review of the current evaluation forms reveals that the criteria on which officers are evaluated could be adjusted to better reflect a community policing orientation to job performance. The current evaluation forms include multiple criteria to rank each officer, including the number of arrests an officer made and the number of citations issued. It appears from the completed evaluations that a higher number in these categories is considered a reason for a higher ranking on that criteria. The public may not view higher numbers of arrests and traffic and parking citations as an inherently laudable goal that reflects a better performance by an officer. Such goals also may not be entirely consistent with a community-oriented policing philosophy, especially when an increase in citations is associated with increased revenue to the Department.

Overall, the evaluation form could benefit from greater emphasis on a customer service orientation. While the evaluation form includes a single category to rank an officer on customer service, the ranking appears to be dependent on the subjective perceptions of the supervising sergeant and is not tied to any direct input from the Department’s “customers.” Performance evaluations that assess customer service should include some way to measure that factor that is more direct and objective than the supervising sergeant's opinion. While the sergeant undoubtedly observes the officer in certain situations and receives feedback from community members about the officer, those instances would inevitably be much more limited than the universe of the officer’s interactions. A more reliable means of such feedback would include some form of input directly from the public. Direct input can help avoid disputes about whether a supervisor’s evaluation of an employee’s customer

service is unfair or subjective. Gathering direct public input also can enhance the perceived legitimacy of the evaluation among employees.

Several products are available in the market that will allow an agency to gather input on an officer's performance immediately after an interaction with a community member. To offer but one representative example, Open Policing (OpenPolicing.org) is an online computer product through which a community member can rate an officer following an interaction. Under this system, a department provides officers with business cards that they carry with them and give out to members of the public with whom they interact. The cards give a community member all of the necessary information they need to access an online website and rank the officer's customer service during the interaction.

The officer would provide that card to the community member after their interaction and politely request that they take a moment to go online to rate the officer's performance. Those ratings then can be compiled over time and reported to department managers. Such ratings provide managers with information directly from the public about an officer's customer service, which they could then use to inform the annual, written performance evaluation. In addition, even if the community member declined to rate the officer, the interaction itself communicates that the Department and its officers care about how the public perceives them, which carries inherent benefits for the Department and officers.

This review also found discrepancies between supervising sergeants in how they completed evaluations. Some evaluations included a self-evaluation section and a section on performance goals for the upcoming year, which the employee completed. Other evaluations lacked those components. Some evaluations included a detailed narrative by the supervisor explaining the employee ranking on each evaluation criteria, while others had only the rankings. Numerical scores were inconsistently associated with overall evaluation ratings. Even though evaluations should include a sign-off from the City Manager's Office, some included this signature, while others did not. These discrepancies suggest that additional training for evaluators is advisable to bring consistency in the thoroughness and approach to evaluations across supervisors.

Regarding dispatchers, the review found a slightly different situation. There is only one dispatch supervisor, so all evaluations reviewed used a similar approach. In addition, it appears the supervisor worked parts of all shifts at times to observe all dispatchers in the performance of their duties personally. Evaluations were completed in a detailed manner with explanatory narratives and included employee

self-evaluations, a valuable means of feedback. Nevertheless, here, too, there was room for some improvement.

Many of the significant criteria for evaluation on the dispatcher form include subjective components for which it was unclear how the evaluator reached the stated conclusions.

For criteria such as call taking, report processing, dispatching units, data accuracy, and timeliness, the criteria appear relatively objective, but the evaluation feedback was, at times, conclusory and subjective. Increasing transparency for the basis for evaluations could help validate the evaluation process and results.

Like the customer service element of the officer evaluations, some aspects of the dispatcher evaluations could benefit from input from those who have experience with dispatchers performing those aspects of their duties, whether peers or community members. For dispatchers, a “customer” might be either a community member calling in with an issue that needs attention, or a police officer sent to respond to a call for service. Each has needs that a dispatcher serves. Therefore, it may make sense to seek ways to gather input from both types of “customer,” especially regarding evaluation criteria such as accuracy and effective transmission of information. In some circumstances, such as a mental health crisis, accurate and effective transmission of information could be the difference between life and death for both the person in crisis and the responding officer. While feedback from a community member might not be as easy to obtain for a dispatcher as it would be for an officer using an Open Policing type system, the Department should explore options for gathering such information to inform dispatcher performance evaluations.

A welcome and positive recent innovation in the SPD evaluation process is the addition of supervisory notes. Under Interim Chief Mort, supervisory notes were added to the SPD process to regularly document in an employee’s personnel file both commendable actions and areas that need improvement. The use of this ongoing process throughout the year provides a continuous record of employee performance information, which an evaluator can use at the end of the year to assist the supervisor in drawing objective conclusions about the employee’s overall performance. In addition, such notes also provide a mechanism for evaluating how supervisors are performing their supervisory duties throughout the year. This is a significant process improvement, as supervisor performance is a critical factor in a police agency's effectiveness, especially a small agency such as SPD.

**RECOMMENDATION 4:** The Department should strengthen its newly implemented performance evaluation system by making its evaluation criteria more focused on the specific functions and missions of SPD.

**SPD RESPONSE 4:** The Department has focused on completing evaluations and familiarizing supervisory with the system. The Department is considering forming a committee to refine the evaluation form and process.

**RECOMMENDATION 5:** The Department should include public input into the performance evaluation system, both by consulting the public on what criteria should measure employee performance, and by including direct customer input into evaluations.

**SPD RESPONSE 5:** The Department is considering forming a committee to refine the evaluation form and process. The Department is considering [openpolicing.org](http://openpolicing.org) or similar platforms to provide for public input in the evaluation process.

**RECOMMENDATION 6:** The Department should consider ways to include the input of peers and other supervisors in employee performance evaluations.

**SPD RESPONSE 6:** A Supervisors' Notes Form was implemented and is being used regularly to document positive and needs-improvement matters. The Department is considering forming a committee to refine the evaluation form and process.

**RECOMMENDATION 7:** The Department should strengthen its emphasis on customer service criteria in its performance evaluation system

**SPD RESPONSE 7:** Customer Service is one of the themes that was implemented with the Supervisors' Notes. The Department is considering forming a committee to refine the evaluation form and process.

**RECOMMENDATION 8:** The Department should increase the transparency and objectivity of the criteria supervisors use to measure performance in annual employee performance evaluations.

**SPD RESPONSE 8:** The Department is training and working with supervisors to create a uniform, objective, consistent, and predictable evaluation process.

**RECOMMENDATION 9:** The Department should enhance the training of supervisors in conducting employee performance evaluations in order to make the process more consistent and predictable for all employees.

**SPD RESPONSE 9:** The Department is training and working with supervisors to create a uniform, objective, consistent, and predictable evaluation process.

**RECOMMENDATION 10:** The Department should support and strengthen the use of supervisory notes to provide regular, ongoing feedback to employees on their performance, and make regular use of such notes for annual performance evaluations.

**SPD RESPONSE 10:** The Department implemented this system in September 2020, and it is being utilized regularly.

## **Employee Training**

### *Existing Training*

There are few professions where proper training is as crucial to success as in policing. A police department may have excellent policies, but without appropriate training to support alignment with those policies, those policies can create false expectations among the public and agency employees. Department policies set expectations for employee performance. Inadequate training significantly increases the prospect of policy violations and erosion of public trust. In today's environment, where public expectations of police officers are changing rapidly and police departments are trying to evolve to meet those expectations, proper training is even more critical than ever.

Unfortunately, with staffing shortages, SPD has offered less than ideal levels of training for several years. This reality is reflected both in staff interviews and in a review of employee training records. Given the challenges the Department has experienced offering training recently, SPD has provided SPD officers primarily training in what POST considers "perishable skills"<sup>5</sup> that must be refreshed regularly. This category of training tends to be related to the use of force. During the last few years, both state requirements and best practices in training have shifted toward new areas of emphasis. These include de-escalation of conflict, limiting force to what is necessary, recognizing and overcoming implicit bias, communicating more skillfully, and focusing on a customer service approach to public interactions.

The auditor reviewed the training record of every SPD employee for this Report. This review showed that SPD officer training historically has focused quite heavily on traditional police training such as use of force, defensive tactics, firearms use, and specialized enforcement areas (such as traffic enforcement, DUI, and drug enforcement). One exception is that most officers have received Crisis Intervention Training, usually from the Sonoma County Sheriff's Office, which focuses on responses to individuals in crisis. This 40-hour training covers several specialized areas such as mental illness, trauma effects, autistic spectrum conditions, and similar areas. Over time, more officers took some training in non-traditional areas such as communication skills, racial profiling, emotional intelligence, and the like. Overall, these non-traditional training hours were a small fraction of the overall training experience of SPD officers.

For dispatchers, the review showed a somewhat different story. Overall, dispatchers received less formal training than officers. Again, however, traditional training was much more prevalent than non-traditional training. Most dispatchers appear to have received some level of training in handling a call related to a person in crisis, with some trained in handling a call from a suicidal individual. Some received training in customer service.

### *Improving SPD Training*

The single most impactful thing that SPD could do to improve training would be to implement full, active staffing of the Department for all funded positions. Also, training is more likely to occur if the Department proposes a staffing budget with assumptions that each employee will be unavailable for work a certain percentage of the time each year due to training. That assumption may increase the number of funded positions in the Department slightly. Both of these approaches would depend on the City Council's support, as they may require an increase in SPD funding.

In addition, given changes in policing in recent years, SPD should increase non-traditional training for its officers in multiple areas. Increasingly, implicit bias training is an essential tool for supporting Departments in serving all communities fairly and equitably. For such training to be effective, it needs to go beyond a training video or classroom presentation and include a scenario-based component. The most effective training in this area emphasizes the scientific fact that *all* people carry unconscious bias against others that affects their decisions, especially during fast-moving stressful events. It then goes on to focus on

techniques to become aware of and overcome such tendencies. It also demonstrates how acting on such biases can cause enforcement mistakes that create risks to an officer's safety. Such training helps officers be more effective and would allow the Department to show its commitment to fair and impartial policing.

Another policing principle that is increasingly emphasized both in law and training is de-escalation. Effective de-escalation skills can help avoid the need for force when a police officer responds to an incident. Many training modules are being offered in this area. The most effective approach in teaching de-escalation skills will incorporate a scenario-based component where officers must choose between escalating to force or using de-escalation skills. Like use of force training, de-escalation training should be treated as a perishable skill requiring regular refreshing. Such training would help SPD officers be more effective and also help the Department show its commitment to avoiding force unless it becomes necessary.

Many agencies have recently offered their officers regular customer service training. This type of training, correctly done, can effectively shift how an officer views their daily interactions with the community. When officers view their underlying task as serving community members, including those with whom they are interacting in an incident, this can shift the way they approach communications. Principles of customer service emphasize treating a community member with respect, civility, and some degree of deference. This approach would support the Department's efforts to engage the public in genuine community-oriented policing.

While more training modules may benefit SPD officers, based on the recommended policy changes below, only one more will be focused on here. Increasingly, legal case law and best practices focus on an officer's "duty to intercede" when they see another officer violating policy. This duty rests on the legal principle that an officer has a responsibility to protect a community member from unlawful actions, even if done by a colleague. It is consistent with the "serve and protect" approach underlying policing.

Several models of "active bystander training" have proven quite effective in supporting a department's shift toward this approach, including an excellent introduction to the subject offered by Lexipol. Such training helps a department avoid legal liability. More importantly, it can help shift the culture of an organization toward a teamwork approach. Officers come to expect colleagues to help them when they are about to cross a line or get too emotionally agitated and

need to step back and let someone else take over. Such training could support SPD in overcoming internal conflict among staff that has recurred in recent years while also communicating to the community that officers have their best interests at heart.

While the above recommendations focus on formal training for individual officers, equally or more important is the training offered by Field Training Officers (FTO). In this regard, it is imperative who the Department chooses as FTOs. An FTO provides new hires training in how the Department wants an officer to handle matters on the street. Typically, an FTO provides this “on the job” training while partnered with a new officer responding to incidents. In some departments, that can mean an FTO tells a new hire to forget what they learned in formal training and instead follow what the FTO imparts to them. Even without such admonitions, an FTO has a significant effect on a new hire. Given this, the Department should assign FTO duties only to those officers with a demonstrated record of complying with Department policy and training. Also, when the Department wants to shift officers’ expectations, it should emphasize new training principles like those discussed above in its FTO program.

**RECOMMENDATION 11:** SPD should increase overall training opportunities for all employees.

**SPD RESPONSE 11:** The Department is currently developing a Department Training Plan.

**RECOMMENDATION 12:** The Department should increase non-traditional training in areas of greater emphasis in modern policing, including Customer service, de-escalation skills, implicit bias, and active bystander training.

**SPD RESPONSE 12:** Department staff recently completed LGBTQ training and national conflict resolution and tactical communications (de-escalation and bias-free) training. Additionally, some staff members have completed conflict resolution training. Additional non-traditional training will be provided as time/budget permits and will be reviewed with the Department Training Plan development.

**RECOMMENDATION 13:** SPD should also include an emphasis on non-traditional training in its Field Training Officer programs.

**SPD RESPONSE 13:** The Department will review this recommendation and assess feasibility of implementation.

**RECOMMENDATION 14:** The Department should choose internal trainers from among those employees with a record of closely following the requirements of agency policy and training.

**SPD RESPONSE 14:** This recommendation will be assessed with the Department Training Plan.

## **Community Engagement**

As discussed above, SPD has experienced multiple organizational transitions and internal conflict for several years, with staffing shortages and poor employee morale compounding challenges. In this environment, responding to calls for service has occupied the majority of officer time and attention. Time pressures have made it near impossible to interact with the community and strengthen relationships outside of enforcement contexts. Fortunately, the City's hiring of a new Chief, the release of this Review, the improvements put in place by Interim Chief Mort, and the opportunity to once again fully staff the Department, make this an opportune time for SPD to pursue approaches that are more attuned to current community priorities.

There is no question that robust community engagement can be a valuable tool in identifying and prioritizing problems that reflect the experiences and priorities of the communities SPD serves. Robust collaboration with communities allows a department to examine and address the roots of criminal activity while gaining the trust of a community by centering them in the process. To the extent the City provides SPD with additional resources, it should emphasize that officers pursue a community engagement model of policing that prioritizes engagement while not ignoring enforcement.

Sebastopol is fortunate that those who work at SPD support robust engagement with the community. The auditor heard universal support from interviewed employees to strengthen community engagement efforts. Employees mentioned a desire for community BBQs, school supply give-ways, Independence Day ice cream socials, coffee with a cop, downtown merchant walks, youth night sports, and the like. Much like community members who would like to know their police officers better, SPD employees yearn for more opportunities to connect with the

community. SPD, therefore, is well-positioned to build on this desire to expand its community engagement efforts.

While many departments use a strategy of assigned officer beats to help build community connections, Sebastopol is too small a town and police force to use that strategy effectively. Nevertheless, it is possible to pursue the goal underlying that approach by regularly assigning officers to interact and consult with specific community groups. The opportunities for such interactions are numerous and include business groups, public service groups, school groups, and organizations that represent and serve disadvantaged communities.

**RECOMMENDATION 15:** SPD should return to a model of robust and active community engagement as soon as staffing levels allow it to do so.

**SPD RESPONSE 15:** The Department is active implementing this recommendation. Foot patrols have been implemented. Bicycle patrols are being assessed. Increased community events are being assessed as the county re-opens from the pandemic.

**RECOMMENDATION 16:** The Department should assign employees to ongoing engagement with key community groups, including especially groups representing or serving traditionally disadvantaged populations, as part of their regular duties.

**SPD RESPONSE 16:** This recommendation is being assessed as the county re-opens from the pandemic.

**RECOMMENDATION 17:** SPD should commit to hiring one or more employees with Spanish language and cultural fluency who can effectively engage with members of the Latinx communities who live, work, and shop in, and travel through, Sebastopol.

**SPD RESPONSE 17:** This recommendation has been implemented. The Department employs individuals who are Spanish language and culturally fluent (approx. 45%). Also, the Department's current recruitment/job description states that Spanish language ability is highly desirable.

**RECOMMENDATION 18:** The Chief should hold regular community meetings with Sebastopol area community organizations to gather input and share information on the Department's policing philosophies and strategies.

**SPD RESPONSE 18:** The Department is implementing this recommendation. To date, one community “Meet & Greet” with Chief Kilgore was held and more community meetings will come. The Department is working with the Sebastopol Chamber of Commerce to set up more meetings with City businesses.

# **PART FOUR: Internal Accountability Systems**

## **SPD's Internal Affairs Investigations System**

### *Overview*

Every police department must rely on its Internal Affairs investigations as a key component of employee accountability. A department may have the best policies and processes in the nation on paper, but they may be worthless unless there is meaningful accountability for employee violations of agency policies. This is especially true concerning the most consequential departmental policies, such as use of force, bias in policing, violations of constitutional rights, abuse of authority, body-worn camera operation, dishonesty, and the like. A vital measure of a Department's effectiveness and community engagement is how well it responds to community complaints alleging officer misconduct. The public has a right to expect that a violation of such policies, explicitly designed to protect the public, will have serious consequences for employees who commit such offenses.

A well-functioning accountability system communicates to the public that a police department takes seriously any complaint that a community member may raise about unsatisfactory treatment received from an agency employee. It does this through welcoming complaints; treating complainants with fairness, respect, and courtesy; communicating transparently with the public on the outcomes of complaints; and imposing meaningful discipline for employees found to have violated departmental policies or the law. And even where an employee's action may not violate a policy, an investigation nevertheless provides an opportunity for both the Department and its employees to consider how they could improve an interaction with a community member and improve policies. Thus, a well-functioning complaint investigation system helps enhance community relationships and the functioning of the Department.

Almost as important, police officers have a right to expect that misconduct allegations will be investigated in a fair, unbiased, and timely manner based solely on the evidence. Other factors extraneous to the investigation, such as relationships or favoritism within a department, or external political pressure, should play no role in such a system. Also, employees should expect that consequences for sustained misconduct findings will be applied fairly among employees and that

discipline for a violation will be reasonably predictable. Such a system reflects procedural justice principles, leading to greater employee satisfaction, higher employee morale, and greater compliance by employees with departmental policies.

To evaluate SPD's employee accountability system, the auditor reviewed the Department's overall complaint process, all available internal affairs investigations completed, and all informal grievances filed by employees during 2014-2020. This comprehensive review provided a firm foundation for drawing conclusions about this process and making recommendations for improvements.

### *Review of SPD Complaint Investigation Process*

Initially, it is noteworthy that internal affairs investigations present a particular challenge for small departments such as SPD. In a small department, an inescapable fact is that all employees tend to work closely with, and must rely on, all other employees at one time or another. This relational dynamic creates challenging pressures on any internal affairs investigator asked to put aside friendships, allegiances, and comradery in the context of an investigation and focus solely on seeking information that may negatively affect a colleague. The same is true for employees asked to answer questions that may negatively affect a co-worker. It also can be challenging to find a supervisor who was not in some way involved in an incident being investigated, making it difficult to avoid conflicts of interest or perceptions of conflicts of interest. Yet, somehow, every department must address these challenges to ensure an effective IA system.

### *Governing Law and Policy for Complaint Investigations*

SPD Policy 1007: Personnel Complaint Procedure sets out the Department's official complaint investigation process.<sup>6</sup> In addition, all complaint intakes and investigations are governed by California Penal Code Sections 832.5, 832.7, and 832.8, as well as Government Code Sections 3303-3305.5 (the "Peace Officer Bill of Rights"). There also are established "best practices" for administrative complaint intake and investigations for police officers, found for example, in standard Internal Affairs Investigations training approved by California Commission on Peace Officer Standards and Training, which are relevant to this review.

SPD Policy 1007 establishes a complaint investigation process that divides complaints into "formal" and "informal" complaints. The SPD policy defines an

“informal” complaint as one where a complainant is satisfied that a supervisor has taken “appropriate action” regarding the complaint allegations. When an agency has a category of “informal” complaints, it can mean that such complaints are not subject to a formal investigation with findings. Yet, Penal Code Section 832.5(a)(1) mandates that every police agency in the state “establish a procedure to investigate complaints by members of the public against [ ] personnel[.]” The language of this provision does not make an investigation of a complaint optional but rather mandatory. Penal Code Section 832.7(f)(1) further requires that a “department or agency shall provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition.” Again, this language does not allow Department not to investigate the complaint; otherwise, the Department could not provide a finding to the complainant.

### *The Complaint Investigation Process in Practice*

#### Complaint Intake

Sebastopol’s approach to external complaints against employees has positive aspects and multiple opportunities for improvement. To its credit, SPD provides complaint forms in a prominent place in the lobby of police headquarters. When a community member comes in and asks to file a complaint, the front desk receptionist directs them to a complaint form. A supervising sergeant comes to the lobby to speak with them about their complaint and complete an intake interview if desired. These are positive features that can make a complainant feel that SPD values their concerns.

However, the Department could improve other aspects of the intake process. For example, the Department provides neither complaint forms nor information about how to file a complaint on its website. The form itself is called a “Public Comment” form, which is somewhat misleading. The law requires a process for the public to file complaints, so the form should be so labeled. If a community member desires to commend an employee, the Department should provide a different form for that purpose. The form itself could be improved by including spaces that request more detailed information, such as the location, date, and time of the incident; whether an arrest was made; and choices as to the nature of the complaint (excessive force, discourtesy, neglect of duty, etc.).

The instructions provided with the form should be revised to encourage community members to express their concerns related to the services they receive from an SPD employee.<sup>7</sup>

Interacting with a community member who is upset over an interaction with an SPD employee can be challenging for the Department's employees. A complainant can sometimes be very upset and accusatory toward SPD's representative and may not always accurately perceive what happened during an incident. Nevertheless, such interactions have inherent value and provide an opportunity to strengthen relationships between the Department and the community when handled appropriately. While informally addressing a complaint can sometimes be effective and appropriate and clarify misunderstandings, it can easily be perceived as dismissiveness or hostility by the complainant. Even an apparently “unreasonable” complaint merits some investigation to ensure that there is not more to the situation than initially assumed by an employee. By doing so, the Department will communicate that it takes community concerns seriously. And every legitimate complaint deserves investigation, even if an initial conversation with an intake supervisor mollifies the complainant.

### Complaint Investigation

California Commission for Peace Officer Standards and Training (“POST”) identifies several basic tenets of a valid internal affairs investigation process, including 1) neutral questioning designed to elicit all information a witness has observed through personal observation; 2) respectful treatment of all witnesses; 3) collection of all evidence material to the outcome of the investigation; 4) findings that reflect unbiased, fact-based analysis of the evidence, without regard to any allegiance to agency or officer; and 5) investigations conducted by a neutral party with no personal or professional interest in the outcome. The Department should take action to ensure that internal investigations comport with these tenets.

### Investigation Outcome Notification Letters

Every police department has a statutory obligation in connection to citizen complaints to notify the complainant in writing of the outcome within 30 days of the investigation’s completion. Statutory confidentiality protections for officers limit the amount of information and detail that the Department can share with a complainant in such letters. Unfortunately, many agencies have responded to these limitations by issuing terse letters that meet legal obligations but unnecessarily omit details that can positively impact complainants. This practice understandably leaves many complainants frustrated and feeling like their time and effort in filing a complaint was wasted. Mustering up the bravery to file a complaint against a police officer, waiting for months with little to no information about what is

happening, and then receiving a terse letter stating that the complaint was “Unfounded” (with no further explanation), is designed to cause dissatisfaction. Yet, this has been SPD's general practice when the Department has issued notification letters.

Instead, SPD should endeavor in such letters to assure complainants their concerns were understood and taken seriously. There are many ways to do this and still comply with the confidentiality requirements of state law. One way to do so is to fully elaborate the allegations of the complaint, outline the Department's investigative steps to determine the findings of the investigation, and include in the letter statements that demonstrate that SPD leadership understood and appreciated the complainant’s perspective that led to the complaint. Where a complaint allegation is found “Sustained,” the Department should sincerely apologize for the misconduct or policy violation at issue and communicate that the Department has taken corrective steps to ensure that such an incident will not happen again. And if the Department finds no violation but takes other actions as a result of the complaint (such as changes in policy or training), these actions also should be disclosed. These steps can help complainants feel that their efforts to communicate their concerns about an interaction were meaningful and valued by the Department.

### *Issues with the Conduct of Investigations*

Overall, SPD complaint investigations showed a steady improvement in quality over time.

#### Completeness of Investigations

All allegations should be investigated, without exception. One of the critical determinants of an effective accountability system is how a department handles evidence of a potential violation that a complaint or internal referral did not allege. A well-functioning, nimble IA system follows the evidence where it leads. The entire purpose of such investigations is to ensure employees follow policy and training designed to guide their actions and ensure they operate in an effective, responsive, and safe manner.

In an internal affairs investigation, all relevant witnesses must be interviewed. Particularly when the allegations involve officers' subjective perceptions (such as unreasonable force or racial bias), interviews of subject officers are especially necessary to a full investigation. Incomplete investigations leave the possibility that potential misconduct will be left undiscovered and that valid complaints will

receive an incorrect outcome. Such outcomes are not in the interest of the community, the Department, or its employees.

### Timeliness of Investigations

A persistent issue in the IA investigations audited was the timeliness of the investigative outcomes. In some cases, investigations took a very long time to complete, with little obvious explanation in the file. In other cases, it appeared that an investigation was completed, but the Chief took a very long time to act on findings and make a disciplinary decision. Again, there was little to explain such delays in the files. While it is true that state law allows a department up to one year, in most circumstances, to issue potential discipline after learning of alleged misconduct, no department should use that one year as its guideline for timeliness. Most investigations involve one officer and are simple enough that they should take a few weeks, at most, to complete. And once the investigation is complete, the Chief should initiate the process of employee notification of any discipline soon after.

For every police employee who is the subject of an IA investigation, the process is fraught with uncertainty and anxiety. It is unlikely the Department will consider the employee for a promotion or coveted collateral assignment during this process. Depending on the allegations' seriousness, potential disciplinary consequences could have significant impacts on their lives and livelihoods, including loss of pay and termination. For community members concerned enough to file a complaint, every day of delay in one in which they may question whether it was worth filing the complaint. From a management perspective, unnecessary delays between a complaint and resulting discipline attenuate the corrective action's constructive value. And serious delays in investigative outcomes may preclude a department from imposing any consequence on an employee, thereby undermining the entire accountability system. For everyone involved, timely outcomes are the pathway to limit anxiety, communicate respect, and ensure the system's effective functioning. Therefore, SPD should prioritize ensuring that it completes every IA investigation in a timely manner, by developing internal timelines to complete investigations.

### Level of Discipline

Several factors are relevant to this discussion. Employee discipline for violation of policies and training should generally be aimed at correcting deviations from those standards rather than punishing employees. Subject to appeal to the City Manager and an independent arbitrator, the Chief holds discretion about what level of

discipline is appropriate to such violations, considering a range of factors like prior violations, contrition, performance evaluations, and other contextual knowledge gleaned from managing the Department. Finally, most departments, including SPD, use a progressive discipline system, under which discipline generally should start at a lower range for first offenses and escalate for subsequent sustained violations.

Nevertheless, overly lenient consequences for serious misconduct can create problematic dynamics for any police agency. Overall, the disciplinary outcomes communicate to all employees the consequences of their actions, with minor discipline communicating that the agency does not take the violated standard very seriously. For example, if excessive force goes without any consequence, officers receive the message that the Department generally accepts use of force without regard to whether it is unreasonable. Likewise, suppose the Department finds against bias allegations without a thorough investigation and analysis. In that case, officers learn that agency leaders are not concerned with whether they deliver fair and impartial policing to all community members. Also, where the Department imposes minor discipline for a serious offense, an employee could contest the imposition of significant discipline in the future for not being consistent with past practice under a progressive discipline system. Fortunately, SPD employees have communicated clearly that, as a group, they believe the system needs to hold all employees firmly accountable for their misconduct. SPD should do so moving forward.

### *Governing Law and Policy for Complaint Investigation Appeals*

The employee accountability system at Sebastopol Police Department includes an extensive process of appeals from decisions finding misconduct and imposing disciplinary consequences. While this is not extremely rare in the context of law enforcement agencies, such extensive appeals can significantly undermine an employee accountability system, depending on how it operates. Of course, some recourse to appeal can provide a check on arbitrary or subjective decisions by management that could undermine internal procedural justice. Likewise, too many opportunities to overturn disciplinary decisions can undermine management's ability to ensure employee accountability. In connection to SPD, this review found that the appellate process, as it functions, has significantly impaired the Department's ability to ensure accountability for employee misconduct. For this reason, the auditor highly recommends consideration of changes to this process to reasonably limit appeals of the Chief's disciplinary decisions.

The SPD process for employee appeal of discipline combines aspects of state labor law with local requirements established by the Sebastopol City Council.<sup>8</sup> Under California state law, every civil service employee is entitled to certain rights to obtain and provide information about a disciplinary decision by management through what is known as a *Skelly* hearing. A *Skelly* hearing ensures that an employee is informed of the allegations against them, has an opportunity to refute the allegations, and has a chance to mitigate the allegations or rehabilitate their standing with the employer before the imposition of any actual disciplinary action. Sebastopol allows the employee to interact with either the Chief or City Manager through the *Skelly* process, but it has always been the Chief in practice. The Chief is advised in the process by outside counsel, given the role of the City Manager/City Attorney in hearing appeals from the Chief's decisions. Following the *Skelly* hearing, the Chief makes a final decision from a more informed perspective. In some cases, this process may change the Chief's conclusion as to the violation, finding, or discipline for alleged misconduct.

Once the Chief makes a final decision on the matter, Sebastopol's policy provides that an SPD employee can appeal the Chief's decision to the City Manager, who is free to change either the finding, the disciplinary consequences, or both. Because Sebastopol's City Manager also serves as City Attorney, this appellate process creates a conflict of interest that requires the City Manager to hire outside counsel to advise him during such an appeal. This attorney must be different from the one who advised the Chief during the disciplinary process. This requirement adds expense to the appeals process.

Should an SPD employee still not be satisfied with the outcome, they can then appeal the matter to an outside arbitrator, who will sit as an administrative law judge to hear and decide on the allegations and render an independent advisory decision on the violations and/or the appropriate discipline. This opinion then goes to the City Manager, who will decide whether to accept the hearing officer's decision or not. Under the policy, the decision of the City Manager is final.

### *The Complaint Investigation Appeal Process in Practice*

In practice, SPD disciplinary decisions over the last six years have included frequent adjustments to discipline at multiple steps in the appellate process. For most of 2014-2016, there were no employee appeals of disciplinary decisions. That began to shift somewhat in 2017, when several employees availed themselves of the *Skelly* process and a subsequent appeal to the City Manager. From 2018-2019,

ten completed investigations were audited. Several employees appealed the discipline imposed by the Chief to the City Manager.

To date, there has been no completed arbitration of a disciplinary matter in which an employee took the issue through appeal to arbitration. Due to the nature of the arbitration proceeding, which is a private trial *de novo* of all the issues in the investigation, it is an expensive process for all parties. The arbitration results in an advisory opinion provided to the City Manager, who then decides whether to accept that opinion's outcome or issue a different finding and discipline. This may put the City Manager in the interesting position of deciding whether to reverse a decision he made in a previous appeal to him.

### *Independent Audit of SPD IA Investigation Systems*

This independent review included a robust audit of every internal affairs investigation completed by the Department between 2014-2020. Most of the review's conclusions and recommendations were based on the information gathered from this audit, supplemented by information supplied by agency staff during interviews.

### *Overview of IA Audit Findings*

While this Review provides the City with robust information from the individual audits of each complaint investigation, that detailed information is confidential under state law and thus cannot be made public.

## **Recommendations**

A number of critical recommendations flow out of the results of the above independent review of the Department's Internal Affairs investigations process. These fall in several general categories: 1) conform the IA complaint and investigative process to the requirements of state law; 2) ensure that the IA process is consistent with recommended minimum best practices so that it gains characteristics of both internal and external procedural justice; and 3) consider options to change the IA process to ensure that conflicts of interest and divided loyalties do not continue to give the appearance of influencing investigation outcomes. What follows are specific recommendations in these general areas.

**RECOMMENDATION 19:** The Department should eliminate the category of "informal" complaint from its complaint investigation process.

**SPD RESPONSE 19:** Policy 1007 has been revised and a new Department complaint form has been developed. See, Policy 1007.3.1 and 1007.5.1(a). "Informal" no longer means it will not be investigated.

**RECOMMENDATION 20:** The Department should eliminate warnings on its complaint forms and instructions to complainants about possible consequences of filing a false complaint against an employee.

**SPD RESPONSE 20:** A new Department complaint form has been developed.

**RECOMMENDATION 21:** The Department should eliminate from its complaint forms and instructions any notice to complainants about possible public disclosure of their name and contact information.

**SPD RESPONSE 21:** A new Department complaint form has been developed.

**RECOMMENDATION 22:** SPD should investigate all complaints lodged with the Department and reach a finding on all allegations of that complaint, regardless of whether internally generated or filed by a community member, and regardless of whether a complainant agrees to categorize the complaint as formal or informal.

**SPD RESPONSE 22:** The Department is investigating all complaints under Chief Kilgore.

**RECOMMENDATION 23:** SPD should fully document all investigations, regardless of outcome and regardless of how they originated.

**SPD RESPONSE 23:** Documentation of each complaint is now retained and tracked.

**RECOMMENDATION 24:** SPD should preserve all complaint investigation files for the 5-year period required by state statute, regardless of how they originated.

**SPD RESPONSE 24:** The Department Policy was revised in December 2020 and the City's policy was revised in March 2021. The 5-year retention requirement is a part of the policy.

**RECOMMENDATION 25:** SPD should provide complainants with a written notice of findings for any complaint filed by a community member.

**SPD RESPONSE 25:** Implemented in compliance with City records retention policy.

**RECOMMENDATION 26:** Once a complaint is lodged, SPD should complete the investigation of that complaint, regardless of whether the investigator considers it to lack merit and regardless of whether the complainant later decides not to pursue that complaint.

**SPD RESPONSE 26:** The Department is taking such action under Chief Kilgore.

**RECOMMENDATION 27:** SPD should investigate all allegations of every complaint.

**SPD RESPONSE 27:** The Department is taking such action under Chief Kilgore.

**RECOMMENDATION 28:** SPD should secure and analyze all evidence material to a complaint investigation, including interviews of all material witnesses to a complaint, as well as all records of any kind that could affect the outcome of the investigation. Every complaint should include an interview of the complainant and the subject officer, absent unavoidable reasons that prevent such interviews.

**SPD RESPONSE 28:** The Department is taking such action under Chief Kilgore.

**RECOMMENDATION 29:** SPD should conduct all investigative interviews by using neutral, open-ended questioning of interview subjects, designed to elicit all relevant information known to the interviewee. Avoid either hostile or leading questions, absent extraordinary circumstances.

**SPD RESPONSE 29:** The Department is taking such action under Chief Kilgore.

**RECOMMENDATION 30:** The Department should ensure that disciplinary consequences for sustained findings of misconduct are consistent across similar circumstances for all officers, without regard to personal or professional alliances among Department employees and/or officials. Consider implementing a disciplinary matrix to provide greater predictability and consistency in discipline.

**SPD RESPONSE 30:** Policy 1007, Personnel Complaints, details some disciplinary procedures. The Department will review this recommendation and make additional changes if necessary. The Department must keep in mind that factors outside of the investigation may influence disciplinary action imposed on

an officer. Specifically, the Department must discipline officers in a progressive manner. The Department will ensure that personal and/or professional alliances will not influence disciplinary decisions.

**RECOMMENDATION 31:** SPD should implement a conflict-of-interest policy that prohibits any officer or Department official from acting in an investigative or decision-making role for any IA investigation that may implicate their personal or professional interests.

**SPD RESPONSE 31:** The Department has revised Policy 1007, Personnel Complaints, which prohibits the immediate supervisor from serving as the investigator of a complaint if he/she was involved in the incident or the ultimate-decision maker on the matter. The Department will review the policy further to determine whether additional changes can and/or should be made.

**RECOMMENDATION 32:** SPD should consider outsourcing IA investigations to a highly trained and experienced civilian investigator, in order to provide neutrality, eliminate actual and perceived conflicts of interest, and to provide the public greater confidence that such investigations are objectively conducted.

**SPD RESPONSE 32:** The Department will outsource IA investigations to ensure neutrality, eliminate actual and perceived conflicts or interests, and when necessary given all of the circumstances presented in a particular case.

**RECOMMENDATION 33:** The Department should make complaint notification letters as specific and personal to recipients as possible.

**SPD RESPONSE 33:** This recommendation was implemented in April 2021.

**RECOMMENDATION 34:** The Department should share with the public on its website information about complaints and internal investigations, including the nature of the allegations, and the outcomes of investigations. Providing more openness in this area helps increase public trust and strengthen community relationships. This same transparency should also exist around data on uses of force.

**SPD RESPONSE 34:** The Department is working on implementing this recommendation. A Department website update is currently in progress and this information will be included on the website soon. New staff was trained in March 2021 to assist with managing and designing the website.

**RECOMMENDATION 35:** SPD should develop written internal deadlines to complete an investigation and review process and require supervisory approval for deviation from those deadlines.

**SPD RESPONSE 35:** The Department has adopted a 60-day completion deadline by the investigator, and 120 days to close out and investigation, barring any unforeseen or unusual circumstances.

**RECOMMENDATION 36:** The Department should evaluate its individual misconduct investigations to ensure that all relevant issues are identified and pursued to a reasonable extent, including a written standard requiring formal interviews with witness officers.

**SPD RESPONSE 36:** The Department is taking such action under Chief Kilgore.

**RECOMMENDATION 37:** SPD should evaluate its levels of discipline for sustained policy violations to ensure that the proper amount of remediation is occurring.

**SPD RESPONSE 37:** The Department is taking such action under Chief Kilgore.

**RECOMMENDATION 38:** The Department should consider simplifying the employee appeal process for imposition of discipline. This could include eliminating appeal steps in the process. It also could include creating a presumption that the Chief's decision is correct and valid, absent evidence of bias or bad faith.

**SPD RESPONSE 38:** This recommendation will be considered by the City and the Department. Such action will require negotiations with SPOA.

### **Uses of Force Reporting & Review**

A police officer's use of force is perhaps the most significant way any public employee can impact community members' lives. Because the law allows police officers to use force, including deadly force, to protect and serve the community, any encounter between an officer and a community member carries with it the potential for an officer to take a life. Even uses of force short of deadly force can significantly change the lives of those upon whom the force is used. This is a grave power entrusted to police officers and one that, therefore, must be evaluated carefully to ensure that it is used only in the most responsible manner.

There are many ways that a police agency can evaluate the use of force, including the investigation of complaints and lawsuits by victims. However, an agency that is genuinely dedicated to ensuring appropriate use of force by its officers will take the next step and put in place processes to regularly evaluate uses of force.

Different agencies handle this in different ways. At a minimum, the process should involve mandatory and specific reporting by each officer of every use of force. A supervisor should then review that force to determine its compliance with policy.

Such formal reviews demonstrate to the community that a department recognizes the value of careful, thorough, and objective examination of such events. Models such as these in other agencies work well and are common across the country in agencies large and small. At their best, such models include a use of force review panel that provides robust issue-spotting and discussion about what went wrong or right and what could be improved. Such reviews allow both a focus on individual officer performance and improvement and agency policies and training that affect such performance. An agency's commitment to process improvement can go a long way to ensuring such a model's success and contribute to a team-building organizational culture.

Building a successful process like this is not without challenges, especially where deadly force is involved. Most officers do not experience a death in custody, and when it happens, the trauma for the involved officer can be significant. A close-knit team of officers understandably may be inclined to rally around the involved officer, making a review process seem counter-intuitive to them. This tendency may be even stronger in a social environment characterized by heightened public scrutiny and skepticism. And some City leaders may be concerned about exposure to civil liability and therefore be skeptical about a robust internal review of uses of force.

However, properly conceived, such a review process is not an exercise in "second guessing" an officer's split-second decisions and need not signal a lack of support for police officers. Instead, it provides an opportunity for all officers to learn what happened and how officers might handle the next incident in a better way. There always is room for improvement, and in no place is a desire to do better more important than in incidents where an officer uses force.

For SPD, the starting point would be to establish a force reporting system that requires every involved officer to file a report about the incident during the same shift in which it happened. Most agencies have found it helpful to have a form specific to this process that an officer must complete and file with their supervisor.

The best such forms ask several mandatory questions designed to elicit important information about the incident. Helpful information can include specifics about the physical setting (such as time of day, weather, conditions, light conditions); the parties involved (e.g., demographic information, alcohol/drug use; apparent mental health issues, size/build/strength of person); any weapons involved; reason for the encounter; force used by the suspect; force used by the officer; de-escalation efforts; subjective perceptions of the officer; and injury to parties involved. The form should require that any officers who used force explain their reasons for such force and why it complies with the Department's Use of Force Policy criteria.

Any force reporting system depends on the criteria of a department's policy guiding the use of force, and most importantly, its definition of what constitutes force. In many cases, including for SPD, the policy tends to define "force" narrowly. This approach is counter to an intention to limit force to where it is necessary and limits a department's ability to learn to do better from its experiences. For example, data suggest a correlation between a department's officers drawing and pointing their firearms at people and higher rates of force. Also, federal case law has clearly established that the degree of force which police officers may use is limited by the circumstances.<sup>9</sup> The courts have reasonably concluded that pointing of a firearm at an individual constitutes force. Consequently, officers may only take such action when reasonable under the circumstances. Therefore, any use of force policy should include pointing a gun at another within its definition of force. Because of these issues, some agencies have defined force broadly to include any action by a police officer that causes a person to feel compelled to follow an officer's orders.<sup>10</sup>

SPD's Use of Force Policy defines "force" as follows: "The application of physical techniques or tactics, chemical agents, or weapons to another person. It is not a use of force when a person allows him/herself to be searched, escorted, handcuffed, or restrained." It is unclear under this definition whether drawing and pointing a firearm at a person would be considered "force."<sup>11</sup> The section of the policy that addresses the display of a firearm suggests that pointing a gun at a suspect would not constitute force. The Department's policy also requires documentation of a use of force in an "appropriate report" and notification to a supervisor under certain circumstances. Where force is reported to a supervisor, the policy requires that the supervisor determine whether the force was consistent with policy. If not, the policy requires that the supervisor initiate a separate IA investigation of the incident.

Despite these policies, the Department has not had an established process by which it tracks uses of force, nor has it had any particular forms or separate databases for that purpose. Instead, SPD has treated use of force as one of many facts about an incident documented in an incident report. It therefore has not been possible to readily generate reports showing data on SPD officer use of force. As the saying goes, one cannot manage what one does not measure. Use of force by police officers is a subject of keen public interest and concern, and therefore deserve significant attention.

The public has come to expect a police department to limit force to those circumstances where it is necessary. Therefore, SPD should change how it handles this issue. SPD should institute a force reporting system that includes robust reporting of uses of force, tagging of body-worn camera footage documenting force, and supervisory review of each use of force for compliance with policy and law. There should also be a regular review of uses of force for lessons learned about how tactical decisions and training may help avoid force.

**RECOMMENDATION 39:** The Department should institute a formal Use of Force Reporting System, which should include mandatory, timely reporting of every use of force by an officer on a reporting form that includes robust data collection. Every reported use of force should be evaluated by a supervisor for compliance with agency policy, and where a policy violation is indicated, a full investigation should follow.

**SPD RESPONSE 39:** The Department maintains Policy 300.8, Reporting the Use of Force, which requires prompt, complete, and accurate reports of use of force. The Department is developing a Use of Force report form and will collect related data via the form on an on-going basis.

**RECOMMENDATION 40:** SPD should broaden its definition of “force” in its use of force policy to include all actions considered force under Fourth Amendment case law and to capture those employee actions that are correlated with escalation of force.

**SPD RESPONSE 40:** The Department maintains Policy 300 Use of Force. The policy defines force, requires that officers use only the amount of force reasonably necessary, and requires reporting the use of force in a variety of circumstances including, but not limited to those circumstances when injury has occurred, an individual is restrained, an individual is struck, or when unreasonable force is used.

The Department will consider revising the policy to more thoroughly define the term “force.”

**RECOMMENDATION 41:** The Department should consider creating a use of force review panel process for significant uses of force by employees, in order to study and learn from such incidents how to better avoid force and to resolve incidents at the lowest possible level of force.

**SPD RESPONSE 41:** The Department is developing a Use of Force report form and will collect related data. A Use of Force review panel has been implemented.

### **Critical Incident Response Policies**

SPD has been fortunate that its staff has experienced only one officer-involved death, in a suspected domestic violence call, back on Thanksgiving Day, 2011. The District Attorney found no wrongdoing occurred on the part of the involved officer involved. Additionally, two SPD officers were involved in an incident where an individual was killed, but the SPD officers involved did not use deadly force against the individual.

Nevertheless, every agency should prepare for such an event, which can happen at any point. Officer-involved deaths are traumatic events that dramatically affect the deceased’s family, the community, and the police department and its staff. Only through careful planning and clear policies can a police agency respond effectively to such a huge event and preserve the agency’s positive relationship with the community. Even then, such an event will challenge everyone in ways that are difficult to anticipate fully. But without such planning, these events can be disastrous for community relationships and color community perceptions of a department for years. It therefore is imperative that SPD plan now for the possibility of such a future event, while hoping it never happens.

SPD should have a policy for responding to officer-involved deaths that covers the steps the agency will follow in the event of such a tragedy. There are three areas in which the Department should be prepared to respond. First, the Department should have a clear policy to guide its interaction with the family of any person killed by an SPD police officer. Second, the Department must prepare to interact with the public transparently during such an incident, to the extent possible. Finally, SPD should have in place programs to support any officer involved in such a traumatic event, which has the potential to change the course of an officer’s career.

SPD does have a policy that addresses officer-involved shootings and deaths, but it covers only a portion of what it should, and there is some confusion surrounding even this guidance. The current and prior policies cover all aspects of the *investigation* of officer-involved shootings and deaths, including which agencies handle criminal and administrative investigations and civil liability issues, as well as some guidance on interactions with the press. However, it is not entirely clear that the current policy is fully consistent with the Law Enforcement Employee-Involved Fatal Incident Protocol adopted by the Sonoma County Law Enforcement Chiefs' Association and still in effect. Certainly, SPD should resolve any inconsistencies with that protocol. Also, that protocol barely touches on the three areas emphasized above. In today's policing environment, the Department must address those areas, and thus suggestions are made below.

The existing SPD policy clarifies that an officer-involved fatality will result in a significant amount of responsive activity related to the various investigations. However, the Department also must recognize that any shooting will cause trauma and distress to the family of the person shot. Families will have an intense and immediate need for information and answers, but interactions with SPD officers may carry with them opportunities for frustration and misunderstanding. Department personnel may suddenly find themselves too busy for the sensitive interactions required to communicate effectively to family members. Indeed, at a time of loss, officer insensitivity or interrogation of the family as witnesses can lead family members to view the Department as a calloused enemy.

Given this dynamic, SPD should consider designating an individual with the requisite skills to serve as a "family liaison" to handle such interactions if and when such a fatal incident occurs. A designated "family liaison" should be specially trained in trauma-informed communication, and released from other responsibilities during such an incident, to the extent possible. A properly trained and skilled staff member can be invaluable in helping family members get the information they need while also freeing other employees to perform the investigative tasks necessary without concern for those aspects.

It can also be beneficial for a department to have ready processes for connecting family members to helpful services that can help them deal with a very challenging situation. These services may include counseling, income replacement, or even assistance with medical or burial expenses associated with the incident. Also, many agencies have found that sharing the video of the critical incident with the deceased's family members can help them process what has happened to their loved one, rather than feel like an agency is trying to hide the facts. Having a

policy to guide such information sharing can help facilitate this process and make it happen more smoothly during difficult circumstances.

For a family experiencing the grief of losing a loved one to police violence, it can make a real difference for a Chief to offer condolences and explain the investigative and review processes that will be unfolding in the immediate aftermath of the incident. The sooner this can happen after the incident, the more helpful it can be for the family. This conveys respect for the family. It also can communicate that the agency is taking seriously its responsibility to examine what happened carefully. An agency should not be concerned that this outreach will be viewed as an admission of liability. Appropriately viewed by the agency and its staff, such outreach is simply a part of the Department's mission: to communicate simple human respect and compassion for a grieving family.

Also important is communicating what happened to the broader community and the general public. In today's policing environment, timely, robust, and objective transparency around officer-related fatalities is necessary to maintain community trust. Accuracy of information is of paramount importance. Any agency must resist the temptation to shape a narrative favorable to the department and its staff at the expense of accuracy and objectivity. An agency should hesitate to release a version of the facts based on an involved officer's initial statement, if not yet compared to witness statements or camera footage. Officer recall of a traumatic event is often not entirely accurate, not because of a desire to intentionally mislead, but because of how such traumatic events distort human perceptions.

Similarly, releasing only facts that favor the agency or its employees can cause problems with community trust. While the temptation can be great in a critical incident to release information selectively and shape initial public perceptions, the Department should resist the temptation. Selective sharing of accurate information also can create public perceptions of bias. Eventually, the truth will out. If that truth calls into question the Department's initial narrative, it can significantly damage the Department's credibility and the community's trust.

While an agency certainly will want to release information to the press, it also should consider holding public events in any neighborhood where a fatality occurs or in a community in which a decedent lives. A department that understands the importance of providing information to those communities will schedule such a meeting within a few days of the event. While traditional and social media can help publicize an event like this, so too can word of mouth through community leaders and old-fashioned flyers. Here, too, the Chief can convey to the community

preliminary information about the incident and related processes. However, mainly the meeting should allow the community to ask questions and share concerns. Where information is not yet available, the Chief should promise to share it when it is. Such events are inherently challenging. Still, the Department's willingness to engage in challenging conversations will send the message that it is committed to engaging respectfully with all the communities with which it interacts, even under challenging circumstances.

Finally, but also significant, SPD should recognize how traumatic a fatality can be to the officer involved. While many police interactions involve traumatic impacts for officers, few are as impactful as a death resulting from an officer's actions. The relative rarity of such an event can compound these effects, as few in the department will understand what an involved officer is going through. The Department should seriously consider offering and strongly encouraging counseling to an officer, mandating time off after such an incident, and other ways to support officers who experience such events. The Department also should consider shielding any such officer from interactions with the public following such an incident.

**RECOMMENDATION 42:** SPD should adopt a policy to guide its interactions with families of victims killed by officers, including the designation and training of an SPD employee as a "family liaison" during such incidents.

**SPD RESPONSE 42:** The Department will assess this recommendation for possible addition to Policy 305, "Officer Involved Shootings and Deaths."

**RECOMMENDATION 43:** SPD should adopt a policy to guide its interactions with community groups during such incidents, including an emphasis on the Chief holding timely community meetings and sharing as much information as possible with the public.

**SPD RESPONSE 43:** The Department will assess this recommendation for possible addition to Policy 305, "Officer Involved Shootings and Deaths."

**RECOMMENDATION 44:** The Department should adopt a policy to guide its transparency efforts during officer involved deaths of community members, including releasing video as quickly as possible and ensuring that all information provided by SPD is as accurate and complete and timely as possible.

**SPD RESPONSE 44:** The Department will assess this recommendation for possible addition to Policy 305, "Officer Involved Shootings and Deaths."

**RECOMMENDATION 45:** SPD should adopt a policy to support and protect officers involved in the death of a community member, recognizing that the trauma involved in such an incident can significantly impact such employees.

**SPD RESPONSE 45:** The Department maintains Policy 305, Officer Involved Shootings and Deaths, which relates to the investigation of an officer-involved shooting. The Department will consider adopting a policy to assist, support, and protect officers involved in incidents that result in the death of a community member.

## PART FIVE: Department Policies and Best Practices

Perhaps the most critical aspect of ensuring officers police the community in ways that conform to community expectations is including the community in creating policies to guide those efforts. For this reason, one of the first pillars of the *Final Report of the President's Task Force on 21<sup>st</sup> Century Policing*<sup>12</sup> (“*President's Report*”) focuses on this process in discussing how a law enforcement agency can build and maintain trust and legitimacy with the public.

The *President's Report* states, “In order to achieve external legitimacy, law enforcement agencies should involve the community in the process of developing and evaluating policies and procedures.” Yet, like many agencies, SPD relies almost exclusively on a subscription service with a private company, Lexipol, in adopting policies governing most aspects of its operations. Retired law enforcement officers established and run Lexipol. The company's primary purpose is to ensure that local law enforcement agencies stay abreast of developments in the law that may affect their liability risks.

Lexipol provides SPD and other agencies a valuable service in establishing minimum standards to help manage legal risks for the Department. SPD only recently started a practice of regularly updating its policy manual to reflect the changes recommended by Lexipol. This change undeniably is an improvement over the Department's previous approach, which failed to finalize policy changes in writing, creating a significant potential for confusion about what policy requirements SPD officers must follow.

Nevertheless, even with the advantages Lexipol conveys, adopting Lexipol policies intact ignores an essential aspect of community engagement raised by the *President's Report*. SPD's current process is to adopt the policy recommendations issued by Lexipol, with no input from Sebastopol community members. There are no processes in place at SPD to include local communities in considering changes to agency policies that guide local policing. To gain and maintain community legitimacy, SPD should involve Sebastopol communities in its process to review and adopt the policies by which the agency protects the City. In doing so, SPD will gain valuable insight into community values and ensure local policing reflects those values.

Not every policy is a focus of public interest, however. There generally are several areas of substantial interest for community members in evaluating whether policing reflects local community values. Chief among them is the Department's policies governing appropriate use of force by its officers. Policies guiding policing of First Amendment activity can greatly impact public perceptions of a police agency. Also important are policies that guide how officers interact with vulnerable groups, such as policies related to bias in policing, immigration status, homeless people, the elderly, youth, mentally ill persons, the cognitively atypical, and those who face substance abuse issues.

Policies that guide the investigation of misconduct complaints are essential to ensure that such investigations reflect integrity and respect for the public. Also, policies on the use of body-worn cameras help ensure that officers use these tools appropriately and that video is available for investigations of both crime and officer misconduct. And good transparency policies help ensure that the public receives crucial information to the maximum degree allowed by law. In these areas, SPD should adopt a robust process for community members and leaders to provide input in shaping policies that guide local policing.

In addition, policies that guide policing do not occur in a vacuum. Communities across California and the nation are engaged in discussions around the appropriate role and scope of policing and the part that certain policies play in guiding that policing. Therefore, SPD should tap into the experiences of other communities in considering such policies. In fact, over time, SPD can glean "best practices" from reviewing policies that other jurisdictions have enacted to address concerns raised by communities in these policy areas.

As is evident from this discussion, if SPD wishes to be a model of community policing, it will be necessary to move beyond simply adopting Lexipol policy changes when they are issued. What is needed is to consult the community and to survey best practices adopted by other jurisdictions. A community advisory board could facilitate such a process for SPD, supported by City staff in some capacity.

Below, this Review considers current SPD policies in various areas and makes suggestions for policy changes based on best practices observed in multiple jurisdictions across the country. Nevertheless, these recommendations provide only a starting point for a discussion that should include robust input from community stakeholders affected by policing in Sebastopol. Those stakeholders include Sebastopol residents and those who own businesses in the City, work in the City, and regularly travel through the City to other destinations.

## Use of Force Policies

No single set of policies impacts policed communities and how they see a police agency more than those guiding use of force by agency employees. There is no more significant power entrusted by the public to police officers than the authority to take away a life or physically and emotionally harm a community member. Policies guiding police use of force and the department and officer's implementation of these policies, may determine who lives and who dies in interactions between police officers and community members. For many years now, policies on use of force have been a focus of intense discussion among police agencies, policing organizations, policed communities, local and state legislators, and community oversight agencies.

Because of their importance to community safety, these policies are the most important for engagement with stakeholders. When community members have a voice in adopting policies that govern use of force, that process lends legitimacy to those policies that otherwise may be lacking. Consequently, there can be a decreased likelihood that actual instances of force will cause disruptions in the community, assuming that the officer(s) complied with the policies adopted with community input. This independent review has revealed instances of uses of force by SPD officers that could have caused community disruptions had they been publicized by those who experienced them. This reality makes it more important that SPD engage in a public review of community expectations and desires around use of force by its officers.

This review analyzed the existing Lexipol based policy on use of force in effect for SPD. Given the extensive public conversations nationally and in multiple jurisdictions across the country around use of force, it is possible to arrive at certain guiding principles to bring the Department's policy into alignment with best practices in use of force policies. Those principles are offered below.

**RECOMMENDATION 46:** The Sebastopol Police Department's Use of Force Policy should consider including the following principles:

1. The UOF policy should be founded on and strongly emphasize a robust Sanctity of Life Statement affirming the value of all human life, the inherent dignity of all persons, and an officer's duty to uphold citizens' civil and constitutional rights. The emphasis should be on the welfare of the community and the corresponding and related physical and emotional well-being of the officers who serve them.

2. The policy should emphasize de-escalation as an approach to any potential use of force incident. It should include a clear definition of de-escalation principles and practices, including the use of time and distance and tone of voice to de-escalate a potentially volatile interaction, and a requirement to use de-escalation techniques whenever feasible. As used in this context, de-escalation should be distinguished from the use of less-lethal force to avoid more lethal force.
3. The policy should provide that any force used be proportional to the situation calling for its use. For example, non-compliance with an officer's lawful order may justify a lower level of force than actions that threaten others.
4. The policy should provide that any force used must be objectively reasonable and the minimal amount necessary to accomplish a lawful policing objective (*see* California Penal Code Section 835a; *Graham v. Connor* (1989) 490 US 386).
5. The policy should consider defining "necessary" as it applies to force, as meaning that a lower level of force would not have achieved the lawful objective in question.
6. The policy should provide that, overall, force used by the department should comply with principles of fair and unbiased policing, so that there is no disparate percentage of instances of force used against any demographic category of persons under similar circumstances.
7. The policy should provide that officers should give a verbal warning whenever feasible before using force.
8. The policy should provide that officers must continually re-assess the situation to evaluate the necessity of force or continued need for force as circumstances change.
9. Special consideration should be given in both policy and training for vulnerable populations, including those for whom there is evidence or suspicion of mental/emotional/behavioral health challenges, those under the influence of drugs or alcohol, pregnant women, the elderly, those who are cognitively divergent, and the young.
10. There should be an emphasis on Crisis Intervention Training and support for mental health professionals handling such situations whenever possible and appropriate. The policy should provide that a sworn law enforcement officer generally should not be the first responder to a situation involving a mental health issue, absent evidence to suggest a threat of violence to self or others.
11. Officer training under the use of force policy should emphasize increased reliance on good communication skills to minimize escalation of emotional reactivity and the need for use of force.
12. The policy should include restrictions on firing into moving vehicles unless necessary to prevent imminent death or serious bodily injury. Shooting at

fleeing felons unless required to prevent imminent death or serious bodily injury should be prohibited.

13. The policy should provide that Tasers and similar electric conduction devices should be considered potentially lethal force options. There should be more significant restrictions on the use of Tasers on vulnerable populations, such as those who may be under the influence of drugs or alcohol, mentally ill or impaired, overweight, or obviously in poor health or infirm.
14. Officers should be required to actively intervene, and report uses of excessive force through both policy and training. The department should consider active bystander training designed to encourage an agency culture that expects and welcomes officers to intervene to prevent other officers from taking action that may constitute unnecessary force. This will help build a teamwork culture and protect officers and the public from unnecessary injury and indignity and lower litigation risks for the department.
15. The policy should require that all uses of force be reported to supervisors in writing by the officer who employed force, that reports be reviewed by a supervisor for compliance with policy that same day (if possible), and the records documenting such reports and reviews be preserved for future review.
16. The policy should require that evaluation of use of force incidents include whether the officer exhausted all other reasonable alternatives before resorting to force, as well as whether de-escalation techniques were reasonable and employed.
17. The Department should employ a Use of Force Reporting form to better track all uses of force and reflect the Department's values.
18. The Department should implement an electronic database for all use of force reporting and review to record and publicly report data on all uses of force by agency employees.
19. The use of force policy should more specifically define what constitutes force, including both a general definition and an "including but not limited to" list of examples of force. Among the examples of force listed in this definition should be any threat of force by an officer against a community member and any officer pointing a weapon at a community member.
20. The policy should provide that, whenever an officer uses force, officers will administer first aid at the scene, as soon as possible, when needed.
21. The Department should develop metrics for tracking and public reporting of use of force incidents, include such metrics in its UF tracking database, compile such metrics into reports, and make such reports easily and regularly available on the department's public website.

22. The SPD should increase and implement robust training necessary to support these core guidelines, including but not limited to de-escalation training, implicit bias training, communications training, and scenario-based training.
23. SPD should carefully train dispatchers in the importance of verifying and accurately reporting all information that may or may not suggest a threat is present in any incident to which an officer is asked to respond. Dispatch information can be the critical factor in whether an officer responds to a call for service in a way that makes it likely that the officer may employ force. Dispatchers should be trained to understand that the safety of the public is as important as the safety of a responding officer and that their actions may help determine whether force is used appropriately in response to the situation. Every Department review of any use of force by an officer should consider the role of dispatch in shaping the officer's perceptions.
24. In particular, where a call for service identifies a "suspicious" individual as presenting some danger and they are a part of a disadvantaged group (such as a racial, ethnic, or religious minority), dispatchers should be trained to seek an objective basis for such claims from the reporting party. The dispatcher should then report accurately to the responding officer the information they gather through such inquiries. Where there appears to be no objective basis for concern about the suspect, the dispatcher should communicate this to the responding officer.
25. The Department should monitor and analyze use of force incidents, and establish an electronic, early intervention program to target officers at risk of using excessive force.
26. SPD should partner with an independent, civilian oversight partner to analyze use of force data, seeking relevant opportunities to decrease use of force incidents.
27. SPD should emphasize officer health and wellness, providing officers with a mental/emotional health support infrastructure for those experiencing traumatic incidents and stressful work and life situations.
28. The Department should consider the benefits of a "trauma-informed policing" approach, both for its officers and the community members they encounter during incidents. Training to understand and accommodate the effects of trauma on both officers' and community members' emotional and cognitive abilities has great potential to increase positive outcomes and avoid the use of force.

**SPD RESPONSE 46:** The Department maintains Policy 305, Officer Involved Shootings and Deaths and Policy 300.6, Use of Force, which relate to the investigation of officer involved shootings and the use of force. The Department is working to create a form to gather relevant information related to the use of force.

The Department will thoroughly review and consider the above-described recommendations and will revise policy as needed to support the community and its officers.

### **Bias-Free Policing Policies**

While policies on use of force are the core policies of interest to most community members, policies related to potential bias by police officers are almost as important for the Department's credibility with communities, and particularly with BIPOC communities. This Review therefore considers recommendations for SPD policies in this area. This Review shows that SPD can and should do better in this area.

Any consideration of this issue must grapple with the history of racial/ethnic discrimination generally, and biased policing specifically, in this county and the City of Sebastopol. There is a deep history of racism in Sonoma County, and the county's shift away from biased practices is relatively recent in the larger scheme of things. Families who have experienced bias against them, particularly in connection to policing practices, carry those experiences in their bodies and psyches. They pass on attitudes about policing through stories to their children. And while overt racism has retreated from public expression in recent decades, it has made a comeback, and implicit bias still remains embedded in our culture and affects all people's actions.

While we all should address bias in ourselves and others, the obligation is even higher when a government employee has the power to take away another's freedom and life. SPD leaders should state in official policy that discriminatory and biased-based policing has no place in the Department. SPD should welcome complaints alleging biased policing with respect and seriousness and investigate them with an attitude of curiousness and openness, rather than defensiveness. This approach can help build trust, engage communities, and improve public safety for all parts of the community. SPD should embrace policies and robust training programs that explain how officers can carry out law enforcement duties without bias.

A crucial first step in this effort is to adopt bias-free policing policies that offer clear guidance to officers in understanding what is expected of them when race or ethnicity is involved in an incident. SPD's mission statement should include a commitment to bias-free, equitable policing so that it is clear that such principles are among the Department's core values. The Department's bias-free policing

policies should include a list of categories of people that officers are prohibited from discriminating against, focusing on the officers' "perception" of a person's membership in such categories. These categories should seek to include all socially marginalized groups. Where government employees wield the power of life and death on behalf of society, such a commitment to protect socially marginalized people is even more important. It conveys to the community that the Department values equity and fairness in policing.

Where biased policing is alleged, the Department also should avoid taking refuge in facially neutral explanations that simply point to legal violations to justify enforcement actions. Instead, the Department should proactively examine issues of disparate enforcement in investigating a complaint. For example, where an officer issues valid traffic citations mostly to BIPOC community members, the department should not rely on a surface explanation that all those who received citations violated traffic laws. Instead, the focus should be on why there is a disparate impact on BIPOC community members in traffic enforcement. SPD should undertake a deeper analysis to discover what led to such results.

In employment discrimination law, when bias plays some role in a negative employment action by an employer, the law may still find liability for discrimination if the negative action would not have happened "but for" the prohibited prejudice. Such an approach also would be valid here. For example, if an officer makes a traffic stop after running vehicle registration and finding the car registered to a Hispanic name, then calls for officer back-up despite no further evidence of danger to the officer, this raises an implication that bias may play a role in this enforcement action. These circumstances would warrant further, careful investigation of a bias complaint.

Going beyond individual complaint investigations, the Department should collect information on all incidents and stops between officers and the public, including robust demographic data, and report such information publicly on the Department's website. SPD should analyze such data objectively to discover if there are policing disparities related to demographic categories. With a commitment to equitable, bias-free policing, the Department will then have measures to score itself on meeting these public commitments. Where disparities exist, the Department should make commitments to eliminate them, along with plans to achieve those commitments.

Apart from policies and investigations, robust training in implicit bias is crucial for any department to achieve such equity goals. Implicit bias exists in every person,

police officer or citizen. Our culture has embedded racially biased views that flow out in thousands of unconscious ways to every one of us. The stereotypical image of a young, Black man in a hoody as a threat to public safety is but one example of a media image that reifies such biases.

Scientific studies have made clear that unconscious biases affect how individuals react in stressful situations, with a person's fight or flight reactions triggered more quickly when they encounter someone who fits cultural stereotypes of danger. Truly effective implicit bias training of police officers therefore tends to employ non-blaming approaches, which make clear that such biases can actually endanger officers in their policing duties and lead to unnecessary injuries to officers and community members. And effective training requires scenario-based training that can help reprogram bodily reactions away from unconscious reactions and move them toward new reaction patterns.

As mentioned above, implicit bias is not unique to police officers. Police departments must grapple with the reality that calls for service from the public may also reflect such bias. To be genuinely effective in realizing the goal of fair and bias-free policing, SPD will need to address this dynamic, as well. When a community member reports a "suspicious person," for example, dispatchers should be trained to elicit and ascertain the objective basis for the reporting party's conclusion that the person is suspicious. If it appears that a report is based in part or whole on improper personal characteristics, such as a Black man walking in a neighborhood of predominately White residents, this information should be flagged by the dispatcher for the responding officer. This review found that some SPD dispatchers already model such approaches.

SPD also should consider including in policy a prohibition, such as that of the Baltimore Police Department, against officers taking any law enforcement action based on information from members of the public that they know or should know is the product of, or motivated by, bias based on any improper personal characteristic. By modeling anti-bias approaches such as this, Sebastopol PD can become a leader in helping shift biased attitudes among its residents

Additionally, as mentioned above, SPD should expect its officers to function as a team in terms of accountability here, as in other areas. SPD officers should be trained and expected to intervene if they observe another officer acting in a way that may reflect prohibited bias. And where bias-free policing policies are violated, officers observing such violations should be expected to report them to their supervisors. The bias-free policing policy should include these expectations.

Much of the above discussion has focused primarily on racial/ethnic bias situations. A special focus on gender bias also is worthwhile in this discussion. Gender bias also is engrained in the dominant culture of our country, as well as in many sub-cultures. While gender bias takes many forms, within policing it can show up in attitudes about the appropriate roles and positions of women and gender-nonconforming persons within a police force. Yet, studies show that police departments with a significant percentage of women officers tend to have lower incidents of force and less severe force. Moreover, many women have de-escalation skills that prove very effective in handling challenging situations. Even apart from effectiveness, representation matters in terms of public perception that a police force is fair and impartial. For these reasons, SPD should endeavor to increase recruitment and retention of women within its ranks of sworn officers.

Yet, gender bias does not affect only cisgender women; it also affects members of the LGBTQI community and gender-nonconforming people who may not consider themselves a part of the LGBTQI community. Therefore, any policy addressing bias-free policing should also offer protections to members of these groups, including such basic things as forms that allow a person to declare their gender without the necessity to choose between a rigid gender binary. Also, SPD should recruit officers who may be members of these vulnerable communities. An agency's support for and achievement of a diverse workforce has been demonstrated to interfere with an organizational culture's tendency to become insular and resistant to outside influences. This is a laudable goal for any agency.

Another potential source of bias in policing is conflicts of interest by officers. SPD therefore should have a robust policy that prohibits any officer from taking official action when the result of that action could be reasonably perceived to affect their professional or personal interests or those of their close family members. Where conflicts exist, officers should recuse themselves to preserve public confidence in SPD policing's fairness and impartiality.

**RECOMMENDATION 47:** SPD's Bias Free Policing Policy should consider including the following principles:

1. The Department should be clear in its policy by including a definition of biased policing and a statement on the limited circumstances in which characteristics of individuals may be considered in policing decisions.
2. The Department should make clear in policy that a violation of the Bias Free Policing Policy is a serious matter justifying significant discipline.
3. The Department should consider committing the agency to an anti-racist philosophy that seeks to counter the influences of racism in society, generally.

4. The Department should consider providing specific examples in its policy where bias in policing may arise, such as decisions to search a person or a vehicle, and explain that such practices are not allowed.
5. The policy should include a mandate that officers intervene when they see an example of biased policing and report any observed violation of the policy.
6. The Department should collect and analyze data on all stops, including robust demographic information, and share analyses of that data with the public in regular reports.
7. The Department should incorporate racial disparity data in early warning systems that indicate issues that could cause additional training or closer evaluation of officer conduct.
8. The policy should address agency employee responses to observed bias from reporting parties during calls for service or enforcement actions.

**SPD RESPONSE 47:** See SPD Policy 401, Bias Based Policing-Sonoma County Protocol, and 402, Racial/Bias Based Profiling. The Department will review the recommendations for any possible changes or additions. The implementation of the California Racial Identify and Profiling Act will cover the majority of the data collection recommended.

### **Policies on Policing of First Amendment Demonstrations**

Policing of public demonstrations is particularly likely to impact public perceptions of a police agency. Such practices can have a significant impact on activities protected by the First Amendment and public perceptions of the fairness or policing by a local agency. An agency with policies and training that are effective in protecting First Amendment activities and protecting public safety will accrue significant public trust. For these reasons, good policies and training in this area are fundamental.

Until recently, many agencies had not adopted policies explicitly directed at policing demonstrations and crowd control. That began to change during the Occupy Movement that sprung up in the economic downturn of 2011, and then again following protests related to Ferguson, and more recently during the BLM protests following the murder of George Floyd. Policing of these public demonstrations and public outcry over that policing has led to deeper thinking around how police should respond to such events. A set of “best practices” has emerged to guide policy and training in this area.

Basic to this discussion is that effective policing of public mass demonstrations must be guided by an approach to crowd psychology attuned to what actually happens between police officers and crowds during such events. Appropriate training will lead to treating crowds not as “single minded” but instead with an understanding of the elaborated social identity model (ESIM), where a differentiated response strategy can result in more focused and successful outcomes. ESIM recognizes that when officers treat individuals as part of a group that needs to be controlled, they will identify with those with whom the police group them together. Consequently, if officers treat peaceful protesters as part of a violent crowd and use force against the crowd, the protesters will tend to respond to escalation with further escalation, when they otherwise would not.

Best practices for protest policing emphasize an approach that responds to individual, particularized violations of law, rather than treating all members of a crowd the same based on the actions of one or more individuals in that crowd. Effective training in this area must include such an understanding of crowd psychology. This approach allows police officers to isolate and remove individuals who perpetrate violence and property destruction while simultaneously protecting peaceful individuals’ right to protest. A differentiated response leads to less resistance and a demonstration that is more likely to remain peaceful.

**RECOMMENDATION 48:** SPD should consider adopting a policy to guide policing of public demonstrations that includes the following guiding principles:

1. A clear commitment to prioritize the protection of the First Amendment Rights of demonstrators to assemble and express themselves in public spaces freely;
2. A prioritization of de-escalation as a core approach to effective crowd management;
3. A limitation on force in such circumstances to circumstances where it is both necessary and unavoidable to avoid harm to others or destruction of property;
4. Limits on the amount of force that officers may use to prevent the destruction of property;
5. A prohibition on the use of kinetic weapon projectiles into a crowd for any purpose;
6. A ban on the use of tear gas to control groups or individuals who do not pose any immediate threat of serious harm to other persons;
7. A prohibition on “kettling”, where police officers box in or guide demonstrators to an area that has no egress;
8. Ensuring that an officer of the rank of Lieutenant or above is present to review & respond in real-time to any serious use of force by an officer during a demonstration;

9. A prohibition on mass arrests; limiting arrests to individuals for which probable cause exists to justify an arrest;
10. A prohibition on the use of obscene, insulting, or disrespectful gestures or language by police officers toward anyone present at a demonstration;
11. Limits on crowd dispersal to circumstances that create an immediate threat to public safety, or where widespread violence or property destruction reasonably appears imminent;
12. A requirement that orders to disperse be delivered in such a manner that they are audible to an entire crowd and are repeated (if possible), before efforts to enforce the dispersal order; include avenues to disperse in the announcement of the dispersal order;
13. A requirement that police officers involved in the protest policing wear name tags and badges with their officer numbers visible;
14. Explicit protections for members of the crowd to audio and video record or observe the demonstration at all times; and
15. Ensuring in advance that mutual aid agreements between responding police agencies clearly specify what policies and training govern policing of any protest.

**SPD RESPONSE 48:** See SPD Policy 423, First Amendment Assemblies, which was implemented in December 2020. The Department will review the recommendations for any possible changes or additions.

### **Policies & Practices Related to Immigrants**

Like other groups mentioned above, immigrants, especially those who may be undocumented, are more socially disadvantaged and vulnerable in our society, both nationally and locally. While this fact has long been evident, it has gained even greater significance over the last four years, as anti-immigrant sentiment has grown in our country. Many immigrants feel unsafe, particularly when interacting with law enforcement.

Some recent immigrants may arrive from countries where law enforcement was corrupt and unconstrained by law and policy. For them, trusting a police officer is not within the realm of their experience. Others may not understand the difference between a local police officer's role or function versus a federal immigration enforcement officer working for ICE. And the distinctions between the multiple policing jurisdictions that exist from the local to the state to the national level can be confusing even to relatively sophisticated U.S. natives. Add difficulties in

understanding English, and it is easy to see why immigrants may be wary of interacting with local police officers.

Yet, there are many reasons why every local police department, including SPD, should work to gain the trust of immigrant community members. Because immigrants are especially vulnerable, they can more easily become the victims of those who would take advantage of them. This means they may more often be the victims of a crime or witness a crime. Without a basic level of trust in local law enforcement, immigrants will not cooperate with investigations of such crimes, to their detriment and the detriment of the broader community. Also, positive interactions with law enforcement can connect people in need to social services that can help them. Overall, greater trust in law enforcement is associated with lower levels of crime. For all of these reasons, SPD should endeavor to set its policy for interactions with immigrants in a way that will encourage and foster trust in law enforcement.

**RECOMMENDATION 49:** SPD should consider adopting an Immigration/Immigrant Policy that includes the following principles:

1. Include immigrants as a group characteristic protected by the Department's Bias-Free Policing Policy.
2. Prohibit SPD officers from taking any enforcement action based on actual or perceived immigration status; asking people about their immigration status; or assisting with a civil immigration enforcement action.
3. Guarantee language access in interactions with immigrant community members who have limited English proficiency, including seeking partnerships with community organizations trusted by immigrant community members, acting as culturally proficient translation providers for law enforcement interactions.
4. Provide cultural sensitivity training to officers and dispatchers to better assist them in the effective performance of their duties with immigrant community members and others whose cultures may not be as familiar to them.
5. Prohibit sharing personal information about immigrant community members in the custody and control of SPD with federal authorities that could be used for civil immigration enforcement.
6. Prohibit participation by SPD officers in federal enforcement actions related to civil immigration laws.
7. Conduct regular departmental outreach and engagement to immigrant communities whose members may work or reside in or travel through Sebastopol.

**SPD RESPONSE 49:** See SPD Policy 411, Immigration Violations. The Department will further review the recommendations for possible changes or additions to policy.

## **Youth Specific Policies & Practices**

Young people are another category of persons long recognized to be more vulnerable than others in our society. However, recent scientific research has shown further that a young person's cognitive and emotional development is such that they continue to exhibit characteristics that make them especially vulnerable in interactions with police officers into early adulthood. The frontal lobes of young brains continue to develop into young adulthood, and with that development comes an increasing ability to inhibit impulsive actions in favor of considered judgments. Until such abilities are sufficiently developed, youth tend to act impulsively and be more reactive in stressful situations. Such natural tendencies are accentuated when youth have experienced trauma during their development, as is common in economically and socially disadvantaged households. These scientific facts have many implications for a policy aimed at interactions with vulnerable youth.

A police department's enforcement actions focused on youth should carefully consider these facts. Young people are inherently less able to understand complicated legal communications, especially when delivered during a stressful police interaction. Something like a *Miranda* warning, where youth may be asked to waive their right to remain silent and have an attorney provided to them, may not be understandable to a young person with no criminal justice system experience. A young person may be so intimidated by adult police officers that they cannot advocate effectively for their own interests during questioning.

Also, because youth are still relatively uncertain of their life trajectory, police interactions and how they are resolved can be formative experiences that may set the direction of their future lives. Even the worst decision by a young person may have little predictive significance to how they turn out as an adult. Consideration of such factors also has substantial implications for a policy for police interactions with youth.

Finally, because they are impressionable, young people form opinions that may shape their views of policing and police for much of their later lives. This presents a significant opportunity for any police agency to help foster improved relationships with youth members of distrusting communities. Mentoring and other programs that seek to assist youth are excellent opportunities to form and strengthen bonds between a police department and communities with which the

agency historically has challenging relationships. Forming such relationships also helps officers better understand the communities they may be policing and avoid misunderstandings that could come from ignorance of those communities. Even short of mentoring, a youth engagement program designed to help youth understand their rights and responsibilities during a policing encounter can have positive benefits in such interactions.

One agency that has developed many of these principles into effective policy and training related to policing youth is the Denver Police Department, partnering with the Denver Office of Independent Monitor (OIM). OIM describes the program this way: “Many youths do not understand their rights or their responsibilities during law enforcement contacts and some officers do not understand how a lack of emotional maturity shapes the way teens act when confronted. The Bridging the Gap Program seeks to proactively improve relationships between youth and law enforcement in Denver by educating youth on their rights and responsibilities when in contact with law enforcement and educating officers on key aspects of adolescent development and de-escalation techniques when contacting youth.”<sup>13</sup> This program has been independently validated as successful by the University of Colorado.

**RECOMMENDATION 50:** SPD should consider adopting a policy governing Interactions with Youth that includes the following principles:

1. Recognize that youth cannot fully understand complicated legal issues and admonitions during police interactions, and therefore require that communications with a youth witness or suspect must include their parent or guardian, absent an emergency that requires immediate action.
2. Where a police officer must provide admonitions such as *Miranda* warnings to a minor, consider translating such warnings into simpler language more understandable to a young mind, in addition to providing the full warning in writing.
3. Recognizing the implications of the young brain’s cognitive development and where possible and advisable, utilize restorative justice principles and approaches to resolve enforcement actions that involve youth.

**SPD RESPONSE 50:** See SPD Policy 311, Temporary Custody of Juveniles, revised in December 2020. The Department will further review the recommendations for possible changes or additions to policy.

## **Language Access Policies & Practices**

Of the many characteristics of a person that may affect a police encounter's success, a community member's ability to access the language an officer uses to communicate is core. While police officers may enter an encounter assuming that a community member can understand what they are saying, they should stay attuned to the possibility that this is not the case. A failure to communicate can have serious and sometimes deadly consequences in an enforcement setting. Among the reasons that a person may not understand communications from an officer include limited English proficiency, hearing loss, autism, or other cognitive/emotional differences that impact communication success.

For these reasons, SPD policy should include recognition and consideration of such personal characteristics in the decision-making processes for enforcement choices such as use of force, arrest, command voice, de-escalation, and the like. Also, SPD training should include modules that help officers recognize atypical responses to situations attributable to such personal characteristics, rather than to risk factors related to resistance or threats to an officer. Where possible, the Department should hire officers who can communicate in languages other than English that are more common in the community, such as Spanish, and pay them for such extra abilities. SPD should also offer training in other forms of communication that can reach those who are deaf or cognitively or emotionally atypical.

## **Accountability Systems Policies & Practices**

Because an agency's system to hold employees accountable is so vital in ensuring adherence to the policies that guide fair and unbiased policing, SPD should have clear policies on how its accountability system will operate that assure the public it has integrity. Interim Chief Mort addressed many of these issues and Chief Kilgore has also begun addressing them. Nevertheless, this report will set out recommendations for addressing deficiencies observed through the review of IA investigations from 2014-2019. Because this issue is so important, an investigator's compliance with policy provisions guiding IA investigations should be considered a significant performance criterion. A serious violation of such policy requirements should result in substantial discipline, and repeated violations should result in employment termination.

**RECOMMENDATION 51:** SPD should consider adopting a Policy on Internal Affairs Investigation that includes the following principles:

1. An investigator should make every reasonable effort to interview every complainant, both to ensure that the investigator understands fully the nature of the complaint and the complainant's view of the available evidence, as well as to convey to the complainant that the agency takes all complaints of employee misconduct seriously.
2. Additionally, an investigator should interview all subject employees and employee witnesses named in a complaint.
3. Where possible, the investigator also should interview at least one third-party witness outside SPD in any investigation involving serious allegations, such as excessive force, racial bias, etc.
4. Regardless of the alleged misconduct's seriousness, the investigator should interview all witnesses with information material to the investigation.
5. When interviews are conducted, the investigator should ensure they are digitally recorded and secured to preserve an exact interview record for subsequent review by agency supervisors and any independent reviewer.
6. The Department should improve its documentation of interviews by moving from digital sound recording, which is usually currently employed, to digital video recording with both sound and visual information that the investigator, supervisors, and any independent reviewer can review.
7. The Department should carefully preserve all documentary and video evidence that may play a role in any future investigation, with a clear chain of custody showing when and if it has been viewed or in possession of any agency employee.
8. Investigators should quickly secure any third-party evidence identified by the complainant or other witnesses or any evidence otherwise identified during the investigation.
9. Each investigation should include the following information about any employee:
  - a. previous complaints filed,
  - b. previous administrative investigations and outcomes,
  - c. performance evaluations, commendations awarded and/or discipline imposed and why, and
  - d. information related to an employee's inclusion on the agency's *Brady* list, including any investigative or complaint file associated with that inclusion. This information should be considered and weighed carefully by the investigator, especially where the credibility of witness statements could influence the outcome of investigative findings.
10. Where policy requires body-worn camera video to be recorded for particular types of incidents, but witnesses state that the video was not recorded, the lack of such evidence should be a separate subject of the investigation. The

investigation should explore the reasons for the absence of the video in some detail.

11. Each investigation should include a thorough analysis of all allegations made by the complainant.
12. The Department should adopt a formal written policy forbidding any retaliatory acts by agency employees against community members who file complaints against, or provide evidence in investigations of complaints against, Department employees.
13. The Department should include this non-retaliation policy on its formal complaint forms and any other written materials that describe the complaint process.
14. SPD should adopt a formal Conflict of Interest Policy to forbid involvement of employees in any investigation that involves a person or organization with which the employee has a familial, financial, and/or significant personal relationship.
15. The Conflict-of-Interest Policy also should forbid any employee from involvement in the conduct or management of any investigation in which that employee is implicated as a subject, supervisor, or witness, or if the employee's personal or professional interests would be affected by the outcome of the investigation.
16. When conducting witness and deputy interviews, investigators typically should utilize open-ended questioning (as opposed to leading or hostile questions) and maintain a neutral demeanor. The investigator should encourage the witness to remember and provide all of the information of which they may be aware.
17. Investigators should undertake a full analysis of factual evidence and should consider and weigh all material evidence, both for and against a specific finding
18. In addition, where the investigator makes findings, the analysis should reference any specific criteria of the relevant policy and explain why the evidence meets or does not meet that criteria.

**SPD RESPONSE 51:** See SPD Policy 320, Standards of Conduct, Policy 418, Body Worn Cameras and Audio Recorders,” and Policy 1007, Personnel Complaints. The Department will further review the recommendations and consider any changes or additions to policy.

### **Body Worn Camera Policies & Practices**

The introduction of body-worn cameras to police departments was an innovation intended to help resolve many issues related to transparency and accountability in policing. In practice, while not a panacea, the cameras have more than proven their

worth in resolving complaints of misconduct against officers, as well as criminal cases charged by those officers. For complaints against police officers, camera footage resolves a matter in favor of an officer as often as it does in favor of a complainant. In the context of criminal investigations, the footage often provides crucial evidence in deciding how to resolve a case against a criminal defendant. Also, many police supervisors have found video useful for training purposes and ongoing review and coaching regarding employee performance. For these reasons, the public, police managers, and union leaders have all come to value these cameras' use in modern policing.

However, questions still arise where video is not available in connection with misconduct complaints filed against an officer. This review has found that SPD officers sometimes do not activate their cameras in situations where they should be activated. The review also found that this failure was not usually investigated, even when it was apparent. Complaints about a failure to activate cameras are rare, as a community member may not know whether they have been activated. It thus is usually up to Department supervisors to initiate such an investigation. Where there is no investigation of a failure to activate a camera, no accountability will follow.

A failure to investigate violations of the body-worn camera policy communicates a troubling message about whether the Department is serious about these requirements. Given these occurrences, it is important for the Department to carefully consider best practices in this area of policy and training and consistently enforce those policies with meaningful discipline where requirements are not followed.

Given the complexities presented for officers when camera policies are nuanced, many agencies have moved to simpler rules that require camera activation any time an officer interacts with a community member in any manner beyond a casual and friendly encounter. Many agencies require officers to activate their cameras once they expect to interact with a community member in an official capacity (such as when dispatched to a call for service). Such policies require the camera to remain active until the officer's participation in the incident has ceased. To the extent an officer needs to communicate with another officer about matters that are not subject to public disclosure during this period of camera use, that section would be redacted at a later date before release to the public. This simplified approach to camera activation ensures that the entirety of an incident is preserved on video for later review. It also allows a method to prevent disclosure of recorded material that should not be released to the public.

A body-worn camera policy should be clear what is expected of an officer when they fail to activate their camera as required by policy. Many agency policies now include a provision requiring that an officer report any failure to activate their camera to supervisors and explain why. Such policies also should be clear that an unjustified failure to activate the cameras will result in disciplinary consequences. Finally, policies should include guidance for timely preservation of video footage in an unaltered state.

The use of body-worn cameras implicates significant privacy issues for members of the public. Many police departments now require officers to inform community members that they are being recorded, if possible under the circumstances. In addition, agency policies commonly require that video be redacted to protect community members' privacy interests before being released to the public, while avoiding redaction that would obscure the events recorded, to the extent possible. Also, state law requires that certain information protected as confidential by state law, such as the identity of a minor or a victim of domestic violence, not be provided through a video release.

On the flip side, the public generally sees camera video as a means of greater transparency regarding a department's policing activities, especially when there is a high-profile incident that may raise questions about the legitimacy of policing activities. The state legislature has increasingly required the release of video in certain circumstances, such as uses of force that results in serious bodily injury or death. However, contrary to common belief among many police agencies, state law does not prohibit the release of body-worn camera footage in other circumstances. Under state law, a police agency has discretion to withhold video where it may be evidence in an investigation but is not required to do so. Nor does body-worn camera video constitute a statutorily protected police personnel record, as some police unions and management assert. Instead, a police department has discretion to release such video footage, and where possible, should in the interest of greater transparency and fostering of community trust.

SPD's body-worn camera policy reviewed by the auditor, which had been in use until recently, failed to meet best practices in this area in multiple respects. It was ambiguous as to when the camera must be activated and when it can be deactivated. The policy included no provision requiring officers to explain or report why they had not activated their cameras in situations where the policy required it. The policy gave no indication that failures to activate cameras would result in discipline. And the policy included a provision that created a presumption that a member of the public knew they are being recorded, rather than requiring an

officer give notice to them. These deficiencies are contrary to best practices and undermine public confidence in the Department's commitment to transparency and accountability and its commitment to respect the community's privacy interests.

The SPD policy should require that officers activate their cameras once they are on the way to a known encounter with a member of the public and keep the camera on until the officer's involvement in that encounter has ended. The policy should define what is meant by "encounters," provide examples of them, and clearly state exceptions, such as recording lawful behavior (*e.g.*, political or religious activity and conversations with confidential informants or child victims). This approach would help officers understand the policy and reduce *ad hoc*, discretionary approaches to recording.

The policy should include a provision requiring officers to report in writing to supervisors on failures to activate the cameras as policy requires. For example, the Los Angeles Police Department's policy provides: "If an officer is unable or fails to activate the [body-worn camera] prior to initiating an enforcement or investigative contact, fails to record the entire contact, or interrupts the recording for any reason, the officer shall set forth the reasons why a recording was not made, was delayed, was interrupted, or was terminated." Every failure should be reviewed and where a failure cannot be credibly justified, a fuller investigation should result, and disciplinary consequences should follow. The policy should clearly prohibit editing, erasing, copying, sharing, altering, or distributing recordings, except as otherwise allowed by policy.

Concerning transparency, several changes are recommended. First, the Department's policy should be clearly labeled as a body-worn camera policy (currently, the policy is called Audio Recording). The policy should be available in a prominent place on the SPD website. The policy should also spell out the Department's commitment to transparency in the release of camera footage for high-profile events at the earliest opportunity that will not substantially interfere with an open investigation. Because the possibility is so remote that camera footage will prejudice a jury pool in a criminal trial, the Department should not generally offer that justification for a refusal to release video footage. Where video footage of significant force by an officer will be released, SPD should try to first show the video to family members of the person who suffered the force, especially where the force may have resulted in death. And the policy should require officers to provide notice to the public when they will be recorded and also assure the public that the Department will redact video to protect privacy, to the extent possible.

**RECOMMENDATION 52:** SPD should consider adopting a Body-Worn Camera Policy that includes the following guiding principles:

1. Define the overall purpose of body-worn cameras (BWC) as providing an accurate video record of interactions between police officers and the public, without limited that purpose to collecting evidence for criminal or administrative investigations.
2. Require officers to activate their BWC at the moment it is clear that they will interact with a member of the public in any official capacity beyond a friend greeting or casual conversation.
3. Once activated, require officers to maintain their BWC in an active state until the officer's participation in the incident has ceased, including any transport by the officer of a suspect to a detention or medical facility.
4. Require officers to notify a member of the public when they are being recorded by the BWC, where possible given the nature of the interaction.
5. Require an officer to report any incident where they did not activate their BWC in situations where the policy required it and explain the reason for such failure.
6. Include in the policy a notice that the failure to activate a BWC where required, and without a reasonable explanation for such failure, will result in discipline.
7. Communicate to officers that a violation of the BWC Policy will be considered a serious violation deserving of significant discipline.
8. Require that BWC video footage be downloaded from BWC units as soon as possible at the conclusion of a shift, and clearly prohibit editing, erasing, copying, sharing, altering, or distributing recordings, except as otherwise allowed by policy.
9. Clearly state the Department's commitment to transparency in the release of BWC camera footage for high-profile events at the earliest opportunity that will not substantially interfere with an open investigation.
10. Clearly state the Department's commitment to protect the privacy of members of the public recorded on BWC video, to the extent reasonably possible.

**SPD RESPONSE 52:** See SPD Policy 418, Body Worn Cameras and Audio Recorders, which was revised in December 2020. The Department will continue to review the recommendations and consider any changes or additions to policy.

# PART SIX: Transparency and Community Feedback Processes

## Department Website

The internet provides significant opportunities for a department to share information about its operations with members of the public. SPD's website offers limited information to the public in a manner that is not the most accessible to those interested in learning about the Department's approach to policing. The Department recently posted its entire policy manual on the website, which is a good first step toward transparency and necessary to comply with a new state law. Also posted is the City's Personnel Policy, which includes, among many other things, the general process for discipline of an employee and their appeal rights for such disciplinary actions. Also, the website has the outline of training topics covered by Field Training Officers, although no explanation is offered to provide context for this document. This posting, too, may be related to a new state requirement that agencies post their manuals and training materials online. The Department clearly could make much better use of its website as a robust transparency portal to inform the public about its operations.

Both the Department's image and the public would greatly benefit from a redesign of the SPD website. Including links to subpages that have more focused subjects is one way to improve the site. Clear headings and explanatory materials would make the information offered easier to understand and better reflect a commitment to public transparency. For example, the website might include a subpage specifically addressing complaints and commendations for an employee and allow for completion of online forms, rather than requiring the use of physical forms. Another subpage could include the policy manual and also specific individual policies of most interest to community members. Another subpage could highlight the Department's community engagement efforts and provide notice of upcoming opportunities for interactions between the public and Department employees. Finally, a data dashboard can help communicate to the public how the Department is doing on several measures, such as crime-solving, complaint investigations, demographics of stops, use of force, and other data of public interest.

**RECOMMENDATION 53:** The Department should enhance the clarity and accessibility of its website in terms of required information and consider ways to further utilize it as a vehicle for informing and engaging the public.

**SPD RESPONSE 53:** A revision of the Department’s website is in progress.

### **Community Involvement in Hiring and Promotional Processes**

One excellent way some departments improve transparency and community relations is to include community members in hiring and promotion decisions. Community members can provide unique insight and a fresh perspective to the review of candidates. During interviews, traditional panelists tend to focus more on an applicant’s ability to handle situations like complex enforcement incidents. In contrast, community representatives will more likely focus on issues like an applicant’s community engagement skills. Including the community in these decisions also communicates to the public that SPD values the community. The Department could greatly benefit by including community members in the discussion as decisions are made to select new employees and supervisors. SPD recently began the process of community inclusion in officer hiring and promotional panels.

**RECOMMENDATION 54:** SPD should engage community members at the interview stage of its hiring and promotional processes.

**SPD RESPONSE 54:** The Department implemented this approach, and it was used in the recent SPD Sergeant promotional process.

### **Surveys and Other Feedback Mechanism**

As discussed above, SPD could benefit from using a customer feedback mechanism such as “Open Policing” to help managers evaluate its officers’ performance during interactions with the public. This review also has recommended exploring some way to gather and include such feedback in evaluations of dispatchers. Going beyond that, many departments have begun to measure community satisfaction with local policing through various survey instruments and processes. One of the challenges of this review was to assess whether SPD’s policing approach is consistent with Sebastopol’s values around policing, in the absence of any actual data in that area. Sebastopol should consider initiating some regular process to measure community values and satisfaction around policing.

In addition to seeking feedback from a cross-section of the Sebastopol community, SPD also should seek regular feedback and input from its criminal justice and

social services partners. SPD officers regularly interact with prosecutors, jail supervisors, judges, public defenders, juvenile justice administrators, probation officers, and social workers. Because of those interactions, individuals in these other agencies may have significant insight into individual SPD officers and the Department's performance as an organization. SPD could benefit significantly from regular feedback from these professionals.

**RECOMMENDATION 55:** SPD should seek out and implement additional processes to gather feedback from the broader Sebastopol community concerning the Department's operations and values.

**SPD RESPONSE 55:** The Department will assess this recommendation. It currently is reviewing options such as Citizen RIMS, openpolicing.org, and similar platforms.

**RECOMMENDATION 56:** SPD should create a feedback loop for its criminal justice and social service partner regarding the performance of its employees and the Department as a whole.

**SPD RESPONSE 56:** The Department will review this recommendation and assess incorporation options

### **Independent Civilian Oversight Processes**

One pillar of the *President's Report* addressed the importance of civilian oversight and police department collaboration with the community. It recommended that jurisdictions establish civilian oversight mechanisms for their police agencies. "Some form of civilian oversight of law enforcement is important in order to strengthen trust with the community. Every community should define the appropriate form and structure of civilian oversight to meet the needs of that community." (Recommendation 2.8)

Especially over the last year, there have been increasing community demands for independent civilian oversight of law enforcement agencies, both across the country and Sonoma County. In November 2020, Measure P, a ballot measure to strengthen civilian oversight of the county Sheriff's Office, was passed by the voters, with 2/3 of the countywide electorate voting in favor. In Sebastopol, the ballot measure won with over 80% of the vote. Clearly, the Sebastopol community strongly supports civilian oversight of law enforcement.

Civilian oversight entities provide a robust process for community involvement in policing and can make police agencies more accountable to those outside the agency. In doing so, civilian oversight helps bridge the gaps between distrusting communities and law enforcement agencies. There is no “one size fits all” model for civilian oversight of a police department. As the National Association for Civilian Oversight of Law Enforcement has stated, each community must determine for itself which model best fits their unique needs. Nevertheless, NACOLE also has been clear that any oversight model must meet certain minimum criteria to be effective.

Among the criteria for effectiveness of civilian oversight are:

1. Independence from the police agency, politicians, and special interests;
2. Clear authority allowing it to do the work with which it is charged;
3. Unfettered access to records of the police agency;
4. Unfettered access to police department leaders and IA staff;
5. Cooperation from the police department;
6. Ongoing engagement with and support from stakeholders;
7. Sufficient funding and staff to support its work;
8. Public transparency and reporting about the work done;
9. Analysis of policy and patters and practice of the police agency reviewed;
10. Robust community engagement of oversight’s community stakeholders.

While oversight models across the country differ in size, budget, scope of authority, and approaches, those that make a positive contribution all provide a means for the public to have a greater say in how police agencies operate within their communities. Small cities like Sebastopol face unique challenges in creating civilian oversight entities due to their limited budgets and small police departments. Yet, it is possible to overcome those challenges and create an effective civilian oversight entity. Sebastopol has a range of options and could choose one or more of them.

One possibility is a Chief’s Advisory Board made up of a diverse cross-section of the communities living and working in and traveling through the City. Such a board could meet regularly with the Chief and offer advice to Department leadership on issues needing decisions. This type of input is most successful when the board includes those who have historically experienced troubled relationships with local police. These boards can offer information and valuable reflections on enforcement strategies, policy choices, and hiring and promotions. Such a board tends to be less independent than some other models but still has value.

Other cities have established independent community review boards appointed by local elected officials and charged with reviewing the local police department's policies and practices. Many of these boards also review IA investigations conducted by the police department or even make findings on misconduct investigations conducted by the police department or independent investigators. Such entities provide the value of an independent, civilian review of policy and/or officer misconduct investigations. The public often feels more comfortable where an independent community body has input such as this. Depending on which tasks they are assigned, they also tend to come with a higher price tag to support such functions. Police department staff also tend to be resistant to untrained community members weighing in on essential policies or outcomes of investigations.

Besides community boards, many jurisdictions hire a civilian oversight professional to provide some level of outside scrutiny and oversight to its police department. An independent police auditor or monitor often knows progressive policing practices across the country and has experience reviewing sensitive and confidential policing responsibilities. Given this experience, professionals can suggest policy changes, recommend training initiatives, flag troubling issues, collaborate with the Department staff to find solutions, and provide public reports of the work accomplished to show progress. Effective professionals work both with the police department and community stakeholders. They can help provide transparency, enhance accountability, and bring the public into the process to benefit all.

For small cities, there can be great benefit in combining aspects of the above models. A permanent community board can provide ongoing community input into the operations of the police department. Community board members can develop significant expertise in policing issues over time and give increasingly valuable advice and recommendations on the Department's operations decisions. As the board's activities become more known by the community, the public is more likely to participate in its processes, further enhancing its value in bridging the gap between the Department and the community. Also, a small city can contract with a professional oversight professional to provide periodic deeper looks at particular issues within the Department. For example, some cities contract with an oversight professional to come to their city a few days per month to audit certain types of IA investigations to ensure that this process is working well. Other cities may contract with a professional to come in for a comprehensive look at the Department yearly or biannually.

While more robust civilian oversight models go beyond these examples, it is unlikely that a small community like Sebastopol, with a small police department, could support the expense of those approaches. This review therefore will not spend time and space describing them. Whatever direction, if any, Sebastopol may ultimately choose for civilian oversight, some oversight function is now considered a best practice in modern, progressive policing.

**RECOMMENDATION 57:** SPD should develop an effective mechanism to obtain robust community input into police department decisions on significant policy changes, enforcement strategies, or other major issues.

**SPD RESPONSE 57:** The Department will assess this recommendation and review the possibilities.

**RECOMMENDATION 58:** City leadership should establish a community process to consider and create a model of independent, effective civilian oversight that is appropriate to Sebastopol's needs.

**SPD RESPONSE 58:** The Department will assess this recommendation and review the possibilities.

## Conclusions

The past year has been a period of intense uncertainty and unprecedented government challenges in multiple areas. Local government continues to struggle with a public health pandemic with unpredictable effects on the local economy and City budgets. Fire disasters threaten to become a permanent fixture of county life, placing burdens on all first responders. The City of Sebastopol, its residents, and its Police Department are face ongoing health concerns, challenges to public engagement, and uncertain finances. At the same time, the field of policing faces changes in public perceptions that continue at an astonishing rate. This Report comes in the midst of these changes and the ground may shift even as it is being released to the public. The recommendations in this Report therefore are made with a level of humility and hope that they continue to remain relevant.

The auditor believes that the recommendations of this Report are grounded largely in the demands of this moment, based as they are both on the particular needs of the Department, the desires of agency staff, and the developing consensus in the public on the need for a shift in direction in policing, both nationally and locally. In extensive conversations with Department leadership and staff and thorough reviews of agency operations, it is clear that this is a moment pregnant with real possibility for a positive reset of the Department's relationship with the broader Sebastopol community. While the Department has a strong foundational relationship with the community it serves, that relationship has been neglected through a lack of resources and recent events have called into question the Department's appropriate role in the City. This is a moment where the relationship between SPD and the community can be supported to become something even more trusting and collaborative in both directions.

The recommendations of this Report are offered in the hope of helping SPD and the community reinvigorate its relationship and close any gaps that may exist to the greatest extent possible. The auditor is extremely grateful for the cooperation and access received from all parties in this endeavor and wishes SPD and the Sebastopol community the best as we all emerge from this difficult period. Together may we rise.

## RECOMMENDATIONS & SPD RESPONSES

### Regular Staff Input on SPD Operations.

**RECOMMENDATION 1:** Given the significant value of the staff interviews conducted as a part of this review to fully understanding the challenges and opportunities of the Department, SPD and the City should consider establishing a process for a periodic, confidential consultation with SPD employees designed to gather such information into a report for use by SPD and City management. In addition, SPD should institute a process for exit interviews of all employees who leave the Department to obtain similar information.

**SPD RESPONSE 1:** Interim Chief Mort implemented monthly sergeants' meetings, bi-weekly check-in meetings with SPOA, and other employees one-on-one meetings. One employee resigned during Mort's tenure and an exit interview was completed by Interim Chief Mort. No formal process or policy has been defined. This process will continue under Chief Kilgore.

**RECOMMENDATION 2:** The City should ensure that SPD is able to fully staff its budgeted positions, so that SPD is able to attract and retain employees, adequately train employees, and support robust community engagement.

**SPD RESPONSE 2:** The Department is actively recruiting staff to fill positions.

### Employee Recruitment, Hiring, and Retention

**RECOMMENDATION 3:** The Department should engage in targeted recruitment of applicants designed to increase the diversity of its workforce.

**SPD RESPONSE 3:** The Department has broadened its recruiting processes to reach a diverse pool of potential applicants within Sonoma County, surrounding counties, and communities within the state. The broadened recruitment processes include visits to regional academies throughout northern California and advertisements that reach communities and academies throughout the state.

### Employee Performance Evaluations

**RECOMMENDATION 4:** The Department should strengthen its newly implemented performance evaluation system by making its evaluation criteria more focused on the specific functions and missions of SPD.

**SPD RESPONSE 4:** The Department has focused on completing evaluations and familiarizing supervisory with the system. The Department is considering forming a committee to refine the evaluation form and process.

**RECOMMENDATION 5:** The Department should include public input into the performance evaluation system, both by consulting the public on what criteria should measure employee performance, and by including direct customer input into evaluations.

**SPD RESPONSE 5:** The Department is considering forming a committee to refine the evaluation form and process. The Department is considering [openpolicing.org](http://openpolicing.org) or similar platforms to provide for public input in the evaluation process.

**RECOMMENDATION 6:** The Department should consider ways to include the input of peers and other supervisors in employee performance evaluations.

**SPD RESPONSE 6:** A Supervisors' Notes Form was implemented and is being used regularly to document positive and needs-improvement matters. The Department is considering forming a committee to refine the evaluation form and process.

**RECOMMENDATION 7:** The Department should strengthen its emphasis on customer service criteria in its performance evaluation system

**SPD RESPONSE 7:** Customer Service is one of the themes that was implemented with the Supervisors' Notes. The Department is considering forming a committee to refine the evaluation form and process.

**RECOMMENDATION 8:** The Department should increase the transparency and objectivity of the criteria supervisors use to measure performance in annual employee performance evaluations.

**SPD RESPONSE 8:** The Department is training and working with supervisors to create a uniform, objective, consistent, and predictable evaluation process.

**RECOMMENDATION 9:** The Department should enhance the training of supervisors in conducting employee performance evaluations in order to make the process more consistent and predictable for all employees.

**SPD RESPONSE 9:** The Department is training and working with supervisors to create a uniform, objective, consistent, and predictable evaluation process.

**RECOMMENDATION 10:** The Department should support and strengthen the use of supervisory notes to provide regular, ongoing feedback to employees on their performance, and make regular use of such notes for annual performance evaluations.

**SPD RESPONSE 10:** The Department implemented this system in September 2020, and it is being utilized regularly.

### **Employee Training**

**RECOMMENDATION 11:** SPD should increase overall training opportunities for all employees.

**SPD RESPONSE 11:** The Department is currently developing a Department Training Plan.

**RECOMMENDATION 12:** The Department should increase non-traditional training in areas of greater emphasis in modern policing, including Customer service, de-escalation skills, implicit bias, and active bystander training.

**SPD RESPONSE 12:** Department staff recently completed LGBTQ training and national conflict resolution and tactical communications (de-escalation and bias-free) training. Additionally, some staff members have completed conflict resolution training. Additional non-traditional training will be provided as time/budget permits and will be reviewed with the Department Training Plan development.

**RECOMMENDATION 13:** SPD should also include an emphasis on non-traditional training in its Field Training Officer programs.

**SPD RESPONSE 13:** The Department will review this recommendation and assess feasibility of implementation.

**RECOMMENDATION 14:** The Department should choose internal trainers from among those employees with a record of closely following the requirements of agency policy and training.

**SPD RESPONSE 14:** This recommendation will be assessed with the Department Training Plan.

## **Community Engagement**

**RECOMMENDATION 15:** SPD should return to a model of robust and active community engagement as soon as staffing levels allow it to do so.

**SPD RESPONSE 15:** The Department is active implementing this recommendation. Foot patrols have been implemented. Bicycle patrols are being assessed. Increased community events are being assessed as the county re-opens from the pandemic.

**RECOMMENDATION 16:** The Department should assign employees to ongoing engagement with key community groups, including especially groups representing or serving traditionally disadvantaged populations, as part of their regular duties.

**SPD RESPONSE 16:** This recommendation is being assessed as the county re-opens from the pandemic.

**RECOMMENDATION 17:** SPD should commit to hiring one or more employees with Spanish language and cultural fluency who can effectively engage with members of the Latinx communities who live, work, and shop in, and travel through, Sebastopol.

**SPD RESPONSE 17:** This recommendation has been implemented. The Department employs individuals who are Spanish language and culturally fluent (approx. 45%). Also, the Department's current recruitment/job description states that Spanish language ability is highly desirable.

**RECOMMENDATION 18:** The Chief should hold regular community meetings with Sebastopol area community organizations to gather input and share information on the Department's policing philosophies and strategies.

**SPD RESPONSE 18:** The Department is implementing this recommendation. To date, one community "Meet & Greet" with Chief Kilgore was held and more community meetings will come. The Department is working with the Sebastopol Chamber of Commerce to set up more meetings with City businesses.

## **Internal Affairs Investigations System**

**RECOMMENDATION 19:** The Department should eliminate the category of "informal" complaint from its complaint investigation process.

**SPD RESPONSE 19:** Policy 1007 has been revised and a new Department complaint form has been developed. See, Policy 1007.3.1 and 1007.5.1(a). "Informal" no longer means it will not be investigated.

**RECOMMENDATION 20:** The Department should eliminate warnings on its complaint forms and instructions to complainants about possible consequences of filing a false complaint against an employee.

**SPD RESPONSE 20:** A new Department complaint form has been developed.

**RECOMMENDATION 21:** The Department should eliminate from its complaint forms and instructions any notice to complainants about possible public disclosure of their name and contact information.

**SPD RESPONSE 21:** A new Department complaint form has been developed.

**RECOMMENDATION 22:** SPD should investigate all complaints lodged with the Department and reach a finding on all allegations of that complaint, regardless of whether internally generated or filed by a community member, and regardless of whether a complainant agrees to categorize the complaint as formal or informal.

**SPD RESPONSE 22:** The Department is investigating all complaints under Chief Kilgore.

**RECOMMENDATION 23:** SPD should fully document all investigations, regardless of outcome and regardless of how they originated.

**SPD RESPONSE 23:** Documentation of each complaint is now retained and tracked.

**RECOMMENDATION 24:** SPD should preserve all complaint investigation files for the 5-year period required by state statute, regardless of how they originated.

**SPD RESPONSE 24:** The Department Policy was revised in December 2020 and the City's policy was revised in March 2021. The 5-year retention requirement is a part of the policy.

**RECOMMENDATION 25:** SPD should provide complainants with a written notice of findings for any complaint filed by a community member.

**SPD RESPONSE 25:** Implemented in compliance with City records retention policy.

**RECOMMENDATION 26:** Once a complaint is lodged, SPD should complete the investigation of that complaint, regardless of whether the investigator considers it to lack merit and regardless of whether the complainant later decides not to pursue that complaint.

**SPD RESPONSE 26:** The Department is taking such action under Chief Kilgore.

**RECOMMENDATION 27:** SPD should investigate all allegations of every complaint.

**SPD RESPONSE 27:** The Department is taking such action under Chief Kilgore.

**RECOMMENDATION 28:** SPD should secure and analyze all evidence material to a complaint investigation, including interviews of all material witnesses to a complaint, as well as all records of any kind that could affect the outcome of the investigation. Every complaint should include an interview of the complainant and the subject officer, absent unavoidable reasons that prevent such interviews.

**SPD RESPONSE 28:** The Department is taking such action under Chief Kilgore.

**RECOMMENDATION 29:** SPD should conduct all investigative interviews by using neutral, open-ended questioning of interview subjects, designed to elicit all relevant information known to the interviewee. Avoid either hostile or leading questions, absent extraordinary circumstances.

**SPD RESPONSE 29:** The Department is taking such action under Chief Kilgore.

**RECOMMENDATION 30:** The Department should ensure that disciplinary consequences for sustained findings of misconduct are consistent across similar circumstances for all officers, without regard to personal or professional alliances among Department employees and/or officials. Consider implementing a disciplinary matrix to provide greater predictability and consistency in discipline.

**SPD RESPONSE 30:** Policy 1007, Personnel Complaints, details some disciplinary procedures. The Department will review this recommendation and make additional changes if necessary. The Department must keep in mind that factors outside of the investigation may influence disciplinary action imposed on

an officer. Specifically, the Department must discipline officers in a progressive manner. The Department will ensure that personal and/or professional alliances will not influence disciplinary decisions.

**RECOMMENDATION 31:** SPD should implement a conflict-of-interest policy that prohibits any officer or Department official from acting in an investigative or decision-making role for any IA investigation that may implicate their personal or professional interests.

**SPD RESPONSE 31:** The Department has revised Policy 1007, Personnel Complaints, which prohibits the immediate supervisor from serving as the investigator of a complaint if he/she was involved in the incident or the ultimate-decision maker on the matter. The Department will review the policy further to determine whether additional changes can and/or should be made.

**RECOMMENDATION 32:** SPD should consider outsourcing IA investigations to a highly trained and experienced civilian investigator, in order to provide neutrality, eliminate actual and perceived conflicts of interest, and to provide the public greater confidence that such investigations are objectively conducted.

**SPD RESPONSE 32:** The Department will outsource IA investigations to ensure neutrality, eliminate actual and perceived conflicts or interests, and when necessary given all of the circumstances presented in a particular case.

**RECOMMENDATION 33:** The Department should make complaint notification letters as specific and personal to recipients as possible.

**SPD RESPONSE 33:** This recommendation was implemented in April 2021.

**RECOMMENDATION 34:** The Department should share with the public on its website information about complaints and internal investigations, including the nature of the allegations, and the outcomes of investigations. Providing more openness in this area helps increase public trust and strengthen community relationships. This same transparency should also exist around data on uses of force.

**SPD RESPONSE 34:** The Department is working on implementing this recommendation. A Department website update is currently in progress and this information will be included on the website soon. New staff was trained in March 2021 to assist with managing and designing the website.

**RECOMMENDATION 35:** SPD should develop written internal deadlines to complete an investigation and review process and require supervisory approval for deviation from those deadlines.

**SPD RESPONSE 35:** The Department has adopted a 60-day completion deadline by the investigator, and 120 days to close out and investigation, barring any unforeseen or unusual circumstances.

**RECOMMENDATION 36:** The Department should evaluate its individual misconduct investigations to ensure that all relevant issues are identified and pursued to a reasonable extent, including a written standard requiring formal interviews with witness officers.

**SPD RESPONSE 36:** The Department is taking such action under Chief Kilgore.

**RECOMMENDATION 37:** SPD should evaluate its levels of discipline for sustained policy violations to ensure that the proper amount of remediation is occurring.

**SPD RESPONSE 37:** The Department is taking such action under Chief Kilgore.

**RECOMMENDATION 38:** The Department should consider simplifying the employee appeal process for imposition of discipline. This could include eliminating appeal steps in the process. It also could include creating a presumption that the Chief's decision is correct and valid, absent evidence of bias or bad faith.

**SPD RESPONSE 38:** This recommendation will be considered by the City and the Department. Such action will require negotiations with SPOA.

### **Use of Force Reporting & Review**

**RECOMMENDATION 39:** The Department should institute a formal Use of Force Reporting System, which should include mandatory, timely reporting of every use of force by an officer on a reporting form that includes robust data collection. Every reported use of force should be evaluated by a supervisor for compliance with agency policy, and where a policy violation is indicated, a full investigation should follow.

**SPD RESPONSE 39:** The Department maintains Policy 300.8, Reporting the Use of Force, which requires prompt, complete, and accurate reports of use of force. The Department is developing a Use of Force report form and will collect related data via the form on an on-going basis.

**RECOMMENDATION 40:** SPD should broaden its definition of “force” in its use of force policy to include all actions considered force under Fourth Amendment case law and to capture those employee actions that are correlated with escalation of force.

**SPD RESPONSE 40:** The Department maintains Policy 300 Use of Force. The policy defines force, requires that officers use only the amount of force reasonably necessary, and requires reporting the use of force in a variety of circumstances including, but not limited to those circumstances when injury has occurred, an individual is restrained, an individual is struck, or when unreasonable force is used. The Department will consider revising the policy to more thoroughly define the term “force.”

**RECOMMENDATION 41:** The Department should consider creating a use of force review panel process for significant uses of force by employees, in order to study and learn from such incidents how to better avoid force and to resolve incidents at the lowest possible level of force.

**SPD RESPONSE 41:** The Department is developing a Use of Force report form and will collect related data. A Use of Force review panel has been implemented.

### **Critical Incident Response Policies**

**RECOMMENDATION 42:** SPD should adopt a policy to guide its interactions with families of victims killed by officers, including the designation and training of an SPD employee as a “family liaison” during such incidents.

**SPD RESPONSE 42:** The Department will assess this recommendation for possible addition to Policy 305, Officer Involved Shootings and Deaths.

**RECOMMENDATION 43:** SPD should adopt a policy to guide its interactions with community groups during such incidents, including an emphasis on the Chief holding timely community meetings and sharing as much information as possible with the public.

**SPD RESPONSE 43:** The Department will assess this recommendation for possible addition to Policy 305, Officer Involved Shootings and Deaths.

**RECOMMENDATION 44:** The Department should adopt a policy to guide its transparency efforts during officer involved deaths of community members, including releasing video as quickly as possible and ensuring that all information provided by SPD is as accurate and complete and timely as possible.

**SPD RESPONSE 44:** The Department will assess this recommendation for possible addition to Policy 305, Officer Involved Shootings and Deaths.

**RECOMMENDATION 45:** SPD should adopt a policy to support and protect officers involved in the death of a community member, recognizing that the trauma involved in such an incident can significantly impact such employees.

**SPD RESPONSE 45:** The Department maintains Policy 305, Officer Involved Shootings and Deaths, which relates to the investigation of an officer-involved shooting. The Department will consider adopting a policy to assist, support, and protect officers involved in incidents that result in the death of a community member.

### **SPD Use of Force Policies**

**RECOMMENDATION 46:** The Sebastopol Police Department's Use of Force Policy should consider including the following principles:

1. The UOF policy should be founded on and strongly emphasize a robust Sanctity of Life Statement affirming the value of all human life, the inherent dignity of all persons, and an officer's duty to uphold citizens' civil and constitutional rights. The emphasis should be on the welfare of the community and the corresponding and related physical and emotional well-being of the officers who serve them.
2. The policy should emphasize de-escalation as an approach to any potential use of force incident. It should include a clear definition of de-escalation principles and practices, including the use of time and distance and tone of voice to de-escalate a potentially volatile interaction, and a requirement to use de-escalation techniques whenever feasible. As used in this context, de-escalation should be distinguished from the use of less-lethal force to avoid more lethal force.
3. The policy should provide that any force used be proportional to the situation calling for its use. For example, non-compliance with an officer's

lawful order may justify a lower level of force than actions that threaten others.

4. The policy should provide that any force used must be objectively reasonable and the minimal amount necessary to accomplish a lawful policing objective (*see* California Penal Code Section 835a; *Graham v. Connor* (1989) 490 US 386).
5. The policy should consider defining “necessary” as it applies to force, as meaning that a lower level of force would not have achieved the lawful objective in question.
6. The policy should provide that, overall, force used by the department should comply with principles of fair and unbiased policing, so that there is no disparate percentage of instances of force used against any demographic category of persons under similar circumstances.
7. The policy should provide that officers should give a verbal warning whenever feasible before using force.
8. The policy should provide that officers must continually re-assess the situation to evaluate the necessity of force or continued need for force as circumstances change.
9. Special consideration should be given in both policy and training for vulnerable populations, including those for whom there is evidence or suspicion of mental/emotional/behavioral health challenges, those under the influence of drugs or alcohol, pregnant women, the elderly, those who are cognitively divergent, and the young.
10. There should be an emphasis on Crisis Intervention Training and support for mental health professionals handling such situations whenever possible and appropriate. The policy should provide that a sworn law enforcement officer generally should not be the first responder to a situation involving a mental health issue, absent evidence to suggest a threat of violence to self or others.
11. Officer training under the use of force policy should emphasize increased reliance on good communication skills to minimize escalation of emotional reactivity and the need for use of force.
12. The policy should include restrictions on firing into moving vehicles unless necessary to prevent imminent death or serious bodily injury. Shooting at fleeing felons unless required to prevent imminent death or serious bodily injury should be prohibited.
13. The policy should provide that Tasers and similar electric conduction devices should be considered potentially lethal force options. There should be more significant restrictions on the use of Tasers on vulnerable populations, such as those who may be under the influence of drugs or

alcohol, mentally ill or impaired, overweight, or obviously in poor health or infirm.

14. Officers should be required to actively intervene, and report uses of excessive force through both policy and training. The department should consider active bystander training designed to encourage an agency culture that expects and welcomes officers to intervene to prevent other officers from taking action that may constitute unnecessary force. This will help build a teamwork culture and protect officers and the public from unnecessary injury and indignity and lower litigation risks for the department.
15. The policy should require that all uses of force be reported to supervisors in writing by the officer who employed force, that reports be reviewed by a supervisor for compliance with policy that same day (if possible), and the records documenting such reports and reviews be preserved for future review.
16. The policy should require that evaluation of use of force incidents include whether the officer exhausted all other reasonable alternatives before resorting to force, as well as whether de-escalation techniques were reasonable and employed.
17. The Department should employ a Use of Force Reporting form to better track all uses of force and reflect the Department's values.
18. The Department should implement an electronic database for all use of force reporting and review to record and publicly report data on all uses of force by agency employees.
19. The use of force policy should more specifically define what constitutes force, including both a general definition and an "including but not limited to" list of examples of force. Among the examples of force listed in this definition should be any threat of force by an officer against a community member and any officer pointing a weapon at a community member.
20. The policy should provide that, whenever an officer uses force, officers will administer first aid at the scene, as soon as possible, when needed.
21. The Department should develop metrics for tracking and public reporting of use of force incidents, include such metrics in its UF tracking database, compile such metrics into reports, and make such reports easily and regularly available on the department's public website.
22. The SPD should increase and implement robust training necessary to support these core guidelines, including but not limited to de-escalation training, implicit bias training, communications training, and scenario-based training.
23. SPD should carefully train dispatchers in the importance of verifying and accurately reporting all information that may or may not suggest a threat is

present in any incident to which an officer is asked to respond. Dispatch information can be the critical factor in whether an officer responds to a call for service in a way that makes it likely that the officer may employ force. Dispatchers should be trained to understand that the safety of the public is as important as the safety of a responding officer and that their actions may help determine whether force is used appropriately in response to the situation. Every Department review of any use of force by an officer should consider the role of dispatch in shaping the officer's perceptions.

24. In particular, where a call for service identifies a "suspicious" individual as presenting some danger and they are a part of a disadvantaged group (such as a racial, ethnic, or religious minority), dispatchers should be trained to seek an objective basis for such claims from the reporting party. The dispatcher should then report accurately to the responding officer the information they gather through such inquiries. Where there appears to be no objective basis for concern about the suspect, the dispatcher should communicate this to the responding officer.
25. The Department should monitor and analyze use of force incidents, and establish an electronic, early intervention program to target officers at risk of using excessive force.
26. SPD should partner with an independent, civilian oversight partner to analyze use of force data, seeking relevant opportunities to decrease use of force incidents.
27. SPD should emphasize officer health and wellness, providing officers with a mental/emotional health support infrastructure for those experiencing traumatic incidents and stressful work and life situations.
28. The department should consider the benefits of a "trauma-informed policing" approach, both for its officers and the community members they encounter during incidents. Training to understand and accommodate the effects of trauma on both officers' and community members' emotional and cognitive abilities has great potential to increase positive outcomes and avoid the use of force.

**SPD RESPONSE 46:** The Department maintains Policy 305, Officer Involved Shootings and Deaths and Policy 300.6, Use of Force, which relate to the investigation of officer involved shootings and the use of force. The Department is working to create a form to gather relevant information related to the use of force. The Department will thoroughly review and consider the above-described recommendations and will revise policy as needed to support the community and its officers.

### **SPD Bias Free Policing Policies**

**RECOMMENDATION 47:** SPD's Bias Free Policing Policy should consider including the following principles:

1. The Department should be clear in its policy by including a definition of biased policing and a statement on the limited circumstances in which characteristics of individuals may be considered in policing decisions.
2. The Department should make clear in policy that a violation of the Bias Free Policing Policy is a serious matter justifying significant discipline.
3. The Department should consider committing the agency to an anti-racist philosophy that seeks to counter the influences of racism in society, generally.
4. The Department should consider providing specific examples in its policy where bias in policing may arise, such as decisions to search a person or a vehicle, and explain that such practices are not allowed.
5. The policy should include a mandate that officers intervene when they see an example of biased policing and report any observed violation of the policy.
6. The Department should collect and analyze data on all stops, including robust demographic information, and share analyses of that data with the public in regular reports.
7. The Department should incorporate racial disparity data in early warning systems that indicate issues that could cause additional training or closer evaluation of officer conduct.
8. The policy should address agency employee responses to observed bias from reporting parties during calls for service or enforcement actions.

**SPD RESPONSE 47:** See SPD Policy 401, Bias Based Policing-Sonoma County Protocol, and 402, Racial/Bias Based Profiling. The Department will review the recommendations for any possible changes or additions. The implementation of the California Racial Identify and Profiling Act will cover the majority of the data collection recommended.

### **SPD Policies on Policing of First Amendment Demonstrations**

**RECOMMENDATION 48:** SPD should consider adopting a policy to guide policing of public demonstrations that includes the following guiding principles:

1. A clear commitment to prioritize the protection of the First Amendment Rights of demonstrators to assemble and express themselves in public spaces freely;

2. A prioritization of de-escalation as a core approach to effective crowd management;
3. A limitation on force in such circumstances to circumstances where it is both necessary and unavoidable to avoid harm to others or destruction of property;
4. Limits on the amount of force that officers may use to prevent the destruction of property;
5. A prohibition on the use of kinetic weapon projectiles into a crowd for any purpose;
6. A ban on the use of tear gas to control groups or individuals who do not pose any immediate threat of serious harm to other persons;
7. A prohibition on “kettling”, where police officers box in or guide demonstrators to an area that has no egress;
8. Ensuring that an officer of the rank of Lieutenant or above is present to review & respond in real-time to any serious use of force by an officer during a demonstration;
9. A prohibition on mass arrests; limiting arrests to individuals for which probable cause exists to justify an arrest;
10. A prohibition on the use of obscene, insulting, or disrespectful gestures or language by police officers toward anyone present at a demonstration;
11. Limits on crowd dispersal to circumstances that create an immediate threat to public safety, or where widespread violence or property destruction reasonably appears imminent;
12. A requirement that orders to disperse be delivered in such a manner that they are audible to an entire crowd and are repeated (if possible), before efforts to enforce the dispersal order; include avenues to disperse in the announcement of the dispersal order;
13. A requirement that police officers involved in the protest policing wear name tags and badges with their officer numbers visible;
14. Explicit protections for members of the crowd to audio and video record or observe the demonstration at all times; and
15. Ensuring in advance that mutual aid agreements between responding police agencies clearly specify what policies and training govern policing of any protest.

**SPD RESPONSE 48:** See SPD Policy 423, First Amendment Assemblies, which was implemented in December 2020. The Department will review the recommendations for any possible changes or additions.

### **SPD Policies & Practices Related to Immigrants**

**RECOMMENDATION 49:** SPD should consider adopting an Immigration/Immigrant Policy that includes the following principles:

1. Include immigrants as a group characteristic protected by the Department's Bias-Free Policing Policy.
2. Prohibit SPD officers from taking any enforcement action based on actual or perceived immigration status; asking people about their immigration status; or assisting with a civil immigration enforcement action.
3. Guarantee language access in interactions with immigrant community members who have limited English proficiency, including seeking partnerships with community organizations trusted by immigrant community members, acting as culturally proficient translation providers for law enforcement interactions.
4. Provide cultural sensitivity training to officers and dispatchers to better assist them in the effective performance of their duties with immigrant community members and others whose cultures may not be as familiar to them.
5. Prohibit sharing personal information about immigrant community members in the custody and control of SPD with federal authorities that could be used for civil immigration enforcement.
6. Prohibit participation by SPD officers in federal enforcement actions related to civil immigration laws.
7. Conduct regular departmental outreach and engagement to immigrant communities whose members may work or reside in or travel through Sebastopol.

**SPD RESPONSE 49:** See SPD Policy 411, Immigration Violations. The Department will further review the recommendations for possible changes or additions to policy.

### **SPD Youth Specific Policies & Practices**

**RECOMMENDATION 50:** SPD should consider adopting a policy governing Interactions with Youth that includes the following principles:

1. Recognize that youth cannot fully understand complicated legal issues and admonitions during police interactions, and therefore require that communications with a youth witness or suspect must include their parent or guardian, absent an emergency that requires immediate action.
2. Where a police officer must provide admonitions such as *Miranda* warnings to a minor, consider translating such warnings into simpler language more

understandable to a young mind, in addition to providing the full warning in writing.

3. Recognizing the implications of the young brain's cognitive development and where possible and advisable, utilize restorative justice principles and approaches to resolve enforcement actions that involve youth.

**SPD RESPONSE 50:** See SPD Policy 311, Temporary Custody of Juveniles, revised in December 2020. The Department will further review the recommendations for possible changes or additions to policy.

### **SPD Accountability Systems Policies & Practices**

**RECOMMENDATION 51:** SPD should consider adopting a Policy on Internal Affairs Investigation that includes the following principles:

1. An investigator should make every reasonable effort to interview every complainant, both to ensure that the investigator understands fully the nature of the complaint and the complainant's view of the available evidence, as well as to convey to the complainant that the agency takes all complaints of employee misconduct seriously.
2. Additionally, an investigator should interview all subject employees and employee witnesses named in a complaint.
3. Where possible, the investigator also should interview at least one third-party witness outside SPD in any investigation involving serious allegations, such as excessive force, racial bias, etc.
4. Regardless of the alleged misconduct's seriousness, the investigator should interview all witnesses with information material to the investigation.
5. When interviews are conducted, the investigator should ensure they are digitally recorded and secured to preserve an exact interview record for subsequent review by agency supervisors and any independent reviewer.
6. The Department should improve its documentation of interviews by moving from digital sound recording, which is usually currently employed, to digital video recording with both sound and visual information that the investigator, supervisors, and any independent reviewer can review.
7. The Department should carefully preserve all documentary and video evidence that may play a role in any future investigation, with a clear chain of custody showing when and if it has been viewed or in possession of any agency employee.
8. Investigators should quickly secure any third-party evidence identified by the complainant or other witnesses or any evidence otherwise identified during the investigation.

9. Each investigation should include the following information about any employee:
  - a. previous complaints filed,
  - b. previous administrative investigations and outcomes,
  - c. performance evaluations, commendations awarded and/or discipline imposed and why, and
  - d. information related to an employee's inclusion on the agency's *Brady* list, including any investigative or complaint file associated with that inclusion.

This information should be considered and weighed carefully by the investigator, especially where the credibility of witness statements could influence the outcome of investigative findings.

10. Where policy requires body-worn camera video to be recorded for particular types of incidents, but witnesses state that the video was not recorded, the lack of such evidence should be a separate subject of the investigation. The investigation should explore the reasons for the absence of the video in some detail.
11. Each investigation should include a thorough analysis of all allegations made by the complainant
12. The Department should adopt a formal written policy forbidding any retaliatory acts by agency employees against community members who file complaints against, or provide evidence in investigations of complaints against, Department employees.
13. The Department should include this non-retaliation policy on its formal complaint forms and any other written materials that describe the complaint process.
14. SPD should adopt a formal Conflict of Interest Policy to forbid involvement of employees in any investigation that involves a person or organization with which the employee has a familial, financial, and/or significant personal relationship.
15. The Conflict-of-Interest Policy also should forbid any employee from involvement in the conduct or management of any investigation in which that employee is implicated as a subject, supervisor, or witness, or if the employee's personal or professional interests would be affected by the outcome of the investigation.
16. When conducting witness and deputy interviews, investigators typically should utilize open-ended questioning (as opposed to leading or hostile questions) and maintain a neutral demeanor. The investigator should encourage the witness to remember and provide all of the information of which they may be aware.

17. Investigators should undertake a full analysis of factual evidence and should consider and weigh all material evidence, both for and against a specific finding
18. In addition, where the investigator makes findings, the analysis should reference any specific criteria of the relevant policy and explain why the evidence meets or does not meet that criteria.

**SPD RESPONSE 51:** See SPD Policy 320, Standards of Conduct, Policy 418, Body Worn Cameras and Audio Recorders, and Policy 1007, Personnel Complaints. The Department will further review the recommendations and consider any changes or additions to policy.

### **SPD Body-Worn Camera Policies & Practices**

**RECOMMENDATION 52:** SPD should consider adopting a Body-Worn Camera Policy that includes the following guiding principles:

1. Define the overall purpose of body-worn cameras (BWC) as providing an accurate video record of interactions between police officers and the public, without limited that purpose to collecting evidence for criminal or administrative investigations.
2. Require officers to activate their BWC at the moment it is clear that they will interact with a member of the public in any official capacity beyond a friend greeting or casual conversation.
3. Once activated, require officers to maintain their BWC in an active state until the officer's participation in the incident has ceased, including any transport by the officer of a suspect to a detention or medical facility.
4. Require officers to notify a member of the public when they are being recorded by the BWC, where possible given the nature of the interaction.
5. Require an officer to report any incident where they did not activate their BWC in situations where the policy required it and explain the reason for such failure.
6. Include in the policy a notice that the failure to activate a BWC where required, and without a reasonable explanation for such failure, will result in discipline.
7. Communicate to officers that a violation of the BWC Policy will be considered a serious violation deserving of significant discipline.
8. Require that BWC video footage be downloaded from BWC units as soon as possible at the conclusion of a shift, and clearly prohibit editing, erasing, copying, sharing, altering, or distributing recordings, except as otherwise allowed by policy.

9. Clearly state the Department's commitment to transparency in the release of BWC camera footage for high-profile events at the earliest opportunity that will not substantially interfere with an open investigation.
10. Clearly state the Department's commitment to protect the privacy of members of the public recorded on BWC video, to the extent reasonably possible.

**SPD RESPONSE 52:** See SPD Policy 418, Body Worn Cameras and Audio Recorders, which was revised in December 2020. The Department will continue to review the recommendations and consider any changes or additions to policy.

### **Transparency & Community Feedback Processes**

**RECOMMENDATION 53:** The Department should enhance the clarity and accessibility of its website in terms of required information and consider ways to further utilize it as a vehicle for informing and engaging the public.

**SPD RESPONSE 53:** A revision of the Department's website is in progress.

**RECOMMENDATION 54:** SPD should engage community members at the interview stage of its hiring and promotional processes.

**SPD RESPONSE 54:** The Department implemented this approach, and it was used in the recent SPD Sergeant promotional process.

**RECOMMENDATION 55:** SPD should seek out and implement additional processes to gather feedback from the broader Sebastopol community concerning the Department's operations and values.

**SPD RESPONSE 55:** The Department will assess this recommendation. It currently is reviewing options such as Citizen RIMS, openpolicing.org, and similar platforms.

**RECOMMENDATION 56:** SPD should create a feedback loop for its criminal justice and social service partner regarding the performance of its employees and the Department as a whole.

**SPD RESPONSE 56:** The Department will review this recommendation and assess incorporation options

### **Independent Civilian Oversight Processes**

**RECOMMENDATION 57:** SPD should develop an effective mechanism to obtain robust community input into police department decisions on significant policy changes, enforcement strategies, or other major issues.

**SPD RESPONSE 57:** The Department will assess this recommendation and review the possibilities.

**RECOMMENDATION 58:** City leadership should establish a community process to consider and create a model of independent, effective civilian oversight that is appropriate to Sebastopol's needs.

**SPD RESPONSE 58:** The Department will assess this recommendation and review the possibilities.

## End Notes

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<sup>1</sup> While the auditor did not have access to any formal polling to draw conclusions about the perceptions of the public in writing this Report, he did talk extensively to multiple long-term members of the community, city council members, and SPD staff and management, about SPD and how it is perceived. The auditor also has lived in the area since 2015 and has closely monitored perceptions of law enforcement in the county. The opinions expressed about public perceptions are informed by those sources.

<sup>2</sup> Before specializing in civilian oversight of policing, Mr. Threet had a long, varied career in public service, including policy work for legislative bodies, clerking in the Texas Court of Criminal Appeals, litigating civil and criminal cases at the U.S. DOJ with the Antitrust Division and with U.S. Attorney Robert Mueller, and conducting public protection litigation as a San Francisco Deputy City Attorney. Much of this work involved working closely and productively with law enforcement officers in their investigative capacity.

<sup>3</sup> The version of the SPD policy manual changed several times during this Review, which somewhat complicated the process. Nevertheless, this reflected positive changes being made while the Review was under way.

<sup>4</sup> Lexipol is a private company run by former law enforcement officers and attorneys that seeks to provide subscribing police agencies with model policies that meet the minimum requirements of developing statutes and case law governing policing. For small agencies, this service can be valuable but also has notable limitations.

<sup>5</sup> The California Commission on Peace Officers Standards and Training (POST) describes the mandate as follows:

Perishable Skills training shall consist of a minimum of 14 hours in each 2-year period. Of the total 14 hours required, a minimum of 4 hours of each of the 3 following topical areas shall be completed:

- Arrest and Control
- Driver Training/Awareness or Driving Simulator\*
- Tactical Firearms\* or Force Options Simulator

Additionally, of the 14 hours required, a minimum of 2 hours must be completed in Strategic Communications.

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<https://post.ca.gov/perishable-skills-program>

<sup>6</sup> This policy has been revised by SPD since being reviewed by the auditor. The auditor's comments refer to the version of the policy in effect at the time of the review, prior to December 2020. The revisions undoubtedly have improved the policy, but do not include all recommendations of this Report.

<sup>7</sup> There are two state laws enacted at the behest of police unions related to the part of this statement that warns of possible legal repercussions from filing a complaint. Civil Code § 47.5 was enacted in 1982 to overrule a court decision holding that complaints against the police were absolutely privileged and thus not subject to civil lawsuits: *Imig v. Ferrar*, 70 Cal. App. 3d 48 (2nd Dist. 1977). Stats. 1982, Ch. 1588. Penal Code § 148.6, Stats 1995 Ch. 590 § 1 (AB 1732), was enacted for the express purpose of curbing the increased number of civilian complaints against officers stemming from the Rodney King "incident" in March 1991. See Assembly Committee on Public Safety, Analysis of AB 11732, at 1–2 (Feb. 24, 1995). Court decisions are conflicting as to whether the California statutes remain good law at all. The California Supreme Court upheld Penal Code § 148.6 against a constitutional attack in the *Stanistreet* decision, but the Ninth Circuit disagreed with *Stanistreet*, and held that "*the statute impermissibly regulates speech on the basis of a speaker's viewpoint.*" *Chaker v. Crogan*, 428 F.3d 1215, 1228 (9th Cir. 2005), *cert. denied*, 547 U.S. 1128 (2006). Civil Code § 47.5 was also found unconstitutional because it "*impermissibly regulates speech based on the content of the speech.*" *Walker v. Kioussis*, 93 Cal. App. 4th 1432, 1437 (4th Dist. 2001). But a subsequent decision upheld the law as constitutional, based on the *Stanistreet* decision. *Loshonkohl v. Kinder*, 109 Cal. App. 4th 510 (4th Dist. 2003). A federal court found the law to be unconstitutional. *Haddad v. Wall*, 107 F. Supp. 2d 1230 (C.D. Cal. 2000), but that decision was vacated by the Ninth Circuit for lack of jurisdiction. *Haddad v. Wall*, 48 F. App'x 279 (9th Cir. 2002). The bottom line of these decisions is that there is good reason to question the continuing validity of these two laws.

There is no legal basis for a police department to require community members to submit to a lie detector test to file a complaint against a Department employee. Such a statement is inherently hostile rather than welcoming of complaints regarding Department employees.

Finally, a *Pitchess* Motion can result in the name and contact information of a complainant being released. However, that information would be provided only to

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an attorney representing a party in a criminal or civil proceeding, who is seeking that information to question the credibility of the officer involved in the complaint filed by the community member. For all other purposes, the name of a complainant cannot be released by the Department. The statement on the form suggests otherwise.

Therefore, a city police department should err on the side of welcoming complaints by members of its community, and these statements should not be included on the form instructions, as they have the opposite effect.

<sup>8</sup> See Appendix.

<sup>9</sup> The Seventh and Ninth Circuits have found that pointing a gun at a suspect when he or she does not present any significant danger to officers may constitute an unreasonable use of force under the Fourth Amendment. *See Espinosa v. City & Cty. of S.F.*, 598 F.3d 528, 537-38 (9th Cir. 2010) (denying summary judgment on qualified immunity grounds because questions of fact remained about whether threatening deadly force was reasonable "given the low level" of danger to the officers); *Baird v. Renbarger*, 576 F.3d 340, 346 (7th Cir. 2009) ("While police are not entitled to point their guns at citizens when there is no hint of danger, they are allowed to do so when there *is* reason to fear danger"); *Tekle v. United States*, 511 F.3d 839, 845-47 (9th Cir. 2007) (denying summary judgment on qualified immunity grounds, stating that "[w]e have held since 1984 that pointing a gun at a suspect's head can constitute excessive force in this circuit"); *Robinson v. Solano Cty.*, 278 F.3d 1007, 1015 (9th Cir. 2002) (agreeing with the Fifth Circuit that a police officer who brandishes a cocked gun at a suspect has "laid the building blocks for a section 1983 claim" even without physical injury); *Jacobs v. City of Chicago*, 215 F.3d 758, 773-74 (7th Cir. 2000) (finding that pointing a gun at plaintiff's head, even after the officer realized plaintiff was not the desired suspect, is "out of proportion to any danger" plaintiff could have posed to officers or others); *McDonald v. Haskins*, 966 F.2d 292, 294-95 (7th Cir. 1992) (concluding that pointing a gun at a child and threatening to pull the trigger while conducting a search was "objectively unreasonable"). See also, *Mlodzinski v. Lewis*, 648 F.3d 24, 30 (1st Cir. 2011); *Black v. Stephens*, 662 F.2d 181, 184-85 (3d Cir.1981).

<sup>10</sup> Another example of a broader definition of force is used by the City of Oakland: "Any physical or mechanical intervention used by a member or employee to defend, control, overpower, restrain or overcome the resistance of an individual." <https://www.oaklandca.gov/resources/use-of-force>

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<sup>11</sup> This is a similar definition of “force” as that set out in the Use of Force policy for the Sonoma County Sheriff. That office clearly does not consider the drawing and pointing of a firearm at another to constitute a use of force, and therefore Sheriff’s deputies are not required to file any report when they take such an action.

<sup>12</sup> *Final Report of the President’s Task Force on 21<sup>st</sup> Century Policing*, Washington, D.C.: U.S. D.O.J., Office of Community Oriented Policing Services, May 2015.

<sup>13</sup> <https://kidsandcops.org/>