



1255 Imperial Avenue, Suite 1000
San Diego, CA 92101-7490
(619) 231-1466 • FAX (619) 234-3407

Agenda

MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM PUBLIC SECURITY COMMITTEE

July 23, 2020

9:00 am

“Meeting will be held via webinar*”

To request an agenda in an alternative format or to request accommodations to facilitate meeting participation, please call the Clerk of the Public Security Committee at least two working days prior to the meeting. Meeting webinar instructions for the public can be accessed at the following link:

<https://www.sdmts.com/about-mts-meetings-and-agendas/other-committee>

ACTION RECOMMENDED

- | | | |
|----|---|---------------|
| 1. | ROLL CALL | |
| 2. | APPROVAL OF MINUTES – May 14, 2020 | Approve |
| 3. | Public Comments – Limited to five speakers with three minutes per speaker | |
| 4. | New Use of Force Policy - Draft (Scott Ybarrondo) | Informational |
| 5. | Transit Enforcement Outside Organizational Review (Manny Guaderrama) | Informational |
| 6. | Fare Diversion Program Implementation Update (Karen Landers) | Informational |
| 7. | Committee Member Comments | |
| 8. | Next Meeting Date – Thursday, September 24, 2020 at 9:00am | |
| 9. | Adjournment | |

Please SILENCE electronics
during the meeting

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Metropolitan Transit System (MTS) is a California public agency comprised of San Diego Transit Corp., San Diego Trolley, Inc. and San Diego and Arizona Eastern Railway Company (nonprofit public benefit corporations). MTS is the taxicab administrator for seven cities.

MTS member agencies include the cities of Chula Vista, Coronado, El Cajon, Imperial Beach, La Mesa, Lemon Grove, National City, Poway, San Diego, Santee, and the County of San Diego.



MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM
PUBLIC SECURITY COMMITTEE
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101

May 14, 2020

1. ROLL CALL

Chair Montgomery called the meeting to order at 2:00 p.m. A roll call sheet listing Public Security Committee members' attendance is attached.

2. APPROVAL OF MINUTES

Mr. Arambula moved to approve the minutes of the February 27, 2020 Public Security Committee meeting. Ms. Galvez seconded the motion, and the vote was 6 to 0 in favor.

3. PUBLIC COMMENTS

No Public Comments.

4. Proposed Fare Enforcement Diversion Program – Pilot Project (Karen Landers)

Karen Landers, MTS General Counsel, provided a presentation on the Proposed Fare Enforcement Diversion Program – Pilot Project. She mentioned that Karen Gorman from LA Metro was on the line for questions. Ms. Landers continued to describe the proposed Phase 1 Pilot – Diversion Program stating that it can be implemented quickly and that data can be collected to analyze what technological or staffing investments may need to be made. She explained 4 options to resolve a citation: pay a reduced fine within 60 days, complete community service within 60 days, limited appeal within 15 days and no action taken within 60 days. No action taken within 60 days will result in the citation being sent to the court for adjudication. In summary, Ms. Landers stated that staff is requesting feedback from the committee to move forward with a recommendation to the Board of Directors to implement the Phase 1 Pilot at the next meeting.

PUBLIC COMMENTS

Rosa Olascoaga – Ms. Olascoaga from Mid-City Can stated she is excited for the program. She would like to ask MTS Board Members to implement an internal policy to suspend fare evasion tickets during shelter in place orders until this pilot program goes into effect. Ms. Olascoaga asked for the Board to consider extending the payback timeline from 60 days to 90 days. Ms. Olascoaga would like to extend the vision of this program to include a transit school program, similar to driving school.

COMMITTEE COMMENTS

Vice Chair Aguirre commented that she appreciates the hybrid model and voiced her interest in seeing what the collected data will show to see if we can move towards a civil program. She asked if it would be possible to collect social demographic data. Ms. Landers stated that the

information is limited as to what is collected on the citation. Vice Chair Aguirre stated that she would like to see economic conditions data added to the pilot program. Ms. Landers suggested that could possibly be made as part of a survey when a person decides to participate in the program.

Mr. Arambula stated that for the purpose of this pilot program, a hybrid model makes sense. He stated the goal in examining the data, as the pilot program develops, would be to move to a more administrative and civil program.

Ms. Galvez stated that she appreciates this being a pilot program due to the potential shortfalls in the budget resulting in possible fare evasion rate increases. She asked how the pilot program will be communicated to the public. Ms. Landers stated the information will be given at the time a citation is issued. Ms. Galvez asked if parameters are set to modify or end the program if the fare evasion rate increases resulting in loss of revenue. Ms. Landers responded that the data would be reported regularly. She said that if there was a need to suspend the pilot program, then that could be done after discussing it with the committee.

Mr. Sandke asked LA Metro representative, Ms. Gorman, about the impacts they experienced as a system relative to their fare evasion rate. Ms. Gorman stated that LA Metro is complex and it is rather difficult to associate any fare evasion rates with any particular activity.

Ms. Weber recommended giving updates on the financial aspect at every committee meeting to make sure the committee could track any money losses, especially during the COVID-19 health pandemic.

Chair Montgomery asked Ms. Landers to provide more detail regarding the 60 day window versus the 90 day window for payments. Ms. Landers stated that the idea was to give the person a long enough time to figure out how they wanted to pursue the citation, but not too long that they would forget about the citation. Chair Montgomery asked for the pilot to include tracking how many people show up to MTS in person to pay and how many sign up after the 60 day window.

Action Taken

Mr. Sandke made a motion to forward a recommendation to the Board of Directors to implement the Phase 1 Pilot for a new Fare Evasion Diversion Program. Ms. Weber seconded the motion and the vote was 6 to 0 in favor.

5. Annual Security Report (January 1, 2019 through December 31, 2019) (Manny Guaderrama)

Manny Guaderrama, MTS Chief of Police, apologized for the delay in his presentation due to the pandemic. He then proceeded with the Annual Security Report for January 1, 2019 through December 31, 2019. Chief Guaderrama started the presentation with an introduction to the Transit Enforcement Department and its mission, and then continued with an employee training update. He also reviewed trolley and bus crime statistics, special enforcement details, quality of life and transient camp details, non-compliant arrests, Ride Assured, and updates on changes due to COVID-19.

COMMITTEE COMMENTS

Ms. Galvez stated that she has concerns with the amount of motor vehicle thefts in the south

sector. Chief Guaderrama responded that when there is a theft, the video is provided to Chula Vista Police Department (CVPD) and in most cases provides images of probable suspects. Ms. Galvez recommended having direct matriculation for CVPD to provide real-time access to the cameras in the stations. Chief Guaderrama said he is not opposed to this idea and would work with the MTS IT Department to see if it would be possible.

Mr. Arambula wanted to address the larceny theft numbers. Chief Guaderrama stated that this type of crime is an opportunity type of crime. He said that educating the patrons would be the best way to reduce the thefts. Mr. Arambula suggested better lighting, and possibly more cameras and signs stating you are being recorded as possible theft deterrents. Mr. Arambula asked for a copy of the de-escalation training lesson plan for the committee. He also asked about enforcement and Chief Guaderrama explained the fare inspection and enforcement processes. He also noted that there has been an 80% reduction in inspections and enforcement since the COVID-19 health pandemic.

Vice Chair Aguirre requested a copy of the biased based policing/cultural diversity lesson plan for the committee. Ms. Aguirre asked what type of disciplinary action is taken when inappropriate misconduct of an officer has occurred. Chief Guaderrama explained that it depends on the incident, but could result in retraining and/or discipline action, which could include suspension or termination. He also noted that all cases are documented.

Chair Montgomery asked to see more information on misconduct incidents and complaints that are filed related to these incidents in the future. She suggested a quarterly or biannual report, either as part of the regular reports or as a separate report. Ms. Cooney stated that MTS staff will work with Chair Montgomery's office to come up with a presentable report going forward.

Action Taken

Informational item only. No action taken.

6. COMMITTEE MEMBER COMMENTS

Vice Chair Aguirre requested for the report being created related to misconduct and complaints be shared with the committee. Chair Montgomery confirmed that it would be.

7. NEXT MEETING DATE

Next meeting date is scheduled for July 23, 2020.

8. ADJOURNMENT

The meeting was adjourned at 3:28 p.m.

/s/ Monica Montgomery
Chairperson

Attachment: A. Roll Call Sheet

PUBLIC SECURITY COMMITTEE
SAN DIEGO METROPOLITAN TRANSIT SYSTEM

ROLL CALL

MEETING OF (DATE) May 14, 2020

CALL TO ORDER (TIME) 2:00 p.m.

CLOSED SESSION

RECONVENE

ADJOURN 3:28 p.m.

COMMITTEE MEMBER	PRESENT (TIME ARRIVED)	ABSENT (TIME LEFT)
AGUIRRE <input checked="" type="checkbox"/>	2:00 p.m.	3:28 p.m.
ARAMBULA <input checked="" type="checkbox"/>	2:00 p.m.	3:28 p.m.
GALVEZ <input checked="" type="checkbox"/>	2:00 p.m.	3:28 p.m.
MONTGOMERY <input checked="" type="checkbox"/>	2:00 p.m.	3:28 p.m.
SANDKE <input checked="" type="checkbox"/>	2:00 p.m.	3:28 p.m.
WEBER <input checked="" type="checkbox"/>	2:00 p.m.	3:28 p.m.

SIGNED BY THE CLERK OF THE COMMITTEE: *Karen Wisniewski*

CONFIRMED BY MANUEL GUADERRAMA: *M.E. Guaderrama*

c: Clerk of the Committee
Accounts Payable
Attachment to Original and Draft Minutes

ITEM #3 – PUBLIC COMMENT

Name: Rosa Olascoaga; Representing Mid-City CAN



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Agenda Item No. 4

MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM PUBLIC SECURITY COMMITTEE

July 23, 2020

SUBJECT:

NEW USE OF FORCE POLICY – DRAFT (SCOTT YBARRONDO)

INFORMATIONAL ONLY

Budget Impact

None with this action.

DISCUSSION:

MTS staff recently initiated a review of its current Use of Force Policy (Attachment A) in conjunction with Debbie Eglin, a consultant considered an expert on the issue. This review is intended to update the policy to address modern policing standards. The new Use of Force Policy (Attachment B) was re-written to ensure compliance with California Assembly Bill 392, California Senate Bill 230, and incorporates the principles of “8 Can’t Wait.” The policy also establishes Use of Force procedures and addresses the following key points:

- Prohibits the use of Carotid Restraint or any neck restraint
- Duty to Intervene
- De-Escalation
- Warnings
- Use of Force Matrix
- Applies to Code Compliance Inspectors and Contracted Security
- Establishes Guidelines for Firearms Policy for Contracted Security



Staff will provide a report on the new Use of Force Policy and seek feedback from the Public Security Committee.

/s/ Sharon Cooney
Sharon Cooney
Chief Executive Officer

Key Staff Contact: Julia Tuer, 619.557.4515, Julia.Tuer@sdmts.com

Attachments: A. SOP 200.20 Use of Force
B. New SOP 200.20 Use of Force



STANDARD OPERATING PROCEDURE

TRANSIT ENFORCEMENT DEPARTMENT	PUBLICATION NUMBER: 200.20	DATE: 06.01.2020	PAGE: 1 of 5
TITLE:	USE OF FORCE		
CLASSIFICATION:	ALL TRANSIT ENFORCEMENT PERSONNEL		
OTHER DEPARTMENTS:	NONE		
ORDERED BY:	MANUEL E. GUADERRAMA, CHIEF OF POLICE TRANSIT ENFORCEMENT DEPARTMENT		
SUPERCEDES:	SOP 200.20 DATED 07.31.2017		

PURPOSE

Code Compliance personnel may encounter situations in the daily performance of their duties when the use of force is necessary and reasonable to effect an arrest, overcome resistance, or to protect themselves or others. This SOP is not meant to be all inclusive, but to offer guidelines on expectations we have for the reasonable and appropriate use of force while enforcing rules, codes and laws for the MTS.

POLICY

The level of force considered to be reasonable is based on a number of factors. The U.S. Supreme Court in *Graham v. Connor*, 490 U.S. 386 (1989), acknowledged that the “reasonableness” test in analyzing the use of force is “not capable of precise definition or mechanical application”. For that reason, in determining whether an officer’s use of force is reasonable in a particular case, it is necessary to evaluate the facts and circumstances confronting the officer at the time force was used. All of the surrounding circumstances will be considered.

PROCEDURE

Background

In most circumstances, an enforcement contact does not require any degree of force beyond compliance with your verbal instruction. In the circumstance where the subject is non-compliant with your lawful instruction, you may affect an arrest.

To affect the arrest where significant verbal or physical resistance is offered by the subject, the amount of force used should be that which is necessary and reasonable to overcome the active resistance. This is the standard by which all enforcement agencies are judged. This degree of force can and should be adjusted as the situation dictates. Active resistance that deescalates to compliance requires you to adjust your degree of force to meet the resistance at the moment.

In situations where the subject has suggested unwillingness to fully cooperate with your instructions, but is not offering physical resistance, you may choose to handcuff to control him/ her. If no resistance to the handcuffing is offered, there is no need for the inspector to generate a use of force report (see SOP Section 200.14, dated 07.31.2017). If resistance is met prior to or during the handcuffing, a use of force report shall be generated.

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As the contact evolves, you should start to consider the gravity of the violation, conditions in the immediate area and indications from the subject that they may become non-compliant. This is critical if the subject begins to flee from your contact. You are neither required to pursue nor are you precluded from pursuing, but each instance is unique and you must make a decision based on the totality of the circumstances. Critical considerations to factor in your decision to pursue are your safety, the safety of others in the area and the threat to the general public- either by your pursuit or the threat the subject may pose if allowed to flee the scene.

Pat Downs

Infractions are minor crimes and a pat-down for weapons or dangerous items is not legal without articulable facts to support the pat-down. If a pat-down is conducted, it should be conducted to feel for weapons and other dangerous items based on a reasonable belief the subject poses a threat and may be armed. If there is probable cause to believe a subject has a weapon or any other dangerous item, the subject should be searched. For example:

If the subject is stating that he will “stab you,” he should be handcuffed and searched for weapons.

If you visually observe items that could be weapons on a suspect, the suspect should be handcuffed and searched.

It is not acceptable to pat-down a subject based on ethnicity, clothing, or non-threatening verbal comments. Any pat-downs performed should be supported by legal precedent. The justification for a pat-down needs to be articulated in the narrative of the report when documenting the arrest. It requires articulable facts that the person may be armed and dangerous. It is not sufficient to simply say, “For my safety, I conducted a pat-down and found...” Instead, a report should document all of the reasons why the officer reasonably suspected that the person might be armed and dangerous. Code Compliance Inspectors may not search a subject for identification unless they are able to articulate a lawful need.

Force may be used to affect an arrest; control a subject who is in lawful custody; prevent an escape; or protect the officer, the subject, or another person from injury or death. Anytime force is used the officer should apply a level of force that is reasonable for the situation. Appropriate and reasonable levels of force should be used based on the behavior of the subject(s) involved.

Definitions: Levels of Resistance

- Compliant Behavior – Behavior that complies with verbal commands, requests or explanations.
- Passive Resistant Behavior – Refusal to comply with verbal commands and does not convey a threat to the officer or another person.
- Active Resistant Behavior – Refusal to comply with verbal commands and conveys a threat to the officer or another person, or consists of physical opposition to attempts of control by the officer.

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TITLE: USE OF FORCE	

- Assaultive Behavior – Aggressive physical opposition to being physically controlled and conveys a threat of injury to the officer; or, behavior that consists of a threat of attack conveyed through aggressive physical actions or aggressive physical actions coupled with verbal threats. Verbal threats alone do not constitute assaultive behavior. Assaultive behavior can be directed at the officer or others.
- Life Threatening Behavior – Behavior likely to cause serious bodily injury or death.

Responses to Resistance

- Controlling Force – the force needed to control a subject who engages in passive resistance. This level of force generally involves use of physical strength, pain compliance defense techniques, and control holds.
- Greater Controlling Force – the force needed to control a subject who engages in active resistance. This level of force may involve the use of techniques such as takedowns, distraction techniques and chemical agents.
- Defending Force – the force needed to stop assaultive behavior against an officer or another person. This level of force generally involves impact strikes by the officer. Impact strikes can be delivered by personal body weapons such as hands, feet, knees, etc.

Force May Be Used

1. When necessary to defend one's self or others in an unprovoked attack.
2. To overcome resistance for the purposes of effecting an arrest.
3. When used in accordance with a lawful purpose, and restricted to the amount necessary to accomplish that purpose.

Improper Use of Force

1. Penal Code Section 149 provides that, "Every Public Officer who, under color of authority, without lawful necessity, assaults or beats any person", is guilty of a felony.
2. The use of improper force occurs when the type of degree of force was excessive, unnecessary or unreasonable.
3. Improper force used by any Code Compliance personnel will result in disciplinary action up to, and including termination.
4. Use of any improper physical restraint or force such as a "choke hold", or other life threatening or mayhem causing application will result in disciplinary action up to, and including termination.

Reporting the Use of Force

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1. The Operations Control Center shall be notified immediately. Injuries to any participant shall receive medical assistance as soon as possible.
2. The Watch Commander will be notified by the OCC and a Transit Enforcement supervisor dispatched to the scene.
3. Required reports such as Officer's Report, Use of Force Report, Sick/Injury and others deemed appropriate will be completed, approved by a supervisor and uploaded to the records management system prior to the end of shift. A Use of Force shall be completed, approved and presented to the MTS Field Operations Manager before the end of shift.
4. When an incident where force was used resulting in injury to any involved party, the MTS Field Operations Manager, Deputy Director of Transit Enforcement or the MTS Chief of Police shall be notified via telephone during and after regular business hours by the Watch Commander.

Example of Use of Force Form

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TITLE: USE OF FORCE



SAN DIEGO METROPOLITAN TRANSIT SYSTEM

CODE COMPLIANCE – TRANSIT ENFORCEMENT

DATE:	TIME:	DAY OF WEEK:	OFFENSE/CHARGE:	CAD/ CITE/ EVENT NUMBER:	STATION/STOP/LOCATION:
SUBJECT'S NAME: Last, First, M		RACE:	DOB:	SEX: <input type="checkbox"/> F <input type="checkbox"/> M	ARRESTED: <input type="checkbox"/> Yes <input type="checkbox"/> No
DATE/TIME SUPV/SGT NOTIFIED:					
PRIMARY REASON FOR USING FORCE: <input type="checkbox"/> Necessary to effect an arrest <input type="checkbox"/> Necessary to prevent a violent forcible felony <input type="checkbox"/> Necessary to defend self or another <input type="checkbox"/> Necessary to restrain for subject's safety <input type="checkbox"/> Necessary to prevent escape/evasion <input type="checkbox"/> Necessary during high-risk incident <input type="checkbox"/> Necessary to effect a lawful detention					
SUBJECT APPEARED TO BE:		NUMBER OF OFFICERS ON SCENE:		NUMBER OF OFFICERS USING FORCE:	
<input type="checkbox"/> Under the influence of alcohol and/or drugs <input type="checkbox"/> Mentally impaired					
LEVEL(S) OF RESISTANCE ENCOUNTERED: <input type="checkbox"/> NONE (subject cooperated/complied) <input type="checkbox"/> PSYCHOLOGICAL INTIMIDATION (non-verbal cues indicating subject's attitude or physical readiness to resist) <input type="checkbox"/> VERBAL NON-COMPLIANCE (subject's expressed unwillingness to comply with the officer's commands) <input type="checkbox"/> PASSIVE RESISTANCE (represents by a refusal to respond to verbal commands but also offers no form of physical resistance) <input type="checkbox"/> ACTIVE RESISTANCE (pushing, pulling or running away from the officer to avoid control; not attempting to harm the officer) <input type="checkbox"/> ASSAULTIVE BEHAVIOR (physical actions of assault) <input type="checkbox"/> AGGRAVATED ACTIVE AGGRESSION (assaults with weapons)					
TOOL/TECHNIQUE USED TO GAIN COMPLIANCE OR OVERCOME RESISTANCE (CHECK ALL THAT APPLY)					
<input type="checkbox"/> Verbal Commands: _____					
<input type="checkbox"/> Empty Hand Control: _____					
<input type="checkbox"/> Grab, Push, or Pull <input type="checkbox"/> Control Hold (Duration: _____) <input type="checkbox"/> Pressure Point (Duration: _____) (Number of Contacts: _____) <input type="checkbox"/> Strike (Specify body part used) (Number of Contacts: _____) <input type="checkbox"/> Takedown Type: _____ <input type="checkbox"/> Carotid (Rendered Unconscious? <input type="checkbox"/> Yes <input type="checkbox"/> No) (Duration: _____)					
<input type="checkbox"/> Tool/Device/Weapon: _____					
<input type="checkbox"/> OC Agent (Duration: _____) (Number of Contacts: _____) <input type="checkbox"/> Decontaminated <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Cord Cuff Restraint Device (Duration: _____) <input type="checkbox"/> Impact Weapon (Number of Contacts: _____) Type: _____					
<input type="checkbox"/> Yes <input type="checkbox"/> No					
SUBJECT INJURED: <input type="checkbox"/> Yes <input type="checkbox"/> No					
EXTENT OF TREATMENT: <input type="checkbox"/> None <input type="checkbox"/> Treated at Scene <input type="checkbox"/> Treated at Hospital <input type="checkbox"/> Hospitalized					
OFFICER(S) INJURED: <input type="checkbox"/> Yes <input type="checkbox"/> No					
EXTENT OF TREATMENT: <input type="checkbox"/> None <input type="checkbox"/> Treated at Scene <input type="checkbox"/> Treated at Hospital <input type="checkbox"/> Hospitalized					
TARGET DISTANCE: _____					
SUPERVISOR PRESENT? <input type="checkbox"/> Yes <input type="checkbox"/> No					
OFFICER	IDENT #:	DATE:			
SUPERVISOR	IDENT #:	DATE:			
MANAGER	IDENT #:	DATE:			
			MARK FIGURE TO INDICATE CONTACT POINT(S)		

MTS -120 1/16



STANDARD OPERATING PROCEDURE

TRANSIT ENFORCEMENT DEPARTMENT	PUBLICATION NUMBER: 200.20	DATE: Draft	PAGE: 1 of 11
TITLE:	USE OF FORCE		
CLASSIFICATION:	ALL TRANSIT ENFORCEMENT PERSONNEL		
OTHER DEPARTMENTS:	NONE		
ORDERED BY:	MANUEL E. GUADERRAMA, DIRECTOR OF TRANSIT ENFORCEMENT DEPARTMENT		
SUPERCEDES:	SOP 200.20 DATED 06-01-2020		

PHILOSOPHY

The Metropolitan Transit System (MTS) Transit Enforcement is dedicated to building a culture of trust with all of our patrons and the communities we serve. Our highest priority is safeguarding the life, dignity, and liberty of all persons, without prejudice to anyone. We do not tolerate any excessive force, racial discrimination or racial profiling. Under MTS's Title VI Policy, MTS has committed to ensuring transportation service levels and quality of service are provided without regard to race, color or national origin. MTS Transit Enforcement activities should be approached with the same goals and commitments to service. We will take immediate action if we become aware of such behavior and will conduct a comprehensive investigation upon any complaint. All use of force (UOF) incidents will be reviewed by MTS Transit Enforcement management.

PURPOSE

This Department Standard Operating Procedure (SOP) establishes guidelines on the use of reasonable force options available to Transit Enforcement Personnel. It is expected that members of this department use these guidelines to make decisions in a professional, impartial and reasonable manner.

For the purpose of this SOP, Transit Enforcement Personnel includes all Code Compliance Inspectors (CCI) and supervisors, and all contracted security personnel.

POLICY

Transit Enforcement Personnel may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offenses or the reasonably perceived level of actual or threatened resistance.

Violation of this policy may result in disciplinary action, up to and including termination.

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TITLE: USE OF FORCE	

AUTHORITY

Code Compliance Inspectors are classified as Public Officers and receive their authority by California Penal Code Section 836.5 which reads (in part):

836.5. (a) A public officer or employee, when authorized by ordinance, may arrest a person without a warrant whenever the officer or employee has reasonable cause to believe that the person to be arrested has committed a misdemeanor in the presence of the officer or employee that is a violation of a statute or ordinance that the officer or employee has the duty to enforce.

(b) There shall be no civil liability on the part of, and no cause of action shall arise against, any public officer or employee acting pursuant to subdivision (a) and within the scope of his or her authority for false arrest or false imprisonment arising out of any arrest that is lawful or that the public officer or employee, at the time of the arrest, had reasonable cause to believe was lawful. No officer or employee shall be deemed an aggressor or lose his or her right to self-defense by the use of reasonable force to effect the arrest, prevent escape, or overcome resistance.

A Security Officer's ability to make a lawful arrest is governed by the same laws which govern arrests made by private citizens. California Penal Code 837 reads:

837 A private person may arrest another:

- 1. For a public offense committed or attempted in his presence.*
- 2. When the person arrested has committed a felony, although not in his presence.*
- 3. When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.*

(Enacted 1872.)

REQUIRED EQUIPMENT

Code Compliance Inspectors are required to carry the following department issued equipment:

- Department issued handcuffs
- Department issued OC spray in accordance with Standard Operating Procedure 200.20a
- Department issued body armor
- Department issued Body Camera Recorder (BCR), must be utilized in accordance with Standard Operating Procedure 200.5
- Security Officers may carry additional equipment as agreed upon by the contract with MTS

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DUTY TO INTERVENE

Transit Enforcement Personnel shall intervene during a use of force incident under the following circumstances, when in a position to do so:

- To prevent and/or stop abusive conduct by another employee
- To prevent and/or stop the use of force by another employee, that is clearly beyond that which is objectively reasonable given the circumstances, and exceeds the degree of force permitted by law

Failure to intervene may subject Transit Enforcement Personnel to disciplinary actions. Transit Enforcement Personnel shall immediately, or as soon as safety allows, notify a Code Compliance Inspector Supervisor of their observations and intervention.

DE-ESCALATION

It is critical for Transit Enforcement Personnel to consider the variety of options available to them during an incident and should not use tactics which may escalate an incident.

Transit Enforcement Personnel must consider whether the subject's lack of compliance may be an inability to comply based on other factors including, but not limited to:

- Mental illness or impairment
- Medical condition
- Developmental disability
- Physical limitation(s)
- Language barrier
- Under the influence of drugs and/or alcohol or an interaction of drugs and/or alcohol
- Behavioral crisis
- Fear/anxiety

Although force may be authorized given the subject's behavior, Transit Enforcement Personnel shall utilize de-escalation strategies when feasible. De-escalation strategies include, but are not limited to the following:

- Slowing a situation down (*time and distance*)
- Re-assessing options and consider resources available to assist in resolving the incident
- Use of communication skills (active listening, body language, tone etc.) to provide clear instructions, attempt to establish rapport and gain time and ideally gain compliance

De-escalation is not intended to compromise officer safety, but rather it is meant to achieve the most peaceful outcome.

DEFINITIONS

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TITLE: USE OF FORCE

Force is defined as the effort required by Transit Enforcement Personnel to overcome resistance and/or to compel compliance from an unwilling subject.

Deadly force is any use of force that creates a substantial risk of causing death or serious bodily injury.

Excessive Force Excessive force is evident when the type, degree and duration of force used was neither necessary nor appropriate.

LEVELS OF RESISTANCE

Compliant Behavior is represented by behavior that complies with verbal commands, requests or explanations.

Passive Resistant Behavior is behavior represented by a refusal to respond to verbal commands but also offers no form of physical resistance.

Active Resistant Behavior is behavior represented by overt physical actions intended to prevent Transit Enforcement Personnel's control, but does not attempt to harm Transit Enforcement Personnel.

Assaultive Behavior is behavior represented by conduct that suggests the potential for human injury. Such behavior may be conveyed through body language, verbal threats and/or physical actions.

Life threatening Behavior is behavior represented by the subject's actions which will potentially result in serious bodily injury or death to Transit Enforcement Personnel or any other person.

Serious bodily injury is defined pursuant to CA PC 243 (f)(4) and means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any body member or organ; a wound requiring extensive suturing; and serious disfigurement.

LEVELS OF FORCE/ FORCE OPTIONS

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TITLE: USE OF FORCE

Controlling Force is the physical force needed to gain or maintain control of a subject who engages in passive resistance. Force options which fall into this category generally include the use of physical strength, pain compliance techniques and control holds.

Greater Controlling Force is the physical force needed to gain or maintain control of a subject who engages in active resistance. Force options which fall into this category include department approved takedowns, the use of department approved chemical agents, and physical strength, pain compliance techniques and control holds.

Defending Force is the physical force needed to stop assaultive behavior against an officer or another person and to gain or maintain control of the subject(s). Force options which fall into this category include impact strikes by the officer using personal body weapons, department approved takedowns, the use of department approved chemical agents, and physical strength, pain compliance techniques and control holds. *Personal body weapons include hands, arms, legs and feet.*¹

Deadly Force Nothing in this policy prohibits Transit Enforcement Personnel from defending themselves from life threatening behavior with reasonable and proportional force up to and including deadly force

Note: *The use of a carotid restraint or choke hold is prohibited.*

“Carotid restraint” means a vascular neck restraint or any similar restraint, hold, or other defensive tactic in which pressure is applied to the sides of a person’s neck for the purpose of restricting blood flow to render the person unconscious or otherwise subdue or control the person.

“Choke hold” means any defensive tactic or force option in which direct pressure is applied to a person’s trachea or windpipe.

USE OF FORCE MATRIX (Next Page)

¹ CA POST 832 PC Student Workbook, Volume Four-V5, Chapter Two: Arrest Methods
Rev. in progress June 2020



SAN DIEGO METROPOLITAN TRANSIT SYSTEM TRANSIT ENFORCEMENT



Use of Force Matrix

	Suspect's Behavior				
	Compliant Behavior	Passive Resistant Behavior	Active Resistant Behavior	Assaultive Behavior	Life Threatening Behavior
OFFICER'S RESPONSE	Touch Verbal Control	Touch Verbal Control <u>Controlling Force:</u> <ul style="list-style-type: none"> Physical Strength Pain Compliance Technique Control Holds 	Touch Verbal Control <u>Controlling Force:</u> <ul style="list-style-type: none"> Physical Strength Pain Compliance Technique Control Holds <u>Greater Controlling Force:</u> <ul style="list-style-type: none"> Approved Takedowns Approved Chemical Agents 	Touch Verbal Control <u>Controlling Force:</u> <ul style="list-style-type: none"> Physical Strength Pain Compliance Technique Control Holds <u>Greater Controlling Force:</u> <ul style="list-style-type: none"> Approved Takedowns Approved Chemical Agents <u>Defending Force:</u> <ul style="list-style-type: none"> Impact strikes by officer using Personal Body Weapons 	Touch Verbal Control <u>Controlling Force:</u> <ul style="list-style-type: none"> Physical Strength Pain Compliance Technique Control Holds <u>Greater Controlling Force:</u> <ul style="list-style-type: none"> Approved Takedowns Approved Chemical Agents <u>Defending Force:</u> <ul style="list-style-type: none"> Impact strikes by officer using Personal Body Weapons Nothing in this policy prohibits an MTS employee from defending themselves from life threatening behavior or great bodily injury with reasonable and proportional force up to and including deadly force.

Reasonable Force Under the Totality of the Circumstances

PUBLICATION NUMBER: 200.20

PAGE: 7 of 11

TITLE: USE OF FORCE

FACTORS TO CONSIDER IN DETERMINING REASONABLE FORCE

In 1989, the United States Supreme Court decided the case of *Graham v. Connor*, 490 U.S. 386, (1989), which established that a peace officer's use of force, under the Fourth Amendment, would be judged using the "objective reasonableness" standard.

The Court noted that determining the objective reasonableness for the use of force must be fact specific, based on the totality of the circumstances confronting the officer at the time that the force is used. The determination of reasonableness must allow for the fact that peace officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving.

The reasonableness of a particular use of force must be judged from the perspective of a **reasonable officer** on the scene, rather than with the 20/20 vision of hindsight.

When balanced against the type and amount of force used, the Graham factors used to determine whether an officer's use of force is **objectively reasonable** are:

- whether the suspect posed an immediate threat to the safety of the officers or others
- the severity of the crime at issue
- whether the suspect was actively resisting arrest
- whether the suspect was attempting to evade arrest by flight
- split-second judgments during circumstances that are tense, uncertain, and rapidly evolving

Of these factors, the most important is whether the individual poses an immediate threat to the officer or public.

The reasonableness inquiry is not limited to the consideration of those factors alone. Other factors which may determine reasonableness in a use of force incident include, but are not limited to:

- whether there was an opportunity to warn about the use of force prior to force being used and, if so, was such a warning given
- whether there was any assessment by the officer of the subject's ability to cease resistance and/or comply with the officer's commands
- availability of other reasonable force options
- number of officers/subjects
- age, size, and relative strength of officers/subjects
- specialized knowledge, skills, or abilities of subjects
- prior contact
- injury or exhaustion of officers
- access to potential weapons
- environmental factors, including but not limited to lighting, footing, sound conditions, crowds, traffic, and other hazards
- whether the officer has reason to believe that the subject is mentally ill, emotionally disturbed, or under the influence of alcohol or drugs

PUBLICATION NUMBER: 200.20**PAGE: 8 of 11****TITLE: USE OF FORCE**

The reasonable officer standard is:

- would another officer, facing like or similar circumstance, act in the same way or use similar judgment?

The totality of the circumstances must be evaluated from *the perspective of the officer at the scene*, rather than from an outsider's benefit of "20/20" hindsight. The facts and circumstances known to the peace officer at the time the force was used will be the basis for the determination of reasonableness.²

WARNINGS

Whenever feasible, prior to using force Transit Enforcement Personnel shall first warn the suspect that force will be used if there is not compliance and allow a reasonable amount of time for the subject to comply.

*Feasible means reasonable capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to Transit Enforcement Personnel or another person.*³

NOTIFICATIONS AND REQUIRED RESPONSE

- Transit Enforcement Personnel who use any force to overcome resistance or to control or apprehend a subject must notify the Dispatch Center immediately, *or when safe to do so*.
- The Dispatch Center will notify the Watch Commander and will dispatch a CCI Supervisor to the scene (see Supervisor Requirements).
- Paramedics will be requested when as a result of a use of force incident there is medical distress, an obvious injury needing immediate medical attention or if medical attention is requested. If a subject refuses medical attention, the Dispatch Center will be notified and the refusal will be documented in the use of force report.
- If an injury requiring medical attention occurs as a result of a use of force incident, including to an MTS employee, the MTS Field Operations Manager, Deputy Director of Transit Enforcement or the MTS Director of Transit Enforcement shall be notified during and after regular business hours by the Watch Commander.

² CA POST LD 20 Use of Force Chapter One Introduction to the Use of Force

³ Pursuant to Senate Bill 230, Government Code Section 7286(a) (2)

Rev. in progress June 2020

PUBLICATION NUMBER: 200.20**PAGE: 9 of 11****TITLE: USE OF FORCE****REPORTING REQUIREMENTS**

Transit Enforcement Personnel who use force must clearly articulate the force used in writing. A Use of Force Report shall be completed, approved and presented to the MTS Field Operations Manager before the end of shift. The basic questions addressing who, what, when, where, how and why, must be answered.

In addition, the following must be specifically included:

- What did the subject do? (Provocation)
- What could have happened if the subject was not stopped?
- What did you do to counter the subject's actions?

Additionally, one Use of Force Supplemental form (MTS-120) will be completed by the primary reporting employee for each incident to include all levels of force used. During incidents where force is used on multiple subjects, a separate MTS-120 form will be completed for each subject. Text on the supplemental form, MTS-120, is optional but all the appropriate boxes shall be checked. The use of force reports and supplemental MTS-120 form must be completed and attached to the use of force paperwork.

Although not considered a use of force, handcuffing a compliant individual must be documented with an Officer's Report (See SOP 200.14).

SUPERVISOR RESPONSIBILITIES

A CCI Supervisor or acting supervisor shall respond to the scene to evaluate all use of force incidents. The supervisor will determine whether law enforcement response is required and ensure the following:

- Identify and interview all witnesses if possible.
- When an incident where force was used resulting in injury to any involved party the supervisor will ensure photographs are taken to document the physical condition of the officer and subject(s) to include injuries or lack thereof.
- Ensure any injured parties were examined and treated or document their refusal of medical treatment.
- Ensure reports are completed in a timely manner.

The supervisor will document the incident and any findings in an Incident Summary Report and submit this with the Officer's Report.

Supervisors shall review all use of force reports for the following:

- To ensure completeness and accurate articulation of the incident
- Evidence is attached (BCR, Surveillance footage, photos etc.)
- To ensure Transit Enforcement Personnel actions were within established department policies and procedures

PUBLICATION NUMBER: 200.20**PAGE: 10 of 11****TITLE: USE OF FORCE**

All use of force reports will be reviewed via the chain-of-command to the level of Field Operations Manager. This review will include reviewing all available MTS video footage of the incident. Any supervisor within the chain-of-command may initiate an administrative investigation.

Furthermore, all Code Compliance Supervisors and the Field Operations Manager shall review use of force reports to assess adherence to policy and procedures, identification of training concerns or deficiencies and risk assessment for civil liability. Issues will be addressed in a timely manner and in accordance with agency policies and procedures.

FIREARMS

The Metropolitan Transit System does not employ armed personnel, however it does contract with outside security companies who provide armed security officers.

Any contracted security company with armed security who contracts with MTS must have policies and procedures covering deadly force and the use of firearms. These policies and procedures must comply with current state and federal laws and have clear guidelines on the utilization of de-escalation tactics, proportionality, alternatives to deadly force, rendering medical aid and an officer's duty to intercede when observing excessive use of force. It shall also prohibit shooting at moving vehicles.

The Firearms Policy containing the listed requirements must be approved by the MTS Director of Transit Enforcement.



SAN DIEGO METROPOLITAN TRANSIT SYSTEM

CODE COMPLIANCE – TRANSIT ENFORCEMENT

DATE:		TIME:		DAY OF WEEK:		OFFENSE / CHARGES:	
CAD # (if available):		CITE #:		EVENT #:		STATION / STOP / LOCATION:	
SUBJECT'S NAME: Last, First, MI				RACE:	DOB	SEX: <input type="checkbox"/> F <input type="checkbox"/> M	ARRESTED: <input type="checkbox"/> Yes <input type="checkbox"/> No
PRIMARY REASON FOR USING FORCE:				<input type="checkbox"/> Necessary to effect an arrest <input type="checkbox"/> Necessary to prevent a violent forcible felony <input type="checkbox"/> Necessary to defend self or another <input type="checkbox"/> Necessary to restrain for subject's safety <input type="checkbox"/> Necessary to prevent escape/evasion <input type="checkbox"/> Necessary during high-risk incident <input type="checkbox"/> Necessary to effect a lawful detention			
SUBJECT APPEARED TO BE:				NUMBER OF OFFICERS ON SCENE:		NUMBER OF OFFICERS USING FORCE:	
<input type="checkbox"/> Under the influence of alcohol and/or drugs <input type="checkbox"/> Mentally impaired							
LEVEL(S) OF RESISTANCE ENCOUNTERED:							
<input type="checkbox"/> NONE (subject cooperated/complied) <input type="checkbox"/> PASSIVE RESISTANCE (represents by a refusal to respond to verbal commands but also offers no form of physical resistance) <input type="checkbox"/> ACTIVE RESISTANCE (pushing, pulling or running away from the officer to avoid control; not attempting to harm the officer) <input type="checkbox"/> ASSAULTIVE BEHAVIOR (physical actions of assault) <input type="checkbox"/> LIFE THREATENING BEHAVIOR							
TOOL/TECHNIQUE USED TO GAIN COMPLIANCE OR OVERCOME RESISTANCE (CHECK ALL THAT APPLY)							
<input type="checkbox"/> Verbal Commands: _____ <input type="checkbox"/> Empty Hand Control: <input type="checkbox"/> Grab, Push, or Pull <input type="checkbox"/> Control Hold (Duration: _____) <input type="checkbox"/> Pressure Point (Duration: _____) (Number of Contacts: _____) <input type="checkbox"/> Strike (Specify body part used) (Number of Contacts: _____) <input type="checkbox"/> Takedown Type: _____ <input type="checkbox"/> Tool/Device/Weapon: <input type="checkbox"/> OC Agent (Duration: _____) (Number of Contacts: _____) <input type="checkbox"/> Decontaminated <input type="checkbox"/> Yes <input type="checkbox"/> No							
SUBJECT INJURED:		EXTENT OF TREATMENT:			OFFICER(S) INJURED:		EXTENT OF TREATMENT:
<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> None <input type="checkbox"/> Treated at Scene <input type="checkbox"/> Treated at Hospital <input type="checkbox"/> Hospitalized			<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> None <input type="checkbox"/> Treated at Scene <input type="checkbox"/> Treated at Hospital <input type="checkbox"/> Hospitalized
Supervisor Present: <input type="checkbox"/> Yes <input type="checkbox"/> No				Supervisor Reviewed Video Footage: <input type="checkbox"/> Yes <input type="checkbox"/> No			
OFFICER					EMPLOYEE ID #:	DATE:	
SUPERVISOR					EMPLOYEE ID #:	DATE:	
MANAGER					EMPLOYEE ID #:	DATE:	

Transit Enforcement Use of Force Policy Update

Scott Ybarrondo
Field Operations Manager

July 23, 2020



Why Update the Policy

- Lawful
 - Ensure Compliance with new laws
- Public Service
 - Build and maintain trust with those we serve
- Accountability
 - Ensures our employees know what is expected of them and the public knows what they can expect from us
- Safety
 - Ensure policy does not negatively affect public or officer safety



Philosophy

The Metropolitan Transit System (MTS) Transit Enforcement is dedicated to building a culture of trust with all of our patrons and the communities we serve. Our highest priority is safeguarding the life, dignity, and liberty of all persons, without prejudice to anyone. We do not tolerate any excessive force, racial discrimination or racial profiling. Under MTS's Title VI Policy, MTS has committed to ensuring transportation service levels and quality of service are provided without regard to race, color or national origin. MTS Transit Enforcement activities should be approached with the same goals and commitments to service. We will take immediate action if we become aware of such behavior and will conduct a comprehensive investigation upon any complaint. All use of force (UOF) incidents will be reviewed by MTS Transit Enforcement Management.



Lawful

- California Penal Code 836.5
- California Assembly Bill 392
- California Senate Bill 230



836.5 PC

Code Compliance Inspectors (CCIs) are classified as “Public Officers” which gives them limited authority:

- 836.5 PC gives the authority of arrest powers for certain misdemeanors in the officer’s presence
- 836.5 PC also states they can use reasonable force to effect an arrest, prevent escape or overcome resistance

AB 392

Redefined Penal Code Section 835a

Highlights:

- Deadly force should be used only when necessary
- Use of force decisions are to be evaluated carefully and from a "reasonable officer" perspective
- Individuals with disabilities may be affected in their ability to understand or comply with peace officer commands

AB 392

Redefined Penal Code Section 835a

- 835a(b) amends reasonable force standard to "objectively reasonable force"

Deadly Force:

- PC 835a(c)(1) amends deadly force standards to include "totality of the circumstances" when: defending against imminent threat of death or serious bodily injury
- PC 835a(c)(2) includes prohibition on using deadly force against persons who pose a danger only to themselves

SB 230

Minimum Standards for L.E. Polices And Reporting Procedures

Highlights:

- Utilize de-escalation tactics
- Use force proportional to the seriousness of the suspect's offense
- Must report excessive force
- Policy must include duty to intervene when there is excessive force
- Must have a shooting at moving vehicles policy

Public Service/Accountability



MTS Updated Policy Highlights

- Complies with California and Federal Laws
- Prohibits the use of carotid restraint or any neck restraint
- Added- requires employees to intervene if they witness excessive force
- Added- requires employees to use de-escalation tactics
- Added- requires employees to warn a subject prior to using any force
- Added a Use of Force Matrix
- This Policy applies to Code Compliance Inspectors and Contracted Security
- Establishes guidelines for Firearms/Deadly Force Policy for contracted security

**Once approved, all employees will be trained on new policy and will be given a general policy knowledge test. Records will be kept in the employees training file.



QUESTIONS?

Karen Wisniewski

From: Coleen Cusack <ccusack.policy@gmail.com>
Sent: Wednesday, July 22, 2020 4:00 PM
To: Karen Wisniewski
Subject: MY STATEMENT FOR TOMORROWS MEETING

INTRODUCTION AND BACKGROUND: My name is Coleen Cusack. I have been a criminal defense attorney in San Diego for 28 years. I am also a professor in criminal justice and in law, a college curriculum designer and a policy analyst.

RICH BROOKS: I represent houseless persons pro bono for infractions they stand accused of committing. Recently I represented such an individual, Rich Brooks in an incident with MTS in which they accused him of "not complying with orders," as an infraction. In that case which is still pending, and which MTS has not requested be dismissed, MTS has failed, refused or is unable to provide the body worn cameras of the three individuals employed or contracted by MTS who were present when my client was cited.

The reason provided is three-fold:

1. The video of the MTS officer and/or the case was reviewed by someone at MTS who determined the matter did not involve "Use of Force," and so was deleted, taped over or otherwise purged.
2. All body worn camera of MTS officers are deleted within 60 days REGARDLESS OF THE INITIATION BY MTS OF CRIMINAL PROCEEDINGS INVOLVING THAT RECORDING.
3. MTS has indicated they have no access to the body worn camera footage of the ARMED SECURITY PERSONNEL who are contracted by a private agency to provide support for MTS officers in the making of arrests and that they have made no effort to provide for such access in their contract with this private agency.

I will relate the above background and expertise to the agenda items:

AGENDA 1: USE OF FORCE POLICY REVISED

Page 1 of 11 of Draft Policy: Refers that it applies to Transit Enforcement Personnel and that includes "all Code Compliance Inspectors (CCI) and supervisors, and all contracted security personnel."

To break this down, MTS Code Compliance Inspectors are authorized to carry citation pad and make public officer arrests but cannot carry a gun. Contracted Security Personnel are authorized to carry a gun but cannot carry citation pad nor make public officer arrests, only arrests a private citizen would be empowered to make. Between the two of them, who travel in tandem, they are a complete officer.

FEEDBACK: This situation – one with the power of force, one with the power of law and procedure, creates a "bully pair." They terrorize my clients and others who ride the trolley with the threatened or actual use of force and because they are paired together they reinforce each other in their wrongfulness. The reason that criminal conspiracies are so much more dangerous than a lone criminal is because of the reinforcing and support that conspiracy members provide each other. By designing an enforcement duo in this regard, you are encouraging a greater use of force than not. Each eggs each other on in the performance of those duties it does not have.

But more specifically, the Contracted Security Officers are bound only by their contract. The contract of these Contracted Security Officers should be provided to be assured that they are indeed bound by this SOP.

Page 2 of 11 of Draft Policy: On this page and throughout there is reference to the arrest power of the Code Compliance and Contracted Security officers. The provided authorization for Code Compliance officers to arrest is only for

misdemeanors, not infractions. Yet use of force arises in infractions as well, where Code Compliance officers are not authorized to make physical arrests. The case in which I am representing Rich Brooks was such an incident.

FEEDBACK: There needs to be clarification as to what powers the MTS officers have to use force in issuing a Notice to Appear for an infraction. Do they have any at all? As to Contracted Security Personnel who only have the power of citizen's arrest, that does not extend to infractions, or we'd have vigilante road ragers chasing vehicle code violators around town. More detail needs to be provided at how the use of force applies in infraction matters. Certainly, ALL infractions should be reviewable for improper use of force, even if or especially if use of force not authorized for infractions.

Page 4 of 11 of Draft Policy:

FEEDBACK: In light of the testimony of MTS in Mr. Brooks matter about the destruction of their body worn camera footage or its inaccessibility, more items are necessary in this to do list. The list presumes that the officer who used force will actually document that use of force. What if they seek to hide it by not reporting it?

5. All body worn camera and overhead surveillance footage collected from any interaction between Transit Enforcement Personnel in which an infraction or a misdemeanor complaint is initiated by the City shall be preserved until the completion of the criminal case. [This will permit the evidence to be preserved for situations such as with Mr. Brooks, who intended to raise improper use of force as a defense, in the infraction in which he was charged.]

BACKGROUND: Rich Brooks was being directed to a dark and remote location away from the surveillance cameras above. Mr. Brooks refused this request and was cited for an infraction instead. Mr. Brooks stated from the beginning of my representation of him that the videos would show the officers trying to physically push, pull or direct Mr. Brooks to that off camera location.

6. WHEN Transit Enforcement Personnel complete the use of force report they are not to refer to the body worn camera evidence before completing that report. [This is common in other police department policy as reference to the body worn camera first allows a malevolent actor to insert false details in support that were outside the camera range, knowing the extent of the collected evidence and its limits.]

7. BEFORE footage is destroyed on the basis that the matter does not involve use of force, the footage should first be watched by MTS Field Operations Manager and a determination made that the criminal proceeding involving the footage is no longer pending, but has been resolved.

8. All Body Worn Camera footage collected by Contracted Security Personnel shall also be made available to MTS upon demand and to the prosecution and defense in the event that a criminal infraction or misdemeanor is issued from that contact.

Page 7 of 11 of Draft Policy:

Feedback. This page ONLY references the "Reasonable" standard that applied in California before the passage of AB . The current law requires the force used be not only reasonable but also necessary. This Use of Force policy needs to be updated with that language.

AGENDA 2:

Scope of the Study: Should extend to the "bully pair" dynamic, and how it contributes to the escalation of force, the issuance of charges that should not be issued, or other wrongful conduct.

This situation – one with the power of force, one with the power of law and procedure, creates a "bully pair." They terrorize my clients and others who ride the trolley with the threatened or actual use of force and because they are paired together they reinforce each other in their wrongfulness. The reason that criminal conspiracies are so much

more dangerous than a lone criminal is because of the reinforcing and support that conspiracy members provide each other. By designing an enforcement duo in this regard, you are encouraging a greater use of force than not. Each eggs each other on in the performance of those duties it does not have.

Proposed Review Process: The Study should include Attorneys and Legal Scholars; those who are familiar with the rules of criminal procedure. How can any review of the effectiveness of transit enforcement be done without attorneys knowledgeable of the rules for which they will be responsible to comply? Members of the community should also play a role.

AGENDA 3: Fare Diversion

Please remember that Diversion programs help to hide wrongful conduct of police. By offering an out to the typical court procedure, which is, in and of itself, a punitive process for my clients, the agency and City set up a situation that eliminates the process in which police behavior would be scrutinized. MTS needs more scrutiny, not less. Instead of diversion, trolly should be made free to persons with low income.

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Agenda Item No. 5

MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM PUBLIC SECURITY COMMITTEE

July 23, 2020

SUBJECT:

TRANSIT ENFORCEMENT OUTSIDE ORGANIZATIONAL REVIEW
(MANNY GUADERRAMA)

INFORMATIONAL ONLY

Budget Impact

Not to exceed \$30,000.

DISCUSSION:

Introduction

In an effort to continue to improve the delivery of services to our patrons and the overall agency, MTS plans to commission an organizational review of the Transit Enforcement Department. The purpose of this study is to identify areas where the Department can improve its core business practices. This is an ideal time to perform a review because of the Mid-Coast Extension of the light rail system and because MTS is currently seeking proposals for a new Security contract. The purpose of this study would be to identify areas where the Transit Enforcement Department can improve its core business practices, and to help incorporate any recommendations as needed in the final security contract.

Background

Transit Enforcement Department staffing consists of a Director of Transit Enforcement, Deputy Director, Field Operations Manager, Records Manager, Systems Security Administrator, one Dispatch Supervisor, four administrative staff members, 11 Code Compliance Supervisors (sergeants) and 53 Code Compliance Inspectors (CCIs). CCI Supervisors and CCIs are classified as Public Officers per California Penal Code Section



836.5. With this designation, CCIs, *“when authorized by ordinance, may arrest a person without a warrant whenever the officer or employee has reasonable cause to believe that the person to be arrested has committed a misdemeanor in the presence of the officer or employee that is a violation of a statute or ordinance that the officer or employee has the duty to enforce.”* (CA Penal Code Section 836.5(a))

In addition to CCIs, MTS contracts with Allied Universal for 158 security officers, 82 of which are armed. The armed officers work alongside the MTS CCIs. The unarmed officers are assigned to provide security at transit centers and staff our dispatch center.

In November 2021, MTS will complete the Mid-Coast Trolley Expansion project. This project will add nine stations to the system along 11 more miles of light rail track. With the completion of the Mid-Coast project, Transit Enforcement anticipates adding 12 CCI positions, three CCI Supervisor positions, and approximately 30 contracted security officer positions. Additionally, we anticipate the creation of a mid-level “field manager” position.

In just the past three years, the Transit Enforcement Department has added nearly 30 CCI positions increasing our security and enforcement capabilities significantly throughout the system, while reducing the contract security officer positions by 50 personnel. The department also formed a beat system, dividing the trolley system into four sectors with each containing three to five beats.

Law enforcement agencies, local and across the country, are closely examining and rapidly changing, their policies, procedures, deployment strategies, hiring processes and core functions. While the MTS Transit Enforcement Department is not a California P.O.S.T. certified law enforcement agency, it does perform several law enforcement functions such as fare enforcement, enforcement of certain state infractions and misdemeanors approved by the MTS Board, assist patrons, and provide security at MTS facilities.

Scope of the Study

The review would evaluate the MTS security and enforcement system and practices compared to other similar sized public transportation systems. This review would analyze:

- Effectiveness of MTS CCIs and Contract Security structure to accomplish goals of the Department, and whether there is a need for a sworn law enforcement contingent
- The overall “organizational climate” of the Transit Enforcement Department, with an emphasis on identifying any biases
- Fare inspection practices
- The handling of personnel issues and employee discipline practices
- Standard Operating Procedures to include, but not limited to:
 - Use of force
 - Supervision
 - Staffing
 - Training
 - Enforcement tactics and procedures
 - Rules of conduct
- CCI training

Proposed Review Process

MTS is proposing to contract with the American Public Transportation Association (APTA) for its Transit Enforcement Department review, because MTS's unique transit enforcement model requires very specific transit industry and law enforcement knowledge. APTA conducts public safety and enforcement peer reviews for public transportation agencies throughout the United States. To conduct a peer review, APTA would assemble a team of law enforcement and security professionals with public transportation backgrounds to conduct a detailed assessment of the overall organizational climate of the Transit Enforcement Department. It is envisioned that the assessment would include a one-week site visit (or virtual visit) to observe operations, to conduct interviews and to review pertinent documents (training, discipline, policies, etc.). At the conclusion of the review, APTA would provide an overall evaluation of the Transit Enforcement Department and would provide a draft report with their overall findings and recommendations. It is anticipated Staff would present the report to the Public Security Committee upon completion for its consideration. The time estimated to complete the review is three months from the award of contract.

/s/ Sharon Cooney

Sharon Cooney
Chief Executive Officer

Key Staff Contact: Julia Tuer, 619.557.4515, Julia.Tuer@sdmts.com

Transit Enforcement Outside Organizational Review

Manny Guaderrama
Director of Transit Enforcement

July 23, 2020



Purpose of an Outside/Independent Review

- Conduct an independent and objective review to identify areas where the Transit Enforcement Department can improve its core business practices
- Identify strengths and weaknesses of the Department
 - MTS personnel
 - Contract Security Personnel
- Make recommendations to improve/correct deficiencies and to build on its strengths

Scope of Study

- Effectiveness of MTS Code Compliance Inspectors (CCIs) and Contract Security structure
- Need for a sworn law enforcement contingent
- Fare inspection practices
- Handling of personnel issues/employee discipline practices
- Training

Scope of Study

(continued)

- Standard Operating Procedures to include, but not limited to:
 - Use of Force
 - Supervision
 - Staffing
 - Training
 - Enforcement tactics and procedures

Proposed Review Process

- Propose contracting with the American Public Transportation Association (APTA)
 - Knowledge of transit industry and law enforcement
 - Experience conducting public safety and enforcement peer reviews
 - Can complete the review in approximately three months
 - Cost under \$30K

There are other organizations such as the Police Executive Research Forum (PERF) that conduct reviews however, their focus/experience is primarily with police departments and not with public transportation agencies. A PERF review would take approximately nine months at a cost of \$80K - \$120K.

APTA Process

- Assemble a team of law enforcement and security professionals with public transportation backgrounds
- Conduct an assessment of the overall organizational climate of the department
- One-week site visit to observe operations, to conduct interviews and to review pertinent documents (training, discipline, policies and procedures, etc.)
- Provide overall evaluation of the department and draft a report with their overall findings and recommendations
- The report would be presented to the Public Security Committee

Questions/Comments?

ITEM #5 – PUBLIC COMMENT

Name: Coleen Cusack, Esq.; representing Social Justice Policy Wonk

Full statement included under item #4 Public Comments



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Agenda Item No. 6

MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM PUBLIC SECURITY COMMITTEE

July 23, 2020

SUBJECT:

FARE DIVERSION PROGRAM IMPLEMENTATION UPDATE (KAREN LANDERS)

INFORMATIONAL ONLY

Budget Impact

None with this item.

DISCUSSION:

The Fare Diversion Program Pilot is scheduled to begin on September 1, 2020. Staff will provide a report on the implementation progress of the Fare Diversion Program Pilot.

/s/ Sharon Cooney
Sharon Cooney
Chief Executive Officer

Key Staff Contact: Julia Tuer, 619.557.4515, Julia.Tuer@sdmts.com



MTS Diversion Program - Implementation Update

Public Security Committee Meeting
July 23, 2020

Summary of Diversion Program

- Effective Sept. 1, 2020
- Eligibility: Any citation that includes *only* one of the following fare evasion violations:
 - Penal Code 640 c1; Penal Code 640 c2; or MTS Ordinance No. 2
- Diversion Program Options
 - Within 120 days, Pay \$25 at Transit Store;
 - Within 120 days, 3 hours of Community Service
 - San Diego Food Bank; OR
 - Homeless Court Program Provider;
 - Within 15 days, appeal online if can show valid fare

Implementation Update

Citation Envelope

- Given by CCI when a passenger is cited for fare evasion
- Citation will be placed within the envelope
- Summarizes the diversion options
 - CCI will describe options to passenger (de-escalation)

This envelope contains a citation for not having a valid MTS fare.



You may be eligible to avoid court and receive a reduced penalty by resolving this citation directly with MTS. To take advantage, complete one (1) of the options in the green box within the listed time. After 120 days, the yellow box contains your only remaining options.

MTS will hold, and not submit the citation to San Diego Superior Court if you participate in the Diversion Program. Here are your options to resolve this citation with MTS:

- | | |
|-----------------|---|
| Within 120 Days | <p>A. Pay a fine: Within 120 days of date of citation, pay \$25 to MTS. Complete the form included in the citation's envelope and pay either in person (credit card, cash, check/money order) or by mail (check/money order only) at the Transit Store (1255 Imperial Ave, 1st Floor, San Diego CA 92101).</p> <p>B. Perform community service: Within 120 days, perform 3 hours of community service at either of the below providers. Proof of completion will be emailed directly to MTS from community service provider.</p> <p>1. San Diego Food Bank: Schedule at sandiegofoodbank.org. Notify San Diego Food Bank when you arrive that you are completing community service for MTS.</p> <p>2. Homeless Court Program Provider (e.g. Father Joe's Villages): Schedule by emailing sandiego@homelesscourtprogram.org or by calling (619) 717-6101. Anyone may participate.</p> |
| Within 15 Days | <p>C. Appeal your citation: If you can demonstrate that you had correct fare or that a ticket vending machine was broken, you may be able to appeal your citation to MTS. Appeals must be requested within 15 days of receiving the citation. If the citation is not dismissed after the appeal, you can still resolve it in one of the ways listed above within 120 days of issuance of citation. To submit your appeal, visit sdmts.com/diversionprogram.</p> |

If you do not resolve this citation within 120 days with MTS, MTS will submit the citation to San Diego Superior Court for adjudication.

- | | |
|----------------|--|
| After 120 Days | <p>A. Resolve in Court: After 120 days, you must resolve this citation at court, as identified on the enclosed citation. Once filed in court, the presumptive fine is \$177.50 or more. Additional fines may be assessed for failure to appear or failure to pay by the required date.</p> <p>B. Participate in Homeless Court Program: You may be eligible to receive help with your court case, fines or fees through the Homeless Court Program. If you participate and meet the requirements of an approved Homeless Court provider (e.g. Social Service organization), your court case may be resolved at Homeless Court. For more details, visit homelesscourtprogram.org.</p> |
|----------------|--|


For more information, visit sdmts.com/diversion-program



Implementation Update

Diversion Program Form

- Form to pay \$25 fine
- In person or by mail at Transit Store
- Requests contact info to send confirmation citation has been voided
- Includes survey on why they did not have a fare
- Will also be printed on the interior of citation envelope



1255 Imperial Avenue, Suite 1000
San Diego, CA 92101-1490
(619) 231-1490 • FAX (619) 234-3407

FARE VIOLATION – DIVERSION PROGRAM
Pay Reduced Fine of \$25 within 120 days to Void Fare Violation Citation

Section A. CONTACT INFORMATION (Please print legibly)

Name _____ Date of Birth ____/____/____
Last First Middle Initial
Mailing Address _____ Apt. No. _____
City _____ State _____ ZIP _____ Phone No. (____) _____
Email Address _____
(If provided, email will be used to send confirmation that the citation has been dismissed)

Section B. CITATION INFORMATION

A copy of your citation **MUST** be provided with this form. Call MTS Security at 619-595-4960 to request a copy.

1. Citation Number _____
2. Citation Date _____ (payment must occur within 120 days of citation date)
3. Please mark below the violation code section listed on your citation.

☐ MTS Ordinance No. 2 / Public Utilities Code 120450 - No Valid Fare
☐ Penal Code 640 (c)(1) – Fare Evasion
☐ Penal Code 640 (c)(2) – Misuse of Fare Pass

Citations with two (2) or more violations listed are **NOT** eligible for diversion. Citations for misuse of a reduced fare (Penal Code 640(c)(3)) are **NOT** eligible for diversion. Contact MTS Security at 619-595-4960 within 72 hours of being cited with valid proof of eligibility of reduced fare to have your confiscated pass returned and the citation voided.

Section C. SURVEY (optional)

Please provide the reason(s) why you did not have valid fare. Your responses are for informational purposes only, will not result in any additional enforcement actions, and will not have any effect on your participation in the Diversion Program.

____ Forgot fare _____ Lost Fare _____ No time to buy fare
____ Cannot afford fare _____ Took Chance / Risked It _____ TVM broken
____ Thought fare was valid _____ Did not know fare required _____ Mobile Phone Died
____ Don't know how to buy fare _____ Other: (____) _____

Section D. SIGNATURE

I certify to the best of my knowledge that the information on this form is true and correct. I understand that a payment of \$25.00 to MTS will be charged/processed to void the fare violation citation.

Signature _____ Date _____
(Parent/Lease Guardian must sign if applicant is under 18)

Section E. PAYMENT AND SUBMISSION OF FORM

Return completed form, along with \$25.00 payment and copy of citation, **in person** (cash, credit card or check/money order) or **by mail** (check only) to: MTS Transit Store, 1255 Imperial Ave., 1st Floor, San Diego CA 92101. ID is required with check and credit card payments.

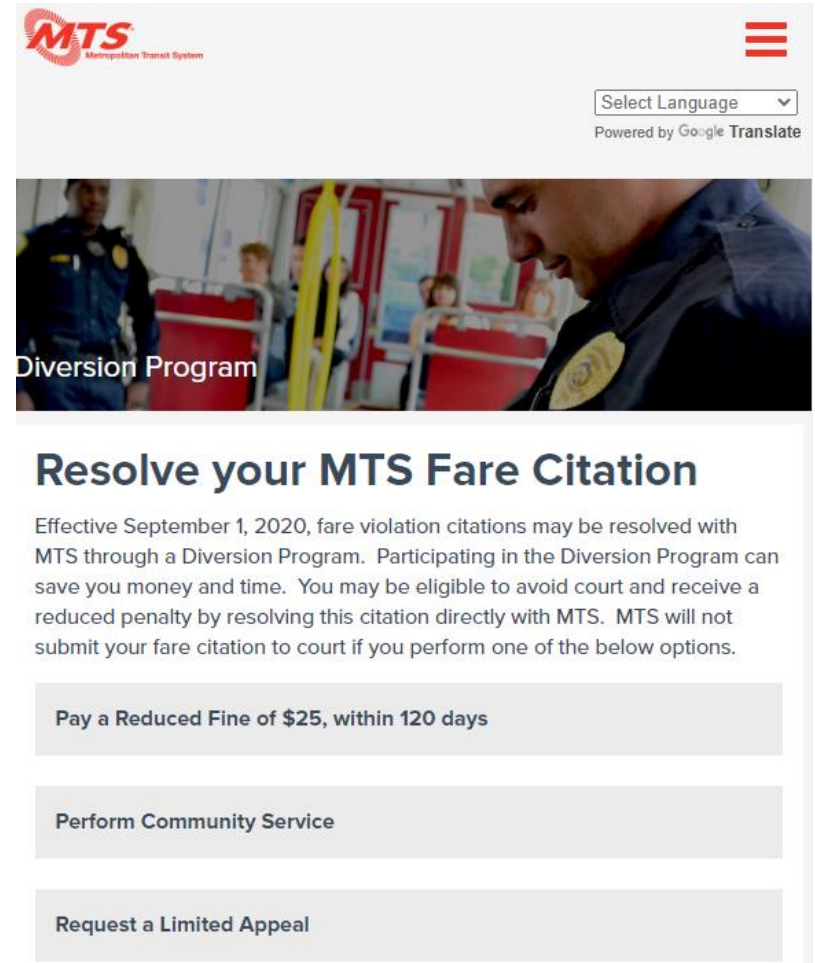
Section F. FOR OFFICE USE ONLY

Staff Initials _____ POS/Transaction ID _____ Date Payment Processed _____

Implementation Update

Website Design

- Provides detailed instructions on how to participate in Diversion Program
- Online Portal to receive appeal requests and upload proof of valid fare



Implementation Update

Data Tracking

- Tracking all eligible fare evasion citations that can participate in the diversion program and whether or not they participated
- In discussions with Court on how to receive data on citations once submitted to court

Citation Tracking	Diversion Prog. Tracking
Citation Number	If paid fine, when and what payment method used
Officer ID	If community service performed, when and which provider
Date of Citation	If appeal, when and what proof provided
Address Where Cited	Survey responses for why did not have valid fare, if provided
Violation Type	If diversion completed, when citation was voided and notification sent to passenger
Passenger Name, DOB, Race, Sex	If diversion not satisfied (e.g. late payment rcvd), when notification sent explaining next steps
DL Number, if provided	If did not participate by deadline, when citation was sent to court

Implementation Update

Community Service Providers

- Finalizing process for how MTS can receive proof that community service is completed
- Finalizing language describing how to schedule community service



Next Steps

- Work with Marketing on how to advertise the program
- Finalizing SOP / provide training:
 - Transit Store (processing payments)
 - Security Administration (data tracking, appeal review, review of community service participation, correspondence with passengers)
 - Code Compliance Inspectors (which violations are eligible for diversions and how to describe diversion program options to passengers)

Questions/Comments?

ITEM #6 – PUBLIC COMMENT

Name: Coleen Cusack, Esq.; representing Social Justice Policy Wonk

Full statement included under item #4 Public Comments

ITEM #6 – PUBLIC COMMENT

Name: Rosa Olascoaga; Representing Mid-City CAN