

LEAP Report for the Amherst Community Safety Working Group

Amherst Police Department Policy Review

This document offers a review of Amherst Police Department Policies. It is of the utmost importance to review and amend these policies regularly to ensure that the policies are clear enough to be practical, useful tools for officers, that they can earn the community’s approval as upholding the department’s and the community’s values, and that they are carefully crafted to maximize public safety, officer safety, and police-community trust.

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Executive Summary

1. Use of Force

Explanation: A Use of Force Policy outlines when police can use force on another person, which includes everything from grabbing someone’s arm to firing a gun. The goal is to prevent a situation from becoming harmful to that person, to police, or the public. A Use of Force policy is usually set up like a decision tree to guide an officer in an unpredictable real-life situation to use only the lowest level of force necessary to safely handle that situation.

Issue: The current APD Use of Force Policy is not easy to understand, clear in its guidance to officers, or reflective of the police and community’s goals. It leaves the Town open to liability and negative outcomes if officers use force.

Solution: We recommend that APD adopt an entirely new Use of Force policy (an example from another agency is provided) and regularly review the policy to ensure that it is applying modern and thoughtful policing best practices.

2. Consent Searches

Explanation: When police pull over a driver, they can only legally search the car if they can point to a specific reason that the car is likely to contain evidence of a crime. Otherwise, they have to get the driver’s permission to search the vehicle, known as a “consent search.”

Issue: Police disproportionately ask people of color for permission to conduct consent searches, and many people only give consent because they do not feel free to say “no.” These searches create distrust in police without any clear benefit to public safety.

Solution: We recommend that APD discontinue using consent searches for all vehicle stops. If officers want to conduct a consent search of a home, they should have to get the resident to sign a form to verify that the person is aware of their right to refuse the search.

3. Low-Level and Pretextual Stops

Explanation: When police see a driver commit a minor violation of the law, such as turning without a signal or driving with a broken taillight, they may stop the vehicle not because they think the driver will get in an accident but because they want to pull over the driver to look for evidence of a more serious crime and they need a legal reason to do so.

Issue: As with consent searches, police are more likely to make these “pretextual stops” on people of color, with a severe impact on community trust. These stops also have a disproportionate impact on people who cannot afford traffic fines and can even lose their job if they have to go to court.

Solution: We recommend that APD discontinue all vehicle stops for low-level violations, unless the violation poses a clear risk to road safety. If an officer does make a stop, they should be required to document the public safety reason on a form. APD should regularly review this traffic stop data to continue to improve service to the Amherst community.

4. Police Union Contract

Explanation: Like other jurisdictions, the Town of Amherst signs a contract, or collective bargaining agreement (CBA), with the local police union. The CBA defines the pay scale, hours, working conditions, and other employment protections that the town commits to provide for officers. The Amherst CBA went into effect at the beginning of the 2020 fiscal year and is set to expire at the end of the 2022 fiscal year.

Issues: The current Amherst CBA includes a complex grievance procedure for any complaint that could prevent the Town from holding police accountable for misconduct. For example, grievances can be dismissed for missing numerous deadlines, and discipline older than a year is erased from an officer’s record.

Solutions: Any future oversight board should review the existing CBA and make recommendations to the Town Manager, or other bargaining unit staff, about concerns and issues they do not want negotiated away at the bargaining table in order to protect not just the Town’s financial interests but also the Town’s values of equity, fairness, and responsibility. The Town should begin this conversation soon, because it is negotiating a new CBA by mid-2022. We suggest several potential changes to the CBA, including:

1. ensuring that disciplinary issues older than a year can be considered in future discipline cases,
2. confirming that grievance process deadlines are reasonable,
3. revisiting the arbitration process to protect justified disciplinary decisions, , and
4. making the CBA process as transparent as possible, with time for the oversight board to weigh in on it prior to adoption by the Town Council.

Review of Massachusetts Police Reform Bill

Massachusetts S.2963: An Act relative to justice, equity, and accountability in law enforcement in the Commonwealth

The above bill was reviewed in its entirety. Below is a summary of the main takeaways regarding what that bill will mean for the Amherst Police Department.

1. Duty to Intervene

Beginning at Section 14, page 57 the bill lays out the state use of force policy. It includes a duty to intervene, meaning that it requires fellow officers to step in if they see an officer using excessive force, and to report such behavior. APD policy does not currently contain a duty to intervene and should be amended accordingly. See General Order III, Policy #12 Use of Force.

2. Limitation on no-knock warrants

Section 2D, page 97 of the bill states that no-knock warrants shall not be allowed unless issued as such by a judge based on an affidavit explaining why it is a necessity. The current APD policy is inconsistent with this update and should be amended accordingly. See page 6 of General Order III, Policy #3 on Searches and Seizure.

3. POST Commission Oversight and Data Transparency

The newly created Police Officer Standards and Training commission¹ has the ability to credential and strip a police officer or an agency of the credential to be employed or offer services in that profession.² The scope of the statute, (items 1-29), gives the POST commission broad oversight of the operation, licensing, and qualifications of both officers and agencies in the Commonwealth.

The POST commission is made up of 9 members. Three are appointed by the governor and are required to include a police chief, a retired superior court judge, and a social worker. Three are appointed by the state's attorney general and must include a police officer below the rank of sergeant, a police officer from a list provided by the Massachusetts Association of Minority Law Enforcement Officers, and an attorney from the state bar's civil rights and social justice section.

The three remaining members are appointed jointly by the governor and attorney general, and one of them must be a nominee from the Massachusetts Commission Against Discrimination.

¹ Chapter 6E, S.2963 The Massachusetts Police Reform Bill <https://malegislature.gov/Bills/191/S2963>

² *Ibid* at Section 3

The bill also requires the commission to be as diverse in gender and ethnicity as the state itself and to include geographically diverse members. The state has already appointed the POST commission members and their biographies can be found at <https://www.mass.gov/orgs/post-commission>.

In addition, under POST shall be a division on police standards.³ This division will be charged with all misconduct oversight of police officers. The commission has broad authority to investigate, review, and adjudicate for a number of misconduct and failure to adhere to standards and guidelines issues⁴. The statute creates public databases and reports based on the findings of this commission, enhancing, state-wide, transparency in police conduct.

Section 99, page 100 requires each law enforcement agency to have provided by June 21, 2021 a record, containing certain specific information related to every police officer's personnel record, specifically any complaints against the officer or any discipline they've received, to the commission. The commission will then be providing each agency with a list of all officers on or before December 21, 2021, and the agency will have to respond with the required information regarding discipline of all officers previously employed by the agency. No specific date is listed in the statute regarding response time.

4. Racial Profiling

Section 83 at page 91 prohibits racial profiling and allows for the state attorney general to bring action against a police department for such behavior. There is no clear guidance on how to avoid such racial profiling in the bill. There is also no additional information on how the attorney general's office will be handling such complaints. The attorney general's website does currently include a place to file civil rights complaints, which include biased policing. If issues related to racial bias in policing arise, we recommend reaching out directly to the attorney general's office.⁵

5. New Commissions Established

The bill establishes commissions to provide input regarding police interactions with specific groups (i.e. Black, Latino, people with disabilities) and to report back regularly to the state legislature on their recommendations.

The bill establishes a committee on police training and certification. In operation, it seems to be tasked with setting up a curriculum that will be in addition to and provide guidance on what POST standards cover. The committee is tasked with establishing curriculum for:

³ *Ibid* at Section 8

⁴ *Ibid* Section 8-16

⁵ <https://www.mass.gov/how-to/file-a-civil-rights-complaint>

1. De-escalation and disengagement tactics when dealing with minor children
2. Handling of interactions with victims, witnesses, and suspects who have mental health or substance abuse issues through the least intrusive means while reducing or preventing harm, but while maintaining officer safety
3. Response to mass gatherings that emphasize de-escalation and minimize necessity for use of force
4. Cultural competency (this term is not defined and there is no further explanation on what this is expected to address)

The committee is also charged with establishing training rubric, with robust requirements, for school officers and interactions with people on the autism spectrum or with other intellectual and developmental disabilities.

The committee is charged with creating minimum certification standards on a broad range of topics from background checks to moral character. The committee has the oversight to revoke the accreditation of any police training academies or schools.

The committee also has purview over in-service training. Such requirements are for the most part not articulated but will include 2 hours annually of mental wellness and suicide prevention for police officers in coping with the stresses of the job.

The report creates several study committees to make additional recommendations:

- A body worn camera task force for best use and procurement (p. 106 (b))
- A task force on the use of facial recognition (p. 110)
- A special legislative commission on the use of emergency hospitalization and how that is used by law enforcement (p 111, section 106)
- A special legislative commission on structural bias in the parole process (p 120, section 111)
- A special legislative commission on structural bias in probation (p 120, section 112)
- A special legislative commission to investigate qualified immunity and its application (p 124, Section 116)
- A community policing and behavioral health advisory council to make recommendations regarding creating a crisis response and continuity of care for alternatives to traditional policing, throughout the commonwealth and reflecting the diverse makeup of the commonwealth (p 125, Section 117)

While the bill establishes many new committees and bodies, it requires little of local law enforcement at this stage. Many future changes will likely come from the work of these

committees. Therefore, LEAP recommends that whatever body comes after the CSWG continues to monitor the work of these committees and other bodies to oversee and modernize policing. Additionally, if given the opportunity, that body should seek to provide input on best practices to inform the work of these committees.

Review of Amherst Police Policies

Use of Force: Concerns

General Order Index III Policy #12, May 8, 2020

Clarity

The Use of Force policy is difficult for officers and the public to understand, does not make clear what actions are allowed and which are not, and lacks language to secure the public trust.

First, the policy is unnecessarily complicated. The Use of Force Policy should offer clear guidance on when to use force and when not to, as much as is practicable, and how much force should be used in various situations. While policies alone are a limited tool to guide officers facing complex real life situations, in order to be useful, they must be written in plain language. The APD policy is written in “legalese.” For example, the following is the definition of Probable Cause from the Use of Force Policy:

Probable cause for arrest exists if, at the time of the arrest, the facts within the knowledge of the arresting officer (or within the collective knowledge of the police) are reasonably trustworthy and are sufficient to warrant a person of reasonable caution and prudence to believe that the person being arrested has committed or is committing the crime for which the arrest is being made.

Simpler language would help officers actually use the policy as a tool to determine whether or not there is probable cause. For example, clearer language might be:

1. For an arrest: Is there a reasonable basis for believing that a crime may have been committed?
2. For a search: Is the evidence of the crime present in the place to be searched?⁶

In addition to legalese, the justification for use of force is made via a complicated decision tree. This decision tree is ill-suited to a real life situation, reducing the usefulness of the policy.

Goals

Second, the current policy lacks language that could help build public trust. Most modern use of force policies are written from the viewpoint that force should be a tool of last resort, to protect the public. For example, the Camden County Police Department’s policy (see [Attachments](#)) states,

⁶ From the Cornell Legal Information Institute https://www.law.cornell.edu/wex/probable_cause

In exercising this authority, officers must respect the sanctity of all human life, act in all possible respects to preserve human life, do everything possible to avoid unnecessary uses of force, and minimize the force that is used, while still protecting themselves and the public.

A Use of Force policy should include not just what is allowable under the law, which is often broad and ambiguous, but also what will best serve the community. The policy should clarify that legal standards serve as the floor for police behavior, not the ceiling. The policy from Camden County explains:

This Department aspires to go beyond [the Constitution] and its minimum requirements. Sound judgment and the appropriate exercise of discretion will always be the foundation of police officer decision making in the broad range of possible use of force situations.

By contrast, APD's Use of Force Policy does not articulate these goals of protecting the public. The APD policy focuses on asserting the rights of police officers to use force to control and gain compliance in a situation. Adding a community-focused perspective can reaffirm broader principles and help reassure the public, because while these policies are generally considered internal, they are public documents.

Report Delay

Third, the Use of Force policy also allows up to four days for an officer involved in a Firearms Discharge to complete a report. It requests that it be done as soon as possible but gives an unnecessarily long time frame in which to complete it. This delay serves no public safety purpose and can reduce the accuracy of the report and create significant public distrust. Police agencies across the country are updating their policies to ensure that officers are giving contemporaneous accounts in the event of a firearms discharge.

Firing Into a Vehicle

Fourth, the policy should exclude firing into a vehicle under almost all circumstances, rather than the broad list of exceptions it contains now. In 1972, the New York City Police Department adopted a prohibition on officers shooting at or from a moving vehicle, unless a person in the vehicle is using or threatening deadly force by means other than the vehicle itself. That policy resulted in an immediate, sharp reduction in uses of lethal force in New York City.⁷ Other agencies have since adopted similar policies, some including narrow exceptions if the vehicle is being used as a deadly weapon.

⁷ "Guiding Principles On Use of Force - Police Executive Research Forum" 16 Mar. 2016, p. 15. <https://www.policeforum.org/assets/30%20guiding%20principles.pdf>. Accessed 6 Oct. 2021.

Use of Force: Recommendations

Rewrite or adopt new policy

The Use of Force policy should at the very least be rewritten to address the issues articulated above. LEAP recommends that Amherst replace the policy with a new version based on the model policy from Camden County, New Jersey (see [Attachments](#)). In addition to addressing the issues above, this model policy would bring APD in line with the new Massachusetts police reform bill's requirement of a duty to intervene.

LEAP recommends one addition to the Camden County policy, which is to prohibit shooting at or from moving vehicles in almost all circumstances. Sample language for such a policy could be:

MOVING VEHICLES.

- Unless such action is necessary for self-defense or to protect another person from immediate and serious injury, officers shall not discharge a firearm at or into a moving vehicle; officers shall not intentionally place themselves in the path of, or reach inside, a moving vehicle; and officers shall attempt to move out of the path of a moving vehicle. Being in the path of a moving vehicle, whether deliberate or inadvertent, shall not be justification for discharging a firearm at the vehicle or any of its occupants, unless the officer is physically unable to move out of its path or is protecting another person from immediate and serious injury.
- Unless such action is necessary for self-defense or to protect another person from immediate and serious injury, officers shall not discharge a firearm from a moving vehicle or shoot at any part of a vehicle in an attempt to disable the vehicle.⁸

Share data with FBI National Use-Of-Force Data Collection

In 2019, the Federal Bureau of Investigation (FBI) launched a National Use-Of-Force Data Collection. However, participation cannot be forced by the FBI and is only encouraged. Thus, their database lacks information as many police departments opt not to participate.⁹ We recommend that APD participate, if they are not already, in sharing data on a monthly basis with the FBI, so that it may be analyzed for larger context and help prevent and address use of force issues nation-wide. As noted on the FBI's website, the program's stated goal is "not to offer insight into single use-of-force incidents but to provide an aggregate view of the incidents

⁸ Some language borrowed from Campaign Zero, Model Use of Force Policy "Motor Vehicles"
<https://campaignzero.org/force>

⁹ Data-Smart City Solutions "How Can Data Increase Police Accountability" Betsy Gardner June 11, 2020
Harvard Kennedy School of Government, Ash Center for Democratic Governance and Innovation
<https://datasmart.ash.harvard.edu/news/article/how-can-data-increase-police-accountability>

reported and the circumstances, subjects, and officers involved.” It would be advantageous for law enforcement, generally, if APD participated.

Consent Searches: Concerns

The APD policy on consent searches are contained in General Order Index: III Policy #3 at page 13 “Search by Lawful Consent”.

The APD policy on consent searches is consistent with the law. Consent search broadly applies to an agreement by a person to give police consent to search anything, whether a domicile, a vehicle, or their person.

As the APD policy correctly warns, consent searches should not be heavily relied upon. A warrant is the proper way to effectuate a search, as consent searches can be easily scrutinized by the court and found lacking, jeopardizing the entirety of a case that is built on a consent search. Proper training is essential to ensure that any consent search respects the Constitution and holds up in court.¹⁰

More significantly, consent searches are a major source of racial disparities that destroy community trust, which is crucial to protect public safety. A report out of Maryland found:

African American and Hispanic males were significantly more likely to be searched than any other race. More troubling however, is the ‘hit rate,’ or the rate at which contraband is found during search. Based on the 2015 Race-based Traffic Stop report, consensual searches have the lowest “hit rate” across the board (for any type of property or contraband.) Three fourths of the time that police conducted consensual searches, they came up completely empty. Additionally, motorists identified as Black or Latinx have, on average, even lower “hit rates” for consent searches than white motorists—just over 23%, compared to 28%.¹¹

¹⁰ The two factor requirement for a consent search should be something all officers are knowledgeable of as a matter of course: 1. The consenting party must have the required authority to give consent to the area being searched and 2. Consent must be freely and voluntarily given.

Though the two-factor test is straightforward, the nuances of who can give consent to a particular search, in order to make such search valid, and what can be searched (the scope of the search) are more complex. For example, a person from whom the police are seeking consent must be informed that they have the right to decline to give consent. Also, except for when something relevant to the case has already been found, consent can be revoked at any time. These points should be emphasized in any training on consent.

¹¹ Governor’s Office of Crime Control and Prevention, 2015 Race-based Traffic Stop Data Analysis (2016), p. 13. Available at <https://goccp.maryland.gov/wp-content/uploads/traffic-stop-report2016.pdf>

As a result, many jurisdictions are stopping consent searches altogether. In 2004, Rhode Island banned the practice of consent searches in vehicle stops completely.¹² The California Highway Patrol, in response to a class-action lawsuit alleging racial profiling in consent searches, has prohibited them for almost two decades.¹³

Consent Searches: Recommendations

1. Discontinue consent searches

While the APD policy is consistent with law, LEAP believes that the Town would benefit from a prohibition on consent searches, in particular consent searches of vehicles. Ending consent searches on vehicles would be a concrete way for the APD to conform with the Massachusetts police reform bill's mandate to stop racial profiling. It would help build trust within the community, improving officers' ability to protect public safety.

Specifically, Amherst could follow the lead of the Providence Police Department's policy language:

No operator or owner-passenger of a motor vehicle shall be requested to consent to a search by a law enforcement officer of his or her motor vehicle which is stopped solely for a traffic violation, unless there exists reasonable suspicion or probable cause of criminal activity.¹⁴

To address the extremely rare case in which a consent search could help stop a serious crime in progress, Amherst could borrow the exception language in Section I, Part 2(d) of the Policing Project's model pretextual stops statute (see [Attachments](#)).

2. Consent Form for Consent Searches

Additionally, it does not appear from the documents shared with LEAP that APD has a "right to consent to search" form, documenting in writing that consent has been given for specific purposes at a specific place. Such a form should be required for all consent searches if APD continues the practice for persons and homes. It would benefit the APD and limit the department's liability, as well as strengthen judicial notice of consent, to implement the use of

¹²Title 31, General Laws entitled "Motor and Other Vehicles," 31-21.2-5
<http://webserver.rilin.state.ri.us/billtext15/housetext15/h5819.htm>

¹³ *Rodriguez v. California Highway Patrol*, 89 F. Supp. 2d 1131 (N.D. Cal. 2000)

¹⁴

<http://www.providenceri.com/sites/default/files/ppd-directives/330.03%20-%20Search%20and%20Seizure.pdf#page=6> The Providence policy states that the definition of "reasonable suspicion" means "that a person is dangerous and might access the vehicle to gain immediate control of weapons." That definition of "reasonable suspicion" should be made clear throughout any adopted policy.

such a form. An example is included in the [attachment packet](#) from the New Orleans Police Department, along with that department's search and seizure policy outlining the justification for such a form.

Low-Level and Pretextual Stops: Concerns

The policies related to pretextual stops are contained in General Order Index: III Policy #3 Searches and Seizures at page 15 "Motor Vehicle Searches" and Policy #35 on Stop, Frisk, and Threshold Inquiries at page 5 under "Motor Vehicles."

The APD policy is consistent with the law. It also underscores that a warrant is the best means to search a vehicle. Unfortunately, it creates wide carve outs that lead to police using pretextual vehicle stops to conduct controversial searches. These pretextual stops rely on a minor offense like expired registration or a broken taillight as an excuse to pull over a car that the officer wants to investigate but does not have cause to stop. The officer then visually inspects the car for any evidence that would justify a search, or simply asks for consent to search the vehicle.

As with consent searches, pretextual stops cause damaging racial disparities. A 2021 article in the Stanford Law Review provides evidence that pretextual stops disproportionately impact people of color.¹⁵ They create negative interactions with police, which often cause fear and deepen distrust in law enforcement. They also particularly target people in the community who cannot afford basic car maintenance or the fees imposed on them. Minor citations can greatly impact less affluent community members, since an unpaid ticket can lead to a bench warrant, arrest, and job loss.

In order to reduce disparities and rebuild trust, several communities have prohibited pretextual stops. Officers can only make stops if combined with another, more legitimate law enforcement purpose or if the violation is greatly impacting the safety of the community (e.g. reckless driving). In 2020, the state of Virginia banned pretext stops.¹⁶ The cities of Portland, Oakland, Philadelphia, and Minneapolis have also discontinued pretext stops.¹⁷ These jurisdictions are benefiting officers by improving public trust and reducing disparities.

¹⁵ An Empirical Assessment of Pretextual Stops and Racial Profiling 73 *Stanford Law Review* 637 (2021) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3506876

¹⁶ Virginia SB 5029 <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=202&typ=bil&val=sb5029>

¹⁷

<https://www.kgw.com/article/news/local/portland-mayor-police-chief-news-conference-policing-changes/283-7c4e2427-d844-440e-acad-ed0e46e68a8d>,

<https://www.sfchronicle.com/bayarea/article/To-curb-racial-bias-Oakland-police-are-pulling-14839567.php>

<https://www.startribune.com/minneapolis-police-to-scale-back-low-level-traffic-stops/600087423/?refresh=true>

<https://www.inquirer.com/news/philadelphia-city-council-isaiah-thomas-police-driving-while-black-20211014.html>

Low-Level and Pretextual Stops: Recommendations

Discontinue Low-Level and Pretextual Stops

Due to the limited usefulness and significant cost of pretextual stops mentioned above, LEAP recommends that APD implement a policy based on the model statute from the Policing Project (see [Attachments](#)). The stated approach of their policy is:

This statute is designed to curtail the use of pretextual traffic stops—focusing in particular on low-level stops that do not otherwise have a close nexus to public safety. The statute takes a four-pronged approach: (1) It prohibits officers from making stops for certain low-level offenses (thereby relegating them to “secondary offense” status; (2) Limits fishing expeditions during lawful stops; (3) Reduces reliance on outstanding warrants for low-level offenses and first-time failures to appear, thereby ensuring that lawful stops do not lead to unnecessary custodial arrests and the associated potential for physical altercation; and (4) Requires agencies to collect demographic stop and arrest data to facilitate public oversight of agency enforcement practices.

Documentation

In addition to implementing the Policing Project model policy, we recommend that APD consider adding a simple reporting innovation. The Oakland Police Department added a check box to forms related to traffic stops asking “Was this stop intelligence-led? Yes or No.” This question cut down significantly on stops related to minor offenses such as broken taillights and expired registration and ensured that pretext stops were only being used to help curb serious criminal activity.¹⁸

Data collection

It was unclear from the APD-provided documents what data APD collects during traffic stops and field interviews. APD should begin or continue collecting data that will:

- be disaggregated by race, ethnicity, and gender;
- include the date, time, and location of such investigatory activities;
- provide justification for the stop and for a search, if conducted; and
- provide the outcomes, including if a search was conducted, if contraband or evidence was found, and if a warning or citation were issued or an arrest made.

¹⁸ *How Oakland police cut traffic stop numbers by 40% with a simple checkbox* Yahoo! Finance Lara O’Reilly July 1, 2019
<https://www.yahoo.com/now/how-the-oakland-police-cut-traffic-stop-numbers-by-40-with-a-simple-checkbox-070000004.html>

Many states already require police agencies to collect this data, including Virginia and Florida, and the Congressional Research Service has recommended to Congress that this data be collected at a federal level.¹⁹ We recommend that APD get out in front of such state and federal legislation in order to build public trust. The model statute language from the Policing Project (see [Attachments](#)) provides detailed guidance on data points that should be included.

APD could use this data to ensure that traffic stops and other actions do not demonstrate racial bias. In particular, this traffic stop analysis could focus on the three key indicators noted by the Congressional Research Service:

[The Federal Government] would be required to analyze the data for disparities in the percentage of drivers or pedestrians stopped relative to the proportion of the population passing through the neighborhood; hit rates (i.e., the rate at which contraband was found during a search); and the frequency of searches performed on drivers who are people of color relative to White drivers.²⁰

While there is some evidence that APD is collecting data related to stops,²¹ it is unclear whether this data is being analyzed, at what level that analysis is happening, and what is being done with the results of that data analysis. LEAP recommends that APD regularly analyze the data and amend policy and procedures to be consistent with unbiased policing goals informed by that data.

Review of Amherst Police Contract

The Amherst Police Contract (Agreement Between The Town of Amherst and the Amherst Police League MassCOP Local 431) went into effect July 1, 2019 and is set to expire June 30, 2022. A majority of the policy discusses payment, pay schedules, overtime, holiday pay, and similar details. Our analysis focuses on potential issues of concern and related recommendations.

Arbitration

Under the contract's Grievance Policy, if an officer commits misconduct and is suspended or fired by the police chief, the officer can appeal this decision to an outside arbitrator, who is approved by both the town and the police union. Studies show that arbitrators reverse the chief's disciplinary decision in about [half of all cases](#), usually on the grounds that the [punishment was too harsh](#). While these cases often involve serious issues such as [excessive use of force or professional dishonesty](#), the arbitrator focuses on what punishment officers have received in the past for a similar offense and the impact it would have on the officer. They do not focus on the

¹⁹*Programs to Collect Data on Law Enforcement Activities: Overview and Issues* page 4
Congressional Research Service R46443 Updated March 11, 2021.
<https://crsreports.congress.gov/product/pdf/R/R46443/3#page=7>

²⁰ *ibid.*

²¹ See June 30, 2020 APD letter Subject: Racial Profiling Documentation for Verbal Warning Motor Vehicle Stops, Effective July 1, 2020 at 0000 hours.

impact that misconduct will have upon community trust in police. In the APD CBA, the arbitrator's decision is binding and cannot be reversed, even if it makes clear errors in judgment or facts, or if new information comes to light.²²

Unlike the Use of Force policy above, the Town cannot simply dictate the terms of the police union contract -- it currently must be negotiated between the Town and the police union. The Town should view the current arbitration process as an important concession to the police. Here are possible alternatives to balance officers' right to due process with the Town's responsibility to ensure accountability, trust, and safety:

1. Instead of appealing the case to an outside arbitrator, the appeal could be heard by the Town Manager or Town Council. This approach is taken in Murrieta, California and other jurisdictions.²³
2. The arbitrator's opinion could be made nonbinding, and either the union or the Town could appeal the decision to the Town Manager or Town Council. This approach is taken in Delano, California (see [Attachments](#)).²⁴
3. Instead of giving the police union veto power over the choice of arbitrator, the arbitrator could be randomly chosen from a pre-approved panel of arbitrators. This would remove the arbitrator's incentive to side with the police in order to be chosen again in the future. This approach is taken in Minnesota.²⁵
4. Instead of giving the arbitrator unchecked power to reverse the decision, the Town could create a disciplinary matrix that specifies a range of punishment acceptable for serious types of misconduct. The arbitrator could rule that misconduct did not occur or alter the punishment within the range, but they could not move outside the range. This approach is taken in Oregon.²⁶

Record Sunset

The grievance process also covers employee discipline in Article XXIII. This article states that “Any record of discipline older than one (1) year from the date issued shall not be used or

²² "480 Mass. 634." 7 May. 2018, <http://masscases.com/cases/sjc/480/480mass634.html>. Accessed 18 Oct. 2021.

²³ 1036 VANDERBILT LAW REVIEW Vol. 74:4:1023

²⁴ JULY 01, 2020 TO JUNE 30, 2024 AGREEMENT BETWEEN CITY OF DELANO AND DELANO POLICE OFFICERS ASSOCIATION, 19(E). Effect of Decision:

The decision of the Arbitrator shall be binding on both parties unless the City Council overrules the decision of the Arbitrator within thirty (30) days from the date of the decision. In order for the City Council to overrule the decision, it is required that at least four (4) Council members (if five members are present) or three (3) Council members (if three or four are present) must vote in favor of the motion to overrule. The Council's decision shall be final and binding.

²⁵ 1036 VANDERBILT LAW REVIEW Vol. 74:4:1023

²⁶ *Ibid.*

considered in future discipline.” This language should be removed, in order to ensure appropriate accountability based on patterns of behavior. This language should be removed from future CBAs by the Town’s labor negotiation team. Any updated discipline policy should include language that allows the Town to consider the entirety of a police officer’s performance record, particularly serious issues, when determining discipline.

Grievance Dismissal

One area of concern in the Amherst Police Contract is the complexity of the Grievance Policy, which is outlined at Article VIII. If any of the multiple layers or steps are not completed or the Town does not respond in a timely fashion, the grievance is dismissed. These time frames protect officers and their families from being kept in limbo unnecessarily, but if they are too short, they can result in the unwarranted dismissal of legitimate grievances. The steps and time frames should be scrutinized to ensure that they are not resulting in inappropriate dismissal of grievances.

Transparency

APD policies on contracts and bargaining would benefit from added public transparency. While labor negotiations themselves are closed according to Massachusetts law,²⁷ the draft contract should be made available to the public prior to adoption.²⁸ Any future oversight board should pay special attention to the terms of that agreement and offer comments where appropriate.

Other Policies

APD Discipline Policy

General Order Index III, Policy #63

The goals of any new civilian oversight board should be supported by statutory language that gives it the authority to subpoena, interview, and recommend discipline for officers as necessary. Nothing in the APD Discipline Policy or Police Contract should prohibit these activities. Current APD policies are silent on this issue but should incorporate cooperative language once such an oversight board is formed.

The current APD policy allows an officer who has used force to wait for four days before filing a report. In order to ensure accurate reporting and avoid unnecessary delays, Amherst should follow other police departments in requiring the report to be filed by the end of their shift, or at

²⁷ See G.L. c. 30A, § 21(a)(2)–(3).

²⁸ This step is required by law in California under the Brown Act: see Walter Katz, "Police Union Collective Bargaining and Participatory Democracy." SMU Law Review Vol. 74, p. 440. <https://scholar.smu.edu/cgi/viewcontent.cgi?article=4886&context=smulr#page=23>. Accessed 18 Oct. 2021.

most within 48 hours, unless there is an emergency medical issue (see the New Orleans Police Department policy in [Attachments](#)).

Current APD policy does not distinguish between a minor incident involving use of force, such as an accidental discharge, and a major incident like an officer-involved shooting. The APD policy should be edited to clarify the requirements for more serious incidents. This new language should make clear that officers are required to meet with the investigators as soon as possible for an interview (see for example the New Orleans Police Department policy in [Attachments](#))

In addition, it should be clarified that any evidence of additional wrongdoing uncovered during an investigation can result in an independent investigation. This issue is not currently addressed by APD policy, but it should be made explicit.

Personnel Information Release

A separate letter titled “ASO-55 Release of Personnel Information,” dated February 9, 2010, appears to require APD personnel to have signed a document allowing their personnel information to be released, in order for such information to be made available. It is not clear to what exact information and to what extent this policy applies, but if it prevents the release of information that should be available to the public, this policy should be amended.

General Recommendations for APD Policies

1. Gendered language should be removed to make the policies more modern. (i.e. eliminating ‘he/she’ in favor of ‘officer’ or ‘police’.)
2. General Orders policies should be reviewed and trained on regularly, if that is not already occurring, to make sure that they are actually understood and able to be put into practice by APD officers. The APD may want to consider an internal policy review committee to make sure that they have the most modern, accurate, clearly understood policies available. A policy that sits unused in a binder is of little good to the department or the community.

Attachments

See [this Google drive link](#) to access the following policies and documents:

1. S.2963 aka The Massachusetts Police Reform Bill
2. Camden County Use of Force Policy
3. NOPD Consent Search Form
4. NOPD Search and Seizure Policy

5. Policing Project Model Policy on Pretextual Stops
6. Delano Police Department Memorandum of Understanding