



# TEMPE POLICE DEPARTMENT

## USE OF FORCE POLICIES

### FREQUENTLY ASKED QUESTIONS



We are a transparent and responsive organization whose mission is to reduce harm. Below you will find a list of frequently asked questions, framed as asked, and our answers which cite our policies including those involving the Tempe Police Department Use of Force. Where we have an applicable policy or are guided by law that directly relates to the question, we have included the attribution as appropriate.

Our overriding culture influences how we engage in the service of policing and includes values of service, Fair and Impartial policing, and the principles of procedural justice.

See: <https://fipolicing.com/> and <https://cops.usdoj.gov/procdceduraljustice>

**Tempe Police Department Orders can be found online at:**  
<https://www.tempe.gov/government/police/departement-orders-policies>

#### **1. Are the police officers in the Tempe Police Department being trained to de-escalate altercations by using peaceful conflict resolution strategies?**

Yes. This includes grant funded curriculum on de-escalation developed with ASU professors for research in a national study. Further regarding use of force, our policy states, “When there is time, the law requires authorized employees to attempt to de-escalate the situation, give lawful commands, and give adequate warnings that force will be used (Blanford v. Sacramento County, US Ninth Circuit Court of App.)” De-escalation is further emphasized in training through classroom and multiple scenario-based exercises throughout each year. (Department Order 12.101.C.2.c)

#### **2. Are the police officers in the Tempe Police Department forbidden from using carotid restraints (chokeholds, strangleholds, etc.) and hog-tying methods? Furthermore, are they forbidden from transporting civilians in uncomfortable positions, such as face down in a vehicle?**

Chokeholds and strangleholds are not authorized. The Carotid Control Technique is permitted in situations involving aggravated aggressive resistance defined as “The employee perceives the subject’s actions are likely to result in death or serious bodily harm to the officer, themselves or another.”

Hobbles are permitted for combative prisoners. Positional asphyxia and conditions such as “excited delirium” are a concern and we train to ensure the person is rolled onto their side, to monitor breathing, and to



# TEMPE POLICE DEPARTMENT

## USE OF FORCE POLICIES

### FREQUENTLY ASKED QUESTIONS



constantly evaluate the need for paramedics. Generally, we do not transport prisoners face down being cognizant of the previously mentioned concerns. We are strengthening the policy in this specific area. (Department Orders 12.101.D.1.e, 12.101.B, 19.105.c)

### **3. Are the police officers in the Tempe Police Department required to intervene if they witness another officer using excessive force? Will officers be reprimanded if they fail to intervene?**

Through our Code of Conduct, officers are required to report knowledge of criminal activity or serious misconduct on the part of another employee. Further, officers are trained as part of de-escalation to intervene if they observe another employee act outside of training and policy regarding use of force. That said, we are adding language to our Use of Force policy supported by the Code of Conduct policy to make it even more explicitly clear of the duty to intervene; this will be finalized in June 2020.

As with any sustained violation of policy to include failure to follow training, policies and procedures, employees would face corrective action through the internal investigation. In some cases, this may also include a criminal investigation if the actions of the officer violated state law. (Department Orders 3.201.D.9, 3.201.D.12., 3.201.e.3)

### **4. Are the police officers in the Tempe Police Department forbidden from shooting at moving vehicles?**

Yes. Officers are prohibited from shooting at or from moving vehicles with a few exceptions. Policy states “Officers will not shoot from or at a moving vehicle, with the following exceptions:

- a) When an occupant of the suspect vehicle is utilizing deadly force against police officers or other persons.
- b) As a last resort to prevent death or substantial harm to the officer or other persons.
- c) As a last resort to apprehend a felon who has just committed a felony resulting in death or serious physical injury, and there is an imminent or great risk that the person will cause death or serious physical injury if apprehension is delayed.” (Department Orders 7.103.D.11.a-c, 12.101.2.c)



# TEMPE POLICE DEPARTMENT

## USE OF FORCE POLICIES

### FREQUENTLY ASKED QUESTIONS



#### **5. Is there a clear and enforced use-of-force continuum that details what weapons and force are acceptable in a wide variety of civilian-police interactions?**

There is a clear and enforced use of force policy that officers adhere to which is supplemented by training that includes scenario-based exercises, review, and accountability measures. Refer to our online Department Orders section 12 for specifics. In addition to supervisory reviews of force, the Tempe Police Department utilizes a Force Review Committee chaired by a command level officer and consisting of subject matter experts in use of force, tactics, and de-escalation whose responsibility is to review use of force incidents.

The types of incidents include but are not limited to in-custody deaths, significant injury as a result of force, incidents of resisting arrest with force, complaints of excessive force, use of less lethal weapons, and use of canine. The committee further reviews additional cases involving strikes, take downs, use of pain compliance, chemical weapons, and discharge of a Taser and the review includes examination of reports and body worn camera footage from all officers at an incident. The purpose of the Force Review Committee is to evaluate policy compliance, identify training and equipment needs, ensure practices for officer safety, and to recommend policy changes and additional training based on observed trends.

#### **6. Are the police officers in the Tempe Police Department required to exhaust every other possible option before using excessive force?**

Excessive force is not authorized per policy or acceptable in our organizational culture. The use of force policy based on current case law provides direction and options of force available to an officer based on the facts and circumstances known at the time of any encounter. Officers are to only use that amount of force that is reasonable and necessary to accomplish a lawful purpose.

The option to exhaust or utilize various types of force will fluctuate depending on the totality of the circumstances. Per policy when an employee uses force, "They should consider the totality of the circumstances, including but not limited to:

- 1) Severity of the crime at issue.
- 2) Whether the suspect poses an immediate threat to officers or others.



# TEMPE POLICE DEPARTMENT

## USE OF FORCE POLICIES

### FREQUENTLY ASKED QUESTIONS



3) Whether they are actively resisting arrest or attempting to evade arrest by flight (Graham v. Connor, US Sup. Ct.).

4) Any other circumstances that cause the officer concern sufficient to justify the use of force (Scott v. Harris, US Sup. Ct). (Department Orders 12.101.A, 12.101.C.2.a-b)

#### **7. Are the police officers in the Tempe Police Department required to give a verbal warning to civilians before drawing their weapon or using excessive force?**

Excessive force is not authorized or acceptable in our organizational culture. Every effort will be made to provide verbal warnings prior to using force unless this is not feasible due to an imminent threat to the public or officers. The policy states, "If practical, any use of force should be preceded by a verbal warning that force will be used if the suspect does not comply. The warning is unnecessary if it will endanger an employee or take away a tactical advantage. The authorized employee employing force need not be the employee giving the warning." It is important to note that it further states, "When there is time, the law requires authorized employees to attempt to de-escalate the situation, give lawful commands, and give adequate warnings that force will be used (Blanford v. Sacramento County, US Ninth Circuit Court of App.). (Department Orders 12.101.C.c, 12.101.A.2)

#### **8. Are the police officers in the Tempe Police Department required to report each time they threaten to or use force on civilians?**

Tempe Police Policy states officers are required to report use of force in the following situations:

- a. "Display of firearm (when pointed at/toward a person/group).
- b. Chemical agent (when deployed at/toward a person/group).
- c. Taser® (drive stun mode or probes deployed at/toward a person/group).
- d. Strikes (punches and/or elbow or knee strikes or foot kicks).
- e. Takedowns.



# TEMPE POLICE DEPARTMENT

## USE OF FORCE POLICIES

### FREQUENTLY ASKED QUESTIONS



- f. Impact device (e.g., ASP, PR24, flashlight).
- g. Less-lethal launcher (e.g., FN-303/ARWEN).
- h. Police K-9 bite.
- i. Carotid control technique.
- j. Lethal force (e.g., discharge of firearm at/toward a person, or use of another object or device that, in the fashion it is used, constitutes a deadly weapon or dangerous instrument).
- k. Any use of force resulting in an injury or complaint of an injury.” (Department Order 12.103).

#### **9. Are the police officers in the Tempe Police Department thoroughly vetted to ensure that they do not have a history with abuse, racism, xenophobia, homophobia / transphobia, or discrimination?**

Yes. We have a multi-layered thorough hiring (vetting) process that evaluates multiple competencies to include extensive examinations in the following areas: medical, psychological, critical thinking, polygraph, comprehensive background, and most importantly that the potential employee aligns with City of Tempe values - to include our non-negotiable support of diversity and inclusion. Additionally, every employee meets with the Chief of Police as a final step before being offered employment.

As a City, we consistently receive the highest ranking on the Municipal Equality Index ([www.hrc.org/mei](http://www.hrc.org/mei)), we have an active Gay-Straight Alliance of City employees, and we were among the first police departments in Arizona to sign the Open for Business Pledge with One Community.

#### **10. Are the police officers in the Tempe Police Department trained to perform and seek necessary medical action after using excessive force?**

Excessive force is not authorized or acceptable in our organizational culture. By policy and extensive training, we ensure aid is rendered when safe to do so. Our officers are provided lifesaving tools and training to provide care and lifesaving measures while awaiting arrival of paramedics. We additionally train on the application of tourniquets, bandages, and chest seals for situations when we are on scene and can provide care as a bridge to paramedic response. Our officers have demonstrated a high degree of lifesaving care in an array of circumstances. (Department Order 12.101.3.a-b)



# TEMPE POLICE DEPARTMENT

## USE OF FORCE POLICIES

### FREQUENTLY ASKED QUESTIONS



#### 11. Is there an early intervention system enforced to correct officers who use excessive force? Additionally, how many complaints does an officer have to receive before they are reprimanded? Before they are terminated?

Excessive force is not authorized or acceptable in our organizational culture. There are multiple layers of review and evaluation for uses of force and complaints. Each instance is reviewed in its totality and additional steps taken depending on the outcome of investigation. Every employee is afforded legally appropriate due process rights as employees. If allegations or violations of policy are sustained, a set chart of sanctions exists that provides a range of appropriate discipline/corrective options. This can range from training through termination.

A factor in considering appropriate discipline, employee assistance needs, or intervention points, is sustained policy violation history. A complaint alone does not mean there was a violation of policy. Further, the police department has a robust employee wellness program focusing on the mental, physical, and spiritual health of our employees to address the human and occupational traumas that they encounter and the stress unique to the service of policing. (Department Order 3.203).

#### **NOTES:**

- 1) Procedural justice refers to the idea of fairness in the processes that resolve disputes and allocate resources. It is a concept that, when embraced, promotes positive organizational change and bolsters better relationships. Procedural justice speaks to four principles, often referred to as the four pillars (<https://cops.usdoj.gov/procdceduraljustice>). A) **fairness** in the processes; B) **transparency** in actions; C) opportunities for **voice**; and D) **impartiality** in decision making
- 2) The City of Tempe has a standing Citizens' Review Panel for complaints and use of force

The Tempe Citizens' Panel for Review of Police Complaints and Use of Force is made up of fifteen (15) public members, and four (4) Police Department members consisting of two (2) sergeants and two (2) line level officers. When reviewing a matter, a sub-panel is formed consisting of six (6) public members and two (2) Police Department members consisting of one (1) sergeant and one (1) line level officer. The public members are approved by the City Manager. This panel is currently active.

The assigned duties of the Panel are: (1) to review all police shootings and any police incidents wherein direct physical force by the police results in serious injury or death; (2) to review the findings of the Police Department's investigation of not-sustained, unfounded or exonerated citizen complaints, when that citizen requests a review of the Police Department's findings; and (3) to review any Police Department incident, at the request of the Chief of Police.



# TEMPE POLICE DEPARTMENT

## USE OF FORCE POLICIES

### FREQUENTLY ASKED QUESTIONS



After the subpanel reviews a record, they make a recommendation to the Chief of Police. They can recommend either of the following:

- (1) Agree with the findings of the Police Department investigation;
- (2) Disagree with the findings of the Police Department investigation;
- (3) Advise the Chief of Police that further investigation is warranted; or
- (4) Upon a review of a use of police force incident, the review panel shall make a further finding whether the use of police force was within Police Department policy.

*Please reference Chapter 2, Article X of the Tempe City Code for the ordinance governing the Tempe Citizens' Panel for Review of Police Complaints and Use of Force. The link to the City Code is here: [https://library.municode.com/az/tempe/codes/city\\_code](https://library.municode.com/az/tempe/codes/city_code).*

The panel may make recommendations to the Chief of Police concerning training programs, revisions of policies or procedures, commendable actions, preventive or corrective measures (except for employee discipline) as it relates to the sub-panel findings of the incident being reviewed.

- 3) The U.S. Supreme Court's landmark 1989 decision, *Graham v. Connor*, holds that police use of force is to be judged against a standard of "objective reasonableness" under the 4th Amendment ban on "unreasonable searches and seizures." *Graham v. Connor*, 490 U.S. 386 (1989). <http://caselaw.findlaw.com/us-supreme-court/490/386.html>

In their ruling, the Court stated: 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.... The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.

In *Graham v. Connor*, the Supreme Court outlines broad principles on how police use of force is to be considered and judged. But the Court leaves it to individual police agencies to determine how best to incorporate those principles into their own policies and training, in order to direct officers on how to perform their duties on a daily basis.

*Graham v. Connor* is the common denominator across the United States, and the Tempe Police meet the foundation of *Graham's* standards, and also build on the legal foundation established by the Supreme Court through progressive and sound policies and training that provide more concrete guidance to officers on how to carry out the legal standard.