

MEMORANDUM OF LAW

DATE: February 6, 1990

TO: Bob Burgreen, Chief of Police, San Diego
Police Department
FROM: City Attorney
SUBJECT: Federal Community Development Block Grant
(CDBG) Entitlement Program Policy on Excessive
Force

This memorandum responds to your request for a legal review of the San Diego Police Department's policy on the use of excessive force as it pertains to the subject program. Reference is also made to Congressman Jim Bates' letter of January 21, 1990, to Mayor Maureen O'Connor regarding the requirement in section 519 of the 1990 Housing and Urban Development (HUD) Appropriation Act that municipalities have an appropriate policy on excessive force by law enforcement agencies or risk the loss of federal Community Development Block Grant (CDBG) funds.

CDBG Certification Requirements

Paragraph three (3) of Attachment One (1), United States Department of Housing and Urban Development Notice CPD-89-53, dated December 22, 1989, requires grantees for the CDBG Entitlement Program to submit the following certification to HUD:

In accordance with section 519 of Public Law 101-140, the 1990 HUD Appropriations Act, (INSERT NAME OF GRANTEE) certifies that: it has adopted and is enforcing a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations.

As stated in paragraph two (2) of Attachment One (1), a written statement of policy or regulation within the police department adopted by the grantee would be a sufficient basis for certification. It further states that "a grantee need not

adopt a new policy if it has and is enforcing an existing written policy that meets the requirements of section 519."

Current Policy on the Use of Excessive Force

Attachment Two (2), San Diego Police Department Procedure 1.4 dated December 20, 1987, on the subject "Use of Force," provides as follows:

III. IMPROPER USE OF FORCE

A. 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.

- B. The use of improper force occurs when the type or degree of force employed was either excessive, unnecessary or unreasonable.
- C. The use of improper force by any member of this Department will not be tolerated.

The current policy applies to the use of excessive force against any and every individual regardless of status.

Recommended Amendment to Policy on the Use of Excessive Force

The current San Diego Police Department policy on the use of excessive force meets the certification requirements outlined in Attachment One (1) because it applies to the use of excessive force against any and every individual regardless of status. While not required by any fair reading of the certification requirements, it is recommended that the San Diego Police Department amend its current policy and procedure on the use of excessive force to specifically identify individuals engaged in nonviolent civil rights demonstrations. As amended the procedures would provide as follows: "C. The use of improper force by any member of this department against any persons, including but not limited to individuals engaged in nonviolent civil rights demonstrations, will not be tolerated."

The recommended amendment would indicate specifically that individuals engaged in nonviolent civil rights demonstrations are

included in the classification of persons protected from the use of excessive force. It will remove any conceivable argument that the present policy statement leaves this issue unresolved.

The San Diego Police Department based on the previous oral advice of this office is currently reviewing the Use of Force Policy.

JOHN W. WITT, City Attorney

By

Joseph M. Battaglino

Deputy City Attorney

JMB:mk:520.1(x043.2)

Attachments

ML-90-23