
To: Mayor and City Council
From: Jason Wu, Chief of Police
Subject: **Lexipol Updates: October through December 2021**

Recommended Motion/Item Description

Adopt the resolution accepting the recent update(s) to the Belvedere Police Department Policy Manual (Lexipol).

Background

Pursuant to Section 20.7.1 of the City of Belvedere Administrative Policy Manual, the Belvedere Police Department (BPD) Policy Manual is incorporated into the Administrative Policy Manual of the City of Belvedere by reference. Changes to the Belvedere Police Policy Manual recommended by the City’s public safety risk management consultant (Lexipol) and approved by the Chief of Police shall be implemented on an interim basis and reported to the City Council concurrent with the next quarterly report by the Chief of Police to City Council. Per Policy Section 20.7.1, such changes will, in the ordinary course of business, be ratified by Council at that meeting. In the event that Council expresses significant concern about any BPD policy or change thereto, the Mayor may establish an ad hoc committee to consult with the Chief of Police and report back to the full Council with its recommendation. The BPD will continue to implement any pending changes until such report is made and Council makes a final decision on the matter.

There is no fiscal impact associated with the incorporation of the Police Policy Manual into the Administrative Policy Manual.

Recommendation

Staff recommends that the City Council adopt the attached Resolution ratifying the most recent Lexipol updates.

Attachments

- Resolution with changes to the Belvedere Police Manual included as Exhibit A.

CITY OF BELVEDERE

RESOLUTION NO. 2022-XX

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELVEDERE
RATIFYING LEXIPOL POLICE DEPARTMENT POLICY MANUAL UPDATES**

WHEREAS, Belvedere Administrative Policy Manual section 20.7.1 provides that updates and changes to the Belvedere Police Policy Manual recommended by the City’s public safety risk management consultant, Lexipol, and approved by the Chief of Police, are to be ratified by the City Council in the ordinary course of business; and

WHEREAS, Administrative Policy Manual section 20.7.1 further provides that said Police Policy Manual updates shall be reported to the City Council by the Chief of Police on a quarterly basis and submitted for Council ratification; and

WHEREAS, at its regularly scheduled meeting on January 10, 2022, the Chief of Police presented the Police Department’s Quarterly Update to the City Council, which update included changes and updates to the Police Policy Manual as recommended by Lexipol and approved by the Chief of Police; and

WHEREAS, the City Council desires to ratify said Police Policy Manual updates; and

WHEREAS, the Police Policy Manual updates herein are not a “project” under the California Environmental Quality Act.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Belvedere that the updates and changes to the Belvedere Police Policy Manual are hereby ratified as set forth in “Exhibit A”.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Belvedere on January 10, 2022, by the following vote:

AYES: Steve Block, James Lynch, Nancy Kemnitzer, James Campbell, and Mayor Wilkinson

NOES: None

ABSENT: None

RECUSED: None

APPROVED: _____
Sally Wilkinson, Mayor

ATTEST: _____
Beth Haener, City Clerk

EXHIBIT A

A. Updates to Lexipol Policy 203 – Training

This policy has been updated because legislative action impacts its content. 2021 AB 26, effective Jan. 1, 2022, prohibits a peace officer who is the subject of a sustained use of force complaint to train another officer for a period of three years from the date the complaint is sustained. Changes to this policy include:

- TRAINING RESTRICTION (§203.10.1) has been added to include a responsibility to identify those officers who are restricted from training.

Unrelated to the legislative update, additional changes include:

- The policy name has been changed from Training Policy to Training for consistency with other policies in the BPD Lexipol Policy Manual.
- OBJECTIVES has been updated to include an additional applicable consideration (§203.3(d)), and punctuation has been corrected.

B. Updates to Lexipol Policy 301 – Use of Force

This policy has been updated because legislative actions impact its content. 2021 CA AB 26, effective Jan. 1, 2022, amended law regarding the use of force. Changes include:

- PURPOSE AND SCOPE has been updated to include an applicable policy reference (added “Retaliation prohibitions for reporting suspected violations are addressed in the Anti-Retaliation Policy”).
- In DUTY OF INTERCEDE, a citation that defines "intercede" has been added (added “as defined by Government Code §7286”).
- FAILURE TO INTERCEDE has been added as a new subsection (§301.2.4) in POLICY to indicate that peace officers who are trained to intercede and fail to do so, may also be disciplined in the same manner as the officer who used excessive force.
- DUTY TO REPORT EXCESSIVE FORCE has been updated to clarify the supervisor notification requirement, and to add the definition for "immediately."
- TRAINING has updated to include a reference to the Training Policy relating to training restrictions.

2021 CA SB 16, along with 2021 SB 2, effective Jan. 1, 2022, added law to the Penal Code that requires instances of use of force be reported immediately to the peace officer's agency. Changes include:

- USE OF FORCE has been updated for clarification (added “or authorized tools,”).
- NOTIFICATION TO SUPERVISORS has been updated to further emphasize supervisor notification, the definition for "immediately" has been added.

2021 CA AB 490, effective Jan. 1, 2022, amended Government Code § 7286.5 to prohibit a law enforcement agency from authorizing officers to use restraint or transportation methods that could impair an individual's breathing or respiratory capacity. Changes include:

- ADDITIONAL RESTRICTIONS has been added as a new subsection (§301.3.6) in USE OF FORCE.

Unrelated to the legislative updates, additional changes include:

- An applicable policy reference (“See the Medical Aid and Response Policy for additional guidelines.”) has been added in MEDICAL CONSIDERATION.

C. Updates to Lexipol Policy 309 – Domestic Violence

This policy has been updated because legislative action impacts its content. 2021 CA SB 320, effective Jan. 1, 2022, amended law regarding protective orders and possession of ammunition by adding "ammunition" to the statute. Changes to this policy include:

- In COURT ORDERS, a citation has been updated as another provision of §309.9.2(c) also applies in regard to implementing a policy for relinquishment of firearms or ammunition (corrected to Family Code §6389(c)). Gendered pronouns have also been removed.
- In REPORTS AND RECORDS, terminology (“ammunition”) and a citation (Family Code §6389(c)) have been updated.

D. Updates to Lexipol Policy 312 – Senior and Disability Victimization

This policy has been updated because legislative actions impact its content. 2021 CA SB 823, effective Jan. 1, 2022, renamed the Bureau of Medi-Cal Fraud to the Division of MediCal Fraud and Elder Abuse. Changes include:

- In MANDATORY NOTIFICATION, an agency name has been updated.

2021 CA AB 135, effective Jan. 1, 2022, amended Welfare and Institutions Code § 15610.57. 2021 CA AB 1171, effective Jan. 1, 2022, amended Welfare and Institutions Code § 15610.63, deleting spousal rape from the statute. Changes include:

- RELEVANT STATUTES has been updated to reflect the law changes.

Unrelated to the legislative update, additional changes include:

- An initialism has been corrected (from SDSS to CDSS) and gendered pronouns have been removed in MANDATORY NOTIFICATION.

E. Updates to Lexipol Policy 314 – Child Abuse

This policy has been updated because legislative action impacts its content. 2021 CA AB 670, effective Jan. 1, 2022, amended law regarding mandatory notifications involving child abuse or neglect where the parent is a minor or dependent adult. Changes to this policy include:

- MANDATORY NOTIFICATION has been updated to add an additional notification requirement, and to add clarity about when a District Attorney does not have to be notified. Also, a spacing error has been corrected, and a gendered pronoun has been removed.

F. Updates to Lexipol Policy 318 – Hate Crimes

This policy has been updated because legislative actions impact its content. 2021 CA AB 600, effective Jan. 1, 2022, amended definitions relating to hate crimes. Changes to this policy include:

- DEFINITION AND LAWS has been updated to conform to the new legislation (added “discriminatory selection of victims” and “regardless of whether it is

stereotypically” to §318.2.1 Bias motivation and Gender expression, respectively).

2021 CA AB 57, effective Jan. 1, 2022, amended law in light of recent reports and studies of hate crimes and the failure to identify, report, and respond to these crimes. The legislation also amended law to identify an additional element of bias motivation.

- In DEFINITION AND LAWS, "Bias motivation" has been updated.
- TRAINING has been updated to include training in the recognition of religion bias (added “and religious bias”).

G. Updates to Lexipol Policy 319 – Standards of Conduct

This policy has been updated because legislative action impacts its content. 2021 CA AB 958, effective Jan. 1, 2022, passed new law regarding law enforcement gangs that requires a policy prohibiting participation in these gangs and a violation being grounds for termination. Changes to this policy include:

- RELATIONSHIPS has been updated to include the prohibition (added §319.5.4(f)). In addition, some punctuation changes have been made to conform with current style guidance.

H. Updates to Lexipol Policy 329 – Gun Violence Restraining Orders

This policy has been updated because legislative action impacts its content. 2021 CA SB 538, effective Jan. 1, 2022, added a new section to the Penal Code that a court or court facility that receives petitions for any restraining order shall permit those petitions to be submitted electronically during and after normal business hours. The court or court facility has until July 1, 2023, to implement this service and develop local rules and instructions for filing. Changes to this policy include:

- GUN VIOLENCE RESTRAINING ORDERS has been updated to include an electronic petition, and a citation has been added (“submit the petition electronically or orally” and “Penal Code §18122” added to §329.3).

Unrelated to the legislative updates, additional changes include:

- In POLICY, grammar has been corrected (added “for” in §329.2).
- Gendered pronouns have been removed in GUN VIOLENCE RESTRAINING ORDERS.

I. Updates to Lexipol Policy 409 – Cite and Release Policy

This policy has been updated because legislative action impacts its content. 2021 CA AB 1171, effective Jan. 1, 2022, amended Penal Code § 1270.1 by deleting the cite for spousal rape from the statute. Changes to this policy include:

- In DISQUALIFYING OFFENSES, the applicable content has been removed (“Rape of a spouse (Penal Code § 262)).

J. Updates to Lexipol Policy 427 – First Amendment Assemblies

This policy has been updated because legislative actions impact its content. 2021 CA AB 48, effective Jan. 1, 2022, added law that prohibits the use of kinetic energy projectiles or chemical agents by any law enforcement agency to disperse any assembly, protest, or demonstration, except in compliance with specified standards. This bill also requires each law enforcement agency, within a specified timeframe, to post on their website a

summary of any incident in which a kinetic energy projectile or chemical agent is deployed by that agency for the purpose of crowd control. Changes include:

- USE OF KINETIC ENERGY PROJECTILES AND CHEMICAL AGENTS FOR CROWD CONTROL and its subsection, USE SUMMARY, have been added to this policy to address the new law (added §427.13 and §427.13.1).
- TRAINING has been updated to address the standards on appropriate use (new language added to §427.12).

2021 CA SB 98, effective Jan. 1, 2022, added new law regarding media access for journalists and news media for protected activity events pursuant to the First Amendment of the U.S. Constitution. Changes include:

- MEDIA ACCESS has been added as a new subsection (§427.9.1) in MEDIA RELATIONS to include the new law.

Unrelated to the legislative updates, additional changes include:

- Spacing has been corrected in UNLAWFUL ASSEMBLY DISPERSAL ORDERS.

K. Updates to Lexipol Policy 603 – Eyewitness Identification

A review of this policy has resulted in an update to one section. Changes to this policy include:

- EYEWITNESS IDENTIFICATION has been updated to clarify that an audio recording should be made when video recording is not feasible (added new language to §603.5).

L. Updates to Lexipol Policy 800 – Property and Evidence

This policy has been updated because legislative action impacts its content. 2021 CA SB 320, effective Jan. 1, 2022, amended law regarding protective orders in domestic violence matters by adding "ammunition" to the statute. Changes include:

- In RELEASE OF FIREARM IN DOMESTIC VIOLENCE MATTERS, terminology has been updated (added “or ammunition” to §800.6.9), and punctuation has been corrected.

M. Updates to Lexipol Policy 801 – Records Section

This policy has been updated because legislative action impacts its content. 2021 CA SB 715, effective Jan. 1, 2022, amended law regarding additional requirements of information to be entered in the Automated Firearms System. Changes to this policy include:

- RECORDS SECTION has been updated to add the new requirements (new text added to §801.3.2(h)).

N. Updates to Lexipol Policy 803 – Records Maintenance and Release

This policy has been updated because legislative action impacts its content. 2021 CA SB 16, effective Jan. 1, 2022, amended law removing the word "civilian" regarding complaints and renumbered various sections. Changes include:

- In RELEASE RESTRICTIONS, terminology has been removed (deleted “civilian”), and a citation has been updated (updated to Penal Code §832.7(b)(9)). Grammar and punctuation have also been corrected.

2021 CA AB 825, effective Jan. 1, 2022, amended law regarding security breaches and personal information. Personal information now includes "genetic data." Changes include:

- SECURITY BREACHES has been updated to include the addition.

O. Updates to Lexipol Policy 1000 – Recruitment and Selection

This policy has been updated because legislative actions impact its content. 2021 CA SB 16, effective Jan. 1, 2022, requires agencies to request and review personnel records of applicants with prior peace officer experience in this state prior to offering employment. Changes include:

- In SELECTION PROCESS, the request and review requirement has been added (added §1000.4(a)(1) and §1000.4(a)(2)).

2021 CA SB 2, effective Jan. 1, 2022, amended law regarding peace officer certification. Changes include:

- In SELECTION PROCESS, a review of prior law enforcement employment information that is maintained by POST has been added (Penal Code §13510.9)
- In EMPLOYMENT STANDARDS, a citation has been added (added “Penal Code §13510.1”).
- Disqualifications for employment as a peace officer have been amended to include those individuals who have had certification revoked, surrendered by law, or denied issuance. Also included are individuals identified in the National Decertification Index of the International Association of Directors of Law Enforcement Standards and Training or a similar federal government database that reflects revoked certification for misconduct or reflects misconduct that would result in a revoked certification in California (added §1000.7.1(i) and §1000.7.1(j)).
- STANDARDS FOR OFFICERS has been updated to include the additional standards (“excepted as provided by Government Code §1031.4” added to §1000.7.1(c)).

2021 CA SB 807, effective Jan. 1, 2022, amended the time frame for retention of employment records. Changes include:

- In RECORDS RETENTION, the time frame has been extended from 2 to 4 years.

2021 CA AB 89 amended the minimum age for peace officers except as provided for certain entities. Changes include:

- STANDARDS FOR OFFICERS has been updated to include the new requirements from 18 to 21 years of age.

2021 CA AB 1096, effective Jan. 1, 2022, removed the term "alien" from the laws in California. Changes include:

- In STANDARDS FOR OFFICERS, the term has been removed (§1000.7.1(b)).

P. Updates to Lexipol Policy 1003 - Anti-Retaliation

This policy has been updated because legislative action impacts its content. 2021 CA AB 26, effective Jan. 1, 2022, requires in policy a prohibition on retaliation against an officer who reports a suspected violation of a law or regulation. Changes to this policy include:

- RETALIATION PROHIBITED FOR INTERCEDING OR REPORTING has been added as a new subsection in RETALIATION PROHIBITED to include the prohibition (added §1003.3.1).

Q. Updates to Lexipol Policy 1004 – Reporting of Employee Convictions

This policy has been updated because legislative action impacts its content. 2021 CA SB 320, effective Jan. 1, 2022, amended law regarding protective orders in domestic violence matters by adding "ammunition" to the statute. Changes to this policy include:

- In PROCEDURE FOR RELIEF, terminology has been updated, and grammar has been corrected.

Unrelated to the legislative update, additional changes include:

- Spelling has been corrected in OTHER CRIMINAL CONVICTIONS AND COURT ORDERS (from “contendre” to “contendere” in §10004.3).
- Serial commas have been added in updated sections.

R. Updates to Lexipol Policy 1005 – Drug – and Alcohol – Free Workplace

This policy has been reviewed and updated for consistency with the Drug-Free Workplace Act, which requires federal grant recipients to maintain a drug-free workplace. The scope of this policy originally extended to drug, alcohol, and controlled substance use by members during the discharge of agency duties. However, that scope expanded as state and federal laws regarding marijuana began to diverge. This update is in keeping with the original scope of the policy. Revisions have been made to provide agencies with a policy that does not go beyond the requirements of the Drug-Free Workplace Act. Therefore, content related to the off-duty use of medical cannabis has been removed because the Drug-Free Workplace Act does not regulate off-duty drug possession or use by a federal grantee's employees. Please note that the removal of references to off-duty drug use from this policy does not mean that illegal off-duty activity by agency members is allowed. Lexipol's Standards of Conduct Policy addresses off-duty illegal conduct, including illegal drug use, by directing members to obey all federal, state, and local laws, as well as instructing members to conduct themselves in a manner that does not impair the good order and discipline of the agency. Changes to this policy include:

- A statutory citation (41 USC §8103) has been moved from GENERAL GUIDELINES to PURPOSE AND SCOPE.
- In GENERAL GUIDELINES, content prohibiting the use of alcohol and drugs in the workplace has been removed because it is duplicative of prohibitions provided in the Standards of Conduct Policy, gendered pronouns have been removed, and a policy reference has been corrected.
- USE OF MEDICATIONS has been updated for clarity (from “avoid taking” to “not use”); gendered pronouns have been removed.
- USE OF MARIJUANA has been renamed MEDICAL CANNABIS for broader applicability, and the content has been updated for clarity to specify that on-duty use of medical cannabis is prohibited.
- REQUESTING SCREENING TESTS has been renamed SCREENING TESTS, and the content has been updated to reflect best practice.

- SUPERVISOR RESPONSIBILITY has been renamed SUPERVISOR RESPONSIBILITIES to better reflect the contents, and the content has been updated for consistency with the rest of this policy.
- SCREENING TEST REFUSAL has been renamed DISCIPLINE to better reflect the contents, and gendered pronouns and redundant content have been removed. CONFIDENTIALITY has been updated to include an applicable policy reference (Personnel Records Policy #1012).

S. Updates to Lexipol Policy 1009 – Personnel Complaints

This policy has been updated because legislative action impacts its content. 2021 CA SB 16, effective Jan. 1, 2022, amended law deleting "his/her" from the statute and replacing it with "complaining party." Changes to this policy include:

- In ACCEPTANCE, gendered pronouns have been removed, and a serial comma has been added.

2021 CA SB 586, effective Jan. 1, 2022, authorized the Commission on Peace Officer Standards and Training (POST) to revoke a certified peace officer's certification under specified circumstances. The bill is specific to POST and their investigations; however, the bill does require law enforcement agencies to be responsible for the completion of an investigation of allegations of serious misconduct by a peace officer, regardless of their employment status. Changes include:

- In RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE, a citation (Penal Code §13510.8) has been added.

2021 CA SB 2 added law to the Penal Code that provides beginning Jan. 1, 2023, agencies to notify POST, on a form specified by POST, of certain personnel events that include separations from employment or appointments or events that could affect a peace officer's POST certification. Agencies must execute and maintain a POST affidavit-of-separation and submit to POST as required by Penal Code § 13510.9. The bill requires by July 1, 2023, any agency employing peace officers shall report to POST the separations from employment or any events that could affect certification that occurred between Jan. 1, 2020, and Jan. 1, 2023. The bill also requires that agencies provide POST access to investigation documentation for inspection or duplication for up to two years after reporting the disposition of an investigation. Changes include:

- REQUIRED REPORTING TO POST has been added as a new section (§1009.16) to include the reporting requirement.

T. Updates to Lexipol Policy 1012 – Personnel Records

This policy has been updated because legislative actions impact its content. 2021 CA SB 807, effective Jan. 1, 2022, amended law that certain personnel records are to be maintained for four years. This is the minimum period of retention. Government Code citations referencing the destruction of records were removed as the Records Maintenance and Release Policy directs that the Custodian of Records manages the records management system, including destruction of records. Changes include:

- DEPARTMENT FILE has been updated to include the longer records retention requirement (from 2 to 4 years for disciplinary action resulting from sustained internally initiated complaints; from 5 to 15 years for disciplinary action resulting

in sustained civilian's complaint involving misconduct; minimum 5-year retention for a civilian's complaint involving misconduct that was not sustained).

- INTERNAL AFFAIRS FILE has been updated to include the longer records retention requirement (from 5 to 15 years for sustained civilian's complaints involving misconduct; from 2 to 4 years for internally generated complaints; and at least 5 years-retention for "not-sustained" civilian complaint involving misconduct.").

2021 CA SB 16 and 2021 CA SB 2, effective Jan. 1, 2022, amended law relating to the retention and release of certain peace officer records. A complaint made by a member of the public that was not a sustained finding of misconduct shall be retained no less than five years. A complaint made by a member of the public that has a sustained finding shall be retained no less than 15 years. Changes include:

- DEPARTMENT FILE has been updated to include the updated retention requirements (§1012.3(e)(1), §1012.3(e)(2), and §1012.3(e)(3)),
- INTERNAL AFFAIRS FILE has been updated to include the updated retention requirements (§1012.6).

2021 CA AB 958, effective Jan. 1, 2022, added new law regarding law enforcement gangs. Information relating to the termination of a peace officer for participating in a law enforcement gang shall be disclosed to another law enforcement agency who is conducting a pre-employment background check on that officer. Changes include:

- RELEASE OF LAW ENFORCEMENT GANG INFORMATION has been added as a new subsection (§1012.8.3) in SECURITY to include the new requirement.

Additionally, the bills make a sustained finding involving force that is unreasonable or excessive, and any sustained finding that an officer failed to intervene against another officer using unreasonable or excessive force, subject to disclosure. The bills require records relating to sustained findings of unlawful arrests and unlawful searches to be subject to disclosure. The bills also require the disclosure of records relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in conduct involving prejudice or discrimination on the basis of specified protected classes. The bills expand the authorization to redact records to allow for the preservation of victim and whistleblower anonymity. The bills require records subject to disclosure to be provided at the earliest possible time and no later than 45 days from the date of a request for their disclosure, except as specified. Changes include:

- RELEASE OF PERSONNEL RECORDS AND RECORDS RELATED TO CERTAIN INCIDENTS, COMPLAINTS, AND INVESTIGATIONS OF OFFICERS; REDACTION; DELAY OF RELEASE; and NOTICE OF DELAY OF RECORDS have been updated to include the new legislative requirements (Penal Codes: §832.7(b)(1), §832.7(b)(3), §832.7(b)(4), §832.7(b)(5), §832.7(b)(6), §832.7(b)(7), and §832.7(b)(8)).

Unrelated to the legislative updates, additional changes include:

- MEMBER ACCESS TO HIS/HER OWN PERSONNEL RECORDS has been renamed MEMBERS' ACCESS TO THEIR PERSONNEL RECORDS. In addition, other gendered pronouns in the section have been removed, and serial commas have been added.