

LOS ANGELES POLICE COMMISSION

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September 20, 2022

BPC 22-195

The Honorable Public Safety Committee
City of Los Angeles
c/o City Clerk's Office
City Hall, Room 395
Los Angeles, CA 90012

RE: CITY COUNCIL FILE NO. 20-0776, WARRANTLESS SEARCHES.

At the regular meeting of the Board of Police Commissioners held Tuesday, September 20, 2022, the Board APPROVED the Department's report relative to the above matter.

Respectfully,

BOARD OF POLICE COMMISSIONERS

A handwritten signature in blue ink that reads "Rebecca Muñoz".

REBECCA MUÑOZ
Commission Executive Assistant

Attachment

c: Chief of Police

INTRADEPARTMENTAL CORRESPONDENCE

RECEIVED
RICHARD M. TERANK
EXECUTIVE DIRECTOR
DATE 9/14/22

September 14, 2022

1.1

RECEIVED

SEP 14 2022

POLICE COMMISSION
22-195

TO: The Honorable Board of Police Commissioners

FROM: Chief of Police

SUBJECT: WARRANTLESS SEARCHES – RESPONSE TO CITY COUNCIL MOTION
(COUNCIL FILE NO. 20-0776)

RECOMMENDED ACTION

1. It is recommended that the Board of Police Commissioners (Board) REVIEW and ACCEPT the attached response to the Public Safety Committee’s report regarding President Obama’s Task Force on 21st Century Policing recommendation that all police departments create a policy on seeking consent before conducting warrantless searches in order to build public trust.
2. It is recommended that the Board TRANSMIT to the Public Safety Committee the attached response.

DISCUSSION

On September 14, 2021, the Public Safety Committee considered a Motion (Harris-Dawson-Price-O’Farrell) relative to President Obama’s Task Force on 21st Century Policing recommendation that all police departments create a policy on seeking consent before conducting warrantless searches in order to build public trust. The Committee approved the recommendations in the Motion as follows:

1. DIRECT the Los Angeles Police Department (LAPD) to report on its internal policies on seeking warrants to conduct searches, and on policies that could be enacted that would encourage officers to seek warrants when feasible, even in cases where there might be a legal workaround.
2. DIRECT the LAPD to report on the establishment of a policy on seeking consent before conducting warrantless searches, as recommended in the final report of President Obama’s Task Force on 21st Century Policing.

The Los Angeles Police Department has reviewed all relevant notices, policies, and procedures with respect to warrantless searches and has identified current policies that address the Council’s directive. The Department already has robust measures in place which address the concerns emphasized in President Obama’s Task Force on 21st Century Policing.

The Honorable Board of Police Commissioners

Page 2

1.1

Should further information be required, please contact Lizabeth Rhodes, Director,
Office of Constitutional Policing and Policy, at (213) 486-8730.

Respectfully,



MICHEL R. MOORE
Chief of Police

Attachments

**BOARD OF
POLICE COMMISSIONERS**
Approved *September 20, 2022*
Secretary *Rebecca Munoz*

LOS ANGELES POLICE DEPARTMENT



MICHEL R. MOORE
Chief of Police

P.O. Box 30158
Los Angeles, CA 90030
Telephone: (213) 486-8590
TTY: (877) 275-5273
Ref #: 1.1

ERIC GARCETTI
Mayor

September 14, 2022

The Honorable Public Safety Committee
Office of the City Clerk
Room 395, City Hall
Los Angeles, California 90012

Honorable Members:

On September 14, 2021, the Public Safety Committee considered a Motion (Council members Harris-Dawson, Price and O'Farrell) relative to President Obama's Task Force on 21st Century Policing recommendation that all police departments create a policy on seeking consent before conducting warrantless searches in order to build public trust. The Committee approved the recommendations in the Motion as follows:

1. DIRECT the Los Angeles Police Department (LAPD) to report on its internal policies on seeking warrants to conduct searches, and on policies that could be enacted that would encourage officers to seek warrants when feasible, even in cases where there might be a legal workaround.
2. DIRECT the LAPD to report on establishment of a policy on seeking consent before conducting warrantless searches, as recommended in the final report of President Obama's Task Force on 21st Century Policing.

Background

Both the United States Constitution and the California Constitution protect persons and their effects from unreasonable search and seizure by the government. To ensure government actions are reasonable, a neutral magistrate must approve a search warrant prior to a government search. The requirement that a search warrant be issued prior to a search is not, however, absolute. There are long-standing, well-established constitutional exceptions to the requirement. These include searches incident to arrest, items in plain view, certain exigent circumstances, consent, abandoned property, automobile searches, inventory searches, searches at the border, and others. These exceptions are not a "workaround" but rather judicially authorized exceptions that recognize the practicalities surrounding frequently encountered law enforcement situations.

For instance, the search of an automobile on the roadway is generally excepted from the warrant requirement because the inherently mobile nature of a vehicle makes it impractical to seek a

warrant every time probable cause exists for a vehicle search. Similarly, it would be impractical to seek a warrant each time someone is lawfully arrested; therefore, the courts allow a warrantless search incident to a lawful arrest. If officers are actively chasing a dangerous suspect who enters a home, the courts understand that officers should not stop at the front door and seek a warrant; thus, officers may enter that home without a warrant.

Consent, appropriately sought and freely given, is another example. It would not be reasonable to delay a member of the community and burden the criminal justice system with the preparation of a search warrant, if the person to be searched offers voluntary and informed consent.

These exceptions, and the many cases surrounding warrants and warrantless searches are well-settled law, and Department personnel are trained and adhere to the Fourth Amendment's requirements and the judicially authorized exceptions. In addition, as outlined in the Appendix and below, the Department offers greater controls and limitations on personnel performing searches than the law requires. This is done to educate the public, add transparency to law enforcement's public safety function, and to build trust.

Internal Policies (Recommendation No. 1)

The Department conducted a thorough review of current guidance regarding search and seizure, and in particular, the use of warrants. In total, the Department's policies and training of its officers significantly furthers the Department's commitment to procedural justice, transparency, and the fostering of public trust.

The Department's internal policies provide significantly more protection, and are significantly more restrictive, than the law requires. Department training for officers, detectives, and supervisors is ongoing, and emphasizes procedural justice, especially when interacting with the subject of a search. Relevant Department guidance is summarized in the Appendix.

In sum, the Department relies on well-settled law, enhanced by internal guidance, to educate officers on when to seek a warrant, or when to utilize an exception to the search warrant requirement. As the law in this area is intensely fact-specific, utilizing the existing legal framework makes more sense than a policy change that mandates seeking a warrant even when a well-recognized, legal, and time effective alternative is available.

Consent (Recommendation No. 2)

Voluntary and informed consent is one of the several valid exceptions to the search warrant requirement. The Department is aware that both voluntary and informed consent are necessary not just as a matter of law, but as a method to promote trust and respect. Even with consent, the Department is aware that searches of a person or place are sometimes invasive and can erode public trust in law enforcement. For this reason, Department policy mandates greater restrictions on consent searches than the legal requirements. Specifically, the law requires the following:

1. Consent is, in fact, given;
2. Consent was voluntary;
3. Search is limited to the scope offered by the consenting party;
4. Search shall not be overly intrusive or destructive; and,
5. Search shall not be unreasonably extended in duration.

However, Department policy mandates significantly more than these five legal requirements. For instance, while the law recognizes the right to search immediately upon the receipt of “implied” consent, Department employees must confirm implied consent verbally. In fact, the Department requires written or verbal consent for all consent searches.

If consent is given in writing, Department policy instructs officers to use *Consent to Search Form, Form 11*, to document consent. The Consent to Search Form requires that when officers complete the form, they list the premises, person, property or vehicle to be searched. The subject of the search must print and sign, acknowledging that:

1. “I have been asked by the below listed Los Angeles Police Officers to permit a complete search...”
2. “I have been advised of my right to refuse consent...and to refuse to sign this form...”
3. “I am giving permission for the search freely, voluntarily, and without any threat or promise having been made...”
4. “I authorize these officers to take any items which they determine may be related to their investigation.¹”

In the event of verbal consent, officers are provided a script for recording this consent on their Body Worn Video (BWV) cameras. It reads, in pertinent part:

1. “May I have your permission to search your ____ (e.g., premise, person, personal property, or vehicle)?”
2. “You may refuse or withdraw your consent at any time.”
3. “Do you understand?”²

In both cases (verbal and written consent), the policy explains that officers should also utilize their BWV cameras to narrate *during* their search, pointing out such information as the reason for the search, the items they are searching for, the location they are searching, any evidence recovered and the location of recovery.

Finally, the Order establishes audit responsibility, which lies with the Commanding Officer, Audit Division.

¹ *Consent to Search Form*, No. 11(04/19)

² *Consent to Search Verbal Advisement*, Form 15.05.00 (09/20)

Conclusion

The LAPD leads the nation in progressive search policies, and offers significantly more protection to the community than the law requires. There is an organizational preference for the use of search warrants whenever practicable. However, both the realities of police service delivery, and the interest of justice sometimes necessitate that an exception to the search warrant requirement be invoked.

In the event that a consent search is needed, it is this Department's policy to seek proper, lawful consent, document that consent in writing and/or via video recording, and educate the subject of a search as to the reasons for the search and their right to rescind consent, and video record the conduct of the search. These policies combine to demonstrate our commitment to the tenets of 21st Century Policing.

If you have any questions or concerns, please contact the Office of Constitutional Policing and Policy at (213) 486-8730.

Respectfully,

A handwritten signature in blue ink, appearing to read 'MICHEL R. MOORE', with a stylized flourish at the end.

MICHEL R. MOORE
Chief of Police

Enclosures

APPENDIX

1. Office of the Chief of Police Notice, *Consent to Search Form, In House Form 11 – Revised; and, Consent to Search Form, In House Form 12 (Spanish Version) – Revised*, dated April 23, 2021.

This notice, and the accompanying form, facilitate the documenting of consent and reaffirm the individual's right to withdraw consent.

2. Training Bulletin, *Contacts with the Public – Part 1, Legal Consideration*, dated March 2021.

This bulletin provides Department personnel with options in identifying and articulating the unique and specific details of encounters which may lead to an arrest. The bulletin defines and explains the Fourth Amendment, procedural justice, consensual encounter, reasonable suspicion and probable cause.

3. Special Order No. 28, *Search and Arrest Warrant Service Policy and Procedures – Department Manual Established; Search Warrant and Probable Cause Arrest Warrant Procedures – Revised; and, Service of High-Risk Warrants – Deleted*, dated November 20, 2020.

This Order explains the “how to” of search warrant service. The execution of search warrant and/or probable cause arrest warrants is one of the most necessary, but high-risk functions of Law Enforcement. For the Los Angeles Police Department, reverence for human life, as well as the safety of Department personnel and members of the community shall be paramount in warrant operations. Moreover, it reminds personnel that any warrant entry is a highly intrusive action. For these reasons, and in compliance with California Penal Code Sections 844 and 1531, absent exigency, all warrants shall be executed following knock-notice.

4. Legal Bulletin dated December 17, 2019.

The legal bulletin advises personnel that during traffic stops, routine searches of vehicles for driver licenses, registration, and/or proof of insurance are no longer permissible. Based on the rulings in *In re Arturo D. and Hinger (2002)* and *People v. Lopez (2019)*, the desire to obtain a driver's identification during a traffic stop does not constitute an independent exemption to the Fourth Amendment warrant requirement.

5. Office of the Chief of Police Notice, *Searches of Cell Phones Incident to Arrest – Revised*, January 15, 2019.

This notice discusses the ruling in *People v. Diaz (2011)* that held if a cell phone is immediately associated with the defendant's person, the warrantless search of the cell phone is valid.

6. Administrative Order No. 19, *Search Warrant and Probable Cause Arrest Warrant Procedures – Revised; Mandatory Compliance with Electronic Communication Privacy Act – Established; and, Search Warrant and Warrant Service/Tactical Plan Checklist, Form 12.25.01*, dated September 10, 2018.

This Order explains the required paperwork to be left at the scene of a search warrant, and certain timelines that must be followed. The order also informs Department employees regarding the provisions and requirements of the California Electronic Communications Privacy Act.

7. Legal Bulletin, *Searches of Vehicles Incident to Arrest*, dated April 23, 2009.

This bulletin discusses the case of *Arizona v. Gant (2009)*, holding a vehicle search justified when an occupant is arrested, and it is reasonable to believe the vehicle holds evidence.

8. Risk Management Group Legal Bulletin, *Entry into Residence Based on Consent of Co-occupant Over the Objections of Another Co-occupant*, dated March 23, 2006.

This bulletin discusses *Georgia v. Randolph (2006)*, stating that an occupant of a residence may object to a search of the residence for evidence, even when a co-occupant offers consent.

9. Los Angeles Police Department Search Warrant Procedures Guide, dated 2003.

This guide provides emphasis on accountability and stronger management controls over the process through which Department personnel obtain search warrants and probable cause arrest warrants. The guide also provides guidance on Search Warrant and Affidavit, Mechanics of Preparation, Legal Considerations, Warrant Service Planning and Service of the Warrant.

10. Administrative Services Notice, *Entry into Residences or Locations and Possible Removal in Suspected Child Abuse Investigations*, dated June 11, 2003.

This notice states that officers may be justified in a warrantless entry into a premise to prevent possible child abuse and removal of victims if there are exigent circumstances.

PUBLIC SAFETY COMMITTEE REPORT relative to President Obama's Task Force on 21st Century Policing recommendation that all police departments create a policy on seeking consent before conducting warrantless searches in order to build public trust.

Recommendations for Council action, pursuant to Motion (Harris-Dawson – Price):

1. DIRECT the Los Angeles Police Department (LAPD) to report on its internal policies on seeking warrants to conduct searches, and on policies that could be enacted that would encourage officers to seek warrants when feasible, even in cases where there might be a legal workaround.
2. DIRECT the LAPD to report on the establishment of a policy on seeking consent before conducting warrantless searches, as recommended in final report of President Obama's Task Force on 21st Century Policing.

Fiscal Impact Statement: Neither the City Administrative Officer nor the Chief Legislative Analyst has completed a financial analysis of this report.

Community Impact Statement: None submitted.

SUMMARY

At a regular meeting held on September 1, 2021 the Public Safety Committee considered a Motion (Harris-Dawson – Price – O'Farrell) relative to President Obama's Task Force on 21st Century Policing recommendation that all police departments create a policy on seeking consent before conducting warrantless searches in order to build public trust. After providing an opportunity for public comment, the Committee approved the recommendations in the Motion, as detailed above. This matter is now transmitted to Council for its consideration.

Respectfully Submitted,

PUBLIC SAFETY COMMITTEE

<u>MEMBER</u>	<u>VOTE</u>
RODRIGUEZ:	YES
O'FARELL:	YES
BUSCAINO:	YES
LEE:	YES
HARRIS-DAWSON:	YES

KK 9/1/21 Council file No. 20-0776

-NOT OFFICIAL UNTIL COUNCIL ACTS-

MOTION AD HOC POLICE


Individuals in the United States are protected from unreasonable search and seizure by the Fourth Amendment of the Constitution, which states that “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” In general, this requirement means that a police officer must seek a warrant to search a person or their property while investigating a crime. However, warrants are not required for all searches. In fact, most searches by police officers are actually done without a warrant, which is allowed when the search is being conducted as part of an arrest, something illegal is in plain view of an officer, if an individual gives consent for a search, or exigent circumstances exist where taking the time to seek a warrant would be a harm to public safety.

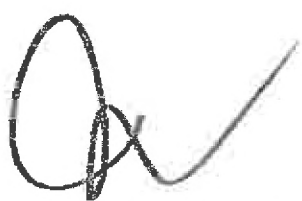

While these exemptions to Fourth Amendment requirements for a warrant are important, and it is not feasible for an officer to seek a warrant in many cases, there are concerns that police officers, including those in the Los Angeles Police Department (LAPD) may use these exemptions instead of requesting a court grant them a warrant. In order to protect the rights of the residents of the City, the LAPD should ensure that it is seeking warrants when feasible, even if some other exemption may exist that would allow an officer to avoid obtaining one. Further, individuals are often not aware that they can refuse to give consent for a warrantless search if they are not going to be arrested. This can create distrust in the community for the police, and President Obama’s Task Force on 21st Century Policing recommended that all police departments create a policy on seeking consent for searches in order to build public trust.

I THEREFORE MOVE that the Police Department (LAPD) be directed to report on its internal policies on seeking warrants to conduct searches, and on policies that could be enacted that would encourage officers to seek warrants when feasible, even in cases where there might be a legal workaround.

I FURTHER MOVE that the LAPD be directed to report on the establishment of a policy on seeking consent before conducting warrantless searches, as recommended in final report of President Obama’s Task Force on 21st Century Policing.

PRESENTED BY: 
MARQUEECE HARRIS-DAWSON
Councilmember, 8th District


CURREN D. PRICE, JR.
Councilmember, 9th District


SECONDED BY: 

ORIGINAL