

PAUMA VALLEY COMMUNITY SERVICES DISTRICT

33129 Cole Grade Road ♦ Pauma Valley, California 92061

Telephone (760) 742-1909 ♦ Fax (760) 742-1588

April 30, 2020

Subject: Security Department Changes

Dear PVCSD Community Members,

The Pauma Valley Community Services District (PVCSD) Board of Directors (Board) would like to inform you of modifications being considered to the Security Department.

The Board is considering reversing the policy of having Security Officer's possess firearms and K9s. No other changes are being considered.

Our rationale is described in the attached documents prepared by the Board, and our legal counsel.

Your comments are welcome. We request your written comments by May 6, 2020 so they can be delivered to the Board on May 7, 2020 in advance of the Special Meeting where this topic will be addressed. The Special Meeting will be held via Zoom (virtual conferencing) on May 8, 2020 at 10 a.m. Agenda attached.

Please direct letters to: PVCSD Board of Directors

Email: gm.pvcسد@gmail.com

Mail: 33129 Cole Grade Rd. Pauma Valley, CA 92061

Sincerely,

Board of Directors
Pauma Valley Community Services District

President/Treasurer-Sam Logan

Vice President-Bill Schultz

Director-Heidi Person

Director-Laurie Kariya

Director-Bill Jacobs

Pauma Valley Community Services District
33129 Cole Grade Road * Pauma Valley, CA 92061
(760) 742-1909 * (760) 742-1588

NOTICE OF PUBLIC MEETING

DATE: Friday, May 8, 2020
TIME: OPEN Session - 10:00 a.m.
PLACE: <https://us02web.zoom.us/j/83785420781>
Phone: (669) 900-6833 Passcode: 837-8542-0781
Audio through Zoom online portal is also an option.

The District meeting room will NOT be open for public attendance, per direction of the Governor of California and the County Public Health Officer.

AGENDA

1. Call to Order
2. Open for Public Comments on
Matters Not on the Agenda
3. Discussion and Possible Action
Related to Security Department
Equipment
 - a. The Board will discuss its current
policy of having guns and K9s be
tools for Security Patrol Officers.
The Board will listen to public
comment. The Board will decide if
the current policy will change.
4. Adjournment



April 30, 2020

SECURITY AGENDA FOR 05/08/20 BOARD MEETING

FACTS:

- We are not eliminating the 24/7 Security Patrol from Pauma Valley CSD.
- CSD remains financially healthy and any proposed change to our existing Security Services is not financially driven.
- PVCSD did not fire the former Security Captain.

GM + Board Goals:

- Provide good business sense and fiduciary responsibility in our decision processes.
- Provide all PVCSD services in a courteous and efficient manner.
- Lower risks and align our services with the needs of the community.
 - The entire Board has been involved in reviewing Risks, Security Services, Tools, and other outsourced support services.
 - Our GM has it built into his Goals + Initiatives to be constantly aware of maintaining a good balance in the provision of services.

PURPOSE

The purpose of this meeting is to review security data collected relative to risk and crime for our community, and as a Board review the equipment utilized by our patrol officers to service the needs of our community.

In previous meetings our GM stated that our current policy of requiring patrol officers to carry guns and K9s poses a high liability to this community. Thus, the following questions are posed as **discussion points** to this community:

1. Are we using the right level of security tools to mitigate the safety and security risks in this community and the PVCSD boundaries?
2. Do we reverse the policy decision on having patrol officers carry guns and K9s?

Board member Jacobs suggested that, in order to make an unbiased, informed decision, research would need to be gathered to base it on facts.

The following data was gathered:

- We looked at the key criteria of geographical risk.
- We looked at local crime statistics.
- We interviewed local law enforcement.
- We compared our security level to that of other similar communities.
- We received legal counsel.

SECURITY AGENDA FOR 05/08/20 BOARD MEETING

Policy: Per our handbook, “the Security Patrol Officer will be responsible for the safeguarding of the lives and property of all District residents during the period of his or her assigned watch.”

Protocol: Any situation, which is believed to be a danger to the public, is reported to the Sheriff’s department immediately via 911 for response. Our Patrol Officer’s will respond first and are trained to handle conflict with techniques learned in verbal judo class, or scenario training led by the Security Supervisor. In dangerous situations they will keep their distance and wait for a Deputy to arrive.

Facts to be aware of:

- Firearms are being carried by Patrol Officers who have the State’s base level of required training.
- PVCSO Patrol Officers are **not** sworn Peace Officers.
- PVCSO Patrol Officers do not train in tactical scenarios like ordinary law enforcement and do not have the same immunity as law enforcement.
- Guns are not needed to perform the duties of a PVCSO Patrol Officer as evidenced by any Monthly Security Report or Daily Activity Log.
- Dogs are not needed to perform the duties of a PVCSO Patrol Officer as evidenced by any Monthly Security Report or Daily Activity Log.
- Dogs can do permanent bodily injury.
- Both guns and dogs have permanent consequences, which put the District and its community property owners at risk.
- Upon his hire two years ago, our GM met with the CHP Captain and discussed their agreement with supporting the PVCSO community. They stated that they would increase presence at the sub station and this has been the case since then.
- Pauma Reservation Police are armed and patrol their property along boundaries of owned land at the back gate. They are not patrolling inside the gates.
- A Sheriff’s Deputy is often in the Pauma area traveling from Valley Center to the 15. Only 3 deputies are on patrol per shift covering a 340 sq mi area. Responses are prioritized by the Sheriff’s dispatch center based on the severity of the call’s details.
- We are not cancelling or cutting back on our 24x7 Patrol Services.

SECURITY AGENDA FOR 05/08/20 BOARD MEETING

The following data was collected. A decision on whether to modify a policy can take place only after all Board Members meet to discuss the item and after public comments are heard.

GEOGRAPHIC RISK

- We live in an area exposed/open to the potential for someone to enter this community via the dog park, Hwy 76 from Cole Grade Rd/back gate area, and/or Pauma Heights Rd.
- We can't calculate the likelihood of someone enacting crimes in our community. Since the entire PVCC community is not fenced, it is unreasonable to expect a 100% secure boundary. That's why each resident needs to make their own determination as to how they want to create their own personal security level.
- Use common sense and lock your doors.
- If anyone is losing sleep over their Security, we have 3 Board members (Bill, Heidi, Laurie) who are versed in Security and can make themselves available for a physical security review to discuss systems and fencing.

CRIME SUMMARY

- In a six-month period from 02/14/19 thru 08/22/19, there were 25 total arrests made in the area defined as Pauma Valley.
 - 8 = DUI
 - 7 = DRUGS
 - 3 = FELONY
 - 2 for Parole Violations
 - 1 for multiple (6) firearm offenses
 - 4 = DOMESTIC
 - 3 = OTHER
- Our crime rate is 24.58% lower than the national average.
- **No area is devoid of crime**, but Pauma Valley is rated as one of 3 "Safest Valley Center neighborhoods".
- 1 exception was one of our own Security officers who entered several homes, without reason and was subsequently fired.
- It's been noted that there is drug related crime on the reservations. This data was not available to us but, to our knowledge, it has not impacted us directly.

SECURITY AGENDA FOR 05/08/20 BOARD MEETING

INTERVIEWS

- We interviewed our own Security staff
- We interviewed with 3 officers from the Valley Center Sheriff's office re) their perception of our needs and liability.
 - Each of the three declined to go on record as to whether they thought our Patrol Officers should carry a firearm or a K9, but they were clear that "we should stay within the confines of "Observe + Report" and NOT engage if a crime is being committed.
 - They warned that if someone is shot, EVERYONE will be named in a civil suit, this includes CSD and all of the residents inside PVCC because these officers are "staff employees and not "contract services".
 - They all concurred with the excess liability aspect if our employee shoots someone.
- Laurie followed up with the Sheriff on their offer to perform a free Risk Assessment, but they couldn't provide one at this time due to COVID-19 restrictions.
- The Sheriff's office suggested that we check with other country clubs.

SECURITY COMPARISONS

- Phone interviews took place with 10 similar gated golf course communities.
- The Bridges CC, The Crosby CC, The Farms CC, Rancho Santa Fe CC and Del Mar CC.
- Included were PVCC, Bear Creek, Bermuda Dunes, Dove Canyon, and Steel Canyon.
- **NO ONE, OTHER THAN PVCSD, HAS DOGS!**
- **ONLY RANCHO SANTE FE AND PVCSD HAVE PATROL OFFICERS w/GUNS!**
 - Rancho Santa Fe stated that they are exposed, they have a high number of B+E's (breaking + entry violations) and they are in a high-risk area.

LEGAL LIABILITY

- **In conversations with 3 officers from the Valley Center Sheriff's Office, they stated that both firearms and K9s carry an increased liability to PVCSD and ALL district residents, if a civil lawsuit is filed against us for a shooting or injury.**
- **Per our attorney at BB&K**
 - **"Although, if we outsource (*the patrol service and kept the firearms*), we can certainly have the vendor indemnify us and help carry the burden if we are sued. Outsourced security vendors would necessarily provide some level of indemnification if liability arose."**
 - **"The real issue appears to be not whether it is legal to have your guards carry guns but whether it is wise to have them carry guns given the potential exposure. In your case, you provide your guards a lethal weapon with – no offense – very little training or qualifications. My firm represents a number of law enforcement agencies, and I can say without a doubt that even highly trained**

SECURITY AGENDA FOR 05/08/20 BOARD MEETING

officers come under intense scrutiny and suit for use of lethal force. It is difficult enough to fight off a lawsuit and provide that lethal force was “within policy” when the officer is highly trained.”

- **“I can imagine it would be a nightmare in a case where the employee is a low-paid, minimally trained security guard rather than a peace officer.”**
- **“I would lean against providing your security guards with guns because of the added exposure to potential suits for wrongful death or personal injury.”**

- Clarifications to BB+K data:
 - i. Our Security Patrol Officers purchase his/her own weapons and ammunition, not PVCSD.
 - ii. To be licensed and hired, they must meet and pass State of CA requirements for a criminal background check and firearm training.
 - iii. Our Security Patrol Officers are paid a fair rate for the responsibilities they are assigned.

- **No liability = no dogs and no guns**
- **Limited liability to some extent = tasers or outsourcing**
- **Highest liability to the PVCSD and this community = our current policy**

OTHER RELEVANT INFORMATION

- We promoted from within and made Todd Albert the Security Supervisor (a 19 yr employee) after he passed a 90-day probationary period. Todd's a well-qualified individual. He's proven himself and earned the respect of his peers.
- Security Officers are not “Sworn” officers.
- Our Patrol and Gate Officers have a State of California Guard Card in which puts them through an extensive criminal background check.
 - They do not have PC832.
- Each Patrol Officer has the State required training that allows them the Permit for Exposed Firearm, issued by the Bureau of Security and Investigative Services (BSIS) under the State of California - Department of Consumer Affairs.
 - Each permit is allowed in conjunction with a valid Security Guard Card for a specific caliber weapon.
 - Copies are on file in the district office.
- We have a “Use of Firearms” policy.
- We have a “K9” Policy.
- We have a “Use of Force” policy.
- Our Patrol Officer staff remains unchanged at 5 people.
- Our Gate Officer staff remains unchanged at 5 people.
- Hiring new staff is an issue that all employers face.
 - This is not a hi-tech area, full of abundant jobs. Therefore, our recruitment reach is limited BUT we've never been unable to rigorously screen and hire the right candidates.

SECURITY AGENDA FOR 05/08/20 BOARD MEETING

- We are confident that we can hire motivated, dependable, caring Patrol Officer candidates that can fulfill the duties of the position.
- Our HR philosophy has not changed and it is to provide career growth opportunities, for those that desire it. We promote from within by giving our “qualified” Gate Officers the opportunity to move into a Patrol Officer role, when those positions become available.
- The functions of Security Patrol and Security Gate Attendant are operating well. “Rebuilding the Security Group” is not required!
- Our neighborhood patrol frequency has increased and the concerns surrounding speeding have decreased.

DOGS

- Our GM took the following steps to improve the K9 living conditions:
 - Specifically, we have enhanced the dogs living conditions by providing a covered shelter, adding hot water for bathing and cleaning the cages, and a fenced exterior area for exercise.
- Under the Security Supervisor’s direction (Todd Albert), the Patrol Officers have also increased the K9 exercise program.
- Since not all Patrol Officers have K9’s it is not essential to have a K9 Program
 - I.e. if the argument is made that a K9 is needed to clear a house then our Patrol Officers without K9s would not be permitted to do such a task. Past experience shows that Patrol Officers clear houses whether they have a K9 or not.
 - I.e. if the argument is made that a K9 is needed to defend the community from trespassers then our Patrol Officers without K9s would not intercept a trespasser for questioning. Patrol Officers without dogs perform this function when the situation arises.

DISCUSSION ITEM

Based on data collected to date, crime statistics, crime history, and the opinions of Sheriff’s Deputies and our legal counsel, does the risk and liability to the District and the individual property owners of the community justify having a policy that includes guns and dogs, which can be lethal?

MEETING

DATE: Friday, May 8, 2020
TIME: OPEN Session - 10:00 a.m.
PLACE: [see agenda](#)
Phone: [see agenda](#)
Pass code: [see agenda](#)

GM - Bobby Graziano
President - Sam Logan
Board Members - Bill Schultz, Bill Jacobs, Heidi Person, Laurie Kariya



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ATTORNEYS AT LAW

Memorandum

To: Board of Directors
Pauma Valley Community Services District

From: Joseph Ortiz, Esq.

Date: April 27, 2020

Re: Provision of Lethal Force to District Security Personnel

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BACKGROUND INFORMATION

The Pauma Valley Community Services District (“District”) has historically authorized its nonsworn security personnel to both carry firearms and utilize trained canines during their shifts. However, while security patrol officers provide “emergency assistance” when necessary, their essential duty is solely to “observe and report.”¹ In that light, the Board has asked whether it is legal or advisable to allow security personnel to continue to carry firearms, utilize canines, or have access to other lethal force during their shifts. This memorandum reviews the legality of allowing nonsworn personnel to brandish lethal force and the potential liability for the same. We conclude that, while there is no legal prohibition, the provision of lethal force to security personnel creates unwarranted legal exposure.

QUESTIONS PRESENTED

1. Is it legal to allow nonsworn personnel to carry firearms, utilize canines, or otherwise have access to lethal force during their shifts?
2. Presuming it is legal, are there liability concerns that arise from allowing nonsworn personnel to carry firearms, utilize canines, or otherwise have access to lethal force during their shifts?

BRIEF ANSWERS

1. It is not illegal to allow nonsworn security personnel to carry firearms, utilize canines, or otherwise have access to lethal force in the furtherance of their duties. Though Penal Code section 171b makes it generally unlawful to bring firearms or deadly weapons into a public building or meeting, there is an express exception for authorized security personnel.

¹ See Security Patrol Officer Job Description (“ . . . insure that other agencies are promptly and properly informed so that they may provide assistance, should that be necessary.”)



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2. Yes. Allowing nonsworn security personnel to brandish firearms, utilize canines, or otherwise have access to lethal force creates a potential liability. In California, an employer is typically liable for the acts its employees, whether the acts were intentional or negligent. (*Carr v. Wm. C. Crowell Co.* (1946) 28 Cal.2d 652, 654; *Rodgers v. Kemper Constr. Co.* (1975) 50 Cal.App.3d 608, 621.)

In the sworn context, personnel are provided qualified immunity, but there is still exposure and a trend toward liability for misuse of deadly force. For instance, in January of 2020, Assembly Bill 392 (“AB392”) raised the standard for sworn officers, making it illegal to use deadly force unless a totality of the circumstances would have led a reasonable trained officer to find it necessary. This new standard is subject to two additional hours of training for sworn officers, in addition to the other various Police Officer Standards Training (“POST”). Given that the standards and potential liability are high even for highly trained sworn personnel, it seems imprudent to allow for potential use of lethal force by minimally trained security personnel. Given that the position’s essential “observe and report” duty does not require the application lethal force, we see no advantage to assuming the potential liability.

ANALYSIS

1. IT IS NOT ILLEGAL TO ALLOW LICENSED SECURITY OFFICERS TO CARRY

As background, California Penal Code section 171b makes it a crime – punishable by imprisonment for not more than one year – to bring a firearm or deadly weapon into a public building or at any meeting required to be open to public. The clear reasoning behind the law is to prevent the presence of weapons in a place of public gathering from cooling free speech or the exercise of government. Thus, as a preliminary matter, just bringing a weapon into a District building or meeting is a criminal offense unless excepted under the law. However, there is an exception where the individual has received written permission from an authorized District official for the purpose of providing security. (Cal. Penal Code, §171b(b)(4).) Here, historically, the District’s security patrol personnel have been previously authorized to carry.

2. AN EMPLOYER IS GENERALLY LIABLE FOR DAMAGE CAUSED BY ITS EMPLOYEES

In California, employers are vicariously liable for the tortuous acts of their employees occurring within the scope of their employment, regardless of whether intentional or negligent. (*Carr v. Wm. C. Crowell Co.* (1946) 28 Cal.2d 652, 654; *Rodgers v. Kemper Constr. Co.* (1975) 50 Cal.App.3d 608, 621.) The policy is based on allocate risk to the employer, who benefits from the performance of the employees work underlying the tortuous act, and who is better able to absorb and spread the cost of the loss by means of income and insurance, than to the plaintiff-victim. (*Hinman v. Westinghouse Elec. Co.* (1970) 2 Cal.3d 956, 959-60.) Unfortunately, the test for determining whether an employee’s tortuous acts fall within the scope of employment has been liberally construed based on whether the act: (1) was required by the employer; (2) was



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incidental to the employee's duties; or (3) was foreseeable. (*Clark Equipment Co. v. Wheat* (1979) 92 Cal.App.3d 503, 520.) The vicarious liability test for foreseeability is construed much broader than typical negligence foreseeability. An employee's tortious conduct is considered to be within the foreseeable scope of his employment if it can be fairly regarded as typical or broadly incidental to the employer's particular enterprise. (*Rodgers, supra*, 50 Cal.App.3d at p. 619.)

Here, it appears highly likely that the District would be held liable for injury or death arising from its security patrol personnel's use of a firearm or canine resources. First, as it stands now, the security personnel have firearms and canines as part of the position. Second, while use of a firearm or canine is not central to the "observe and report" duty, it would at least be perceived as incidental to the requirement that security personnel respond to emergencies. In other words, the use of a firearm could be incidental in responding to an emergency related to an apprehension of threat of intrusion. Finally, it is foreseeable that a security employee may use his or her firearm in a heated situation: It is a common saying that, "If all you have is a hammer, every problem looks like a nail." This means that, because the security personnel are provided firearms and canines, they may look to those tools. Thus, it appears more likely than not that the District would have significant exposure for injury or death arising out of the use of lethal force by security personnel.

3. SWORN LAW ENFORCEMENT ARE ENTITLED TO IMMUNITY FOR LEGAL INVESTIGATIONS THAT IS UNAVAILABLE TO SECURITY GUARDS

Sworn law enforcement is provided certain immunities for conducting legal investigations under both State and Federal law. California Government Code Section 820.4 provides, "[a] public employee is not liable for his act or omission, **exercising due care**, in the execution or enforcement of any law." (Emphasis added.) Government Code Section 845 further exonerates law enforcement from liability stemming from a failure to provide police services. At the federal level, law enforcement is the recipient of "qualified immunity." The defense of "qualified immunity" protects government officials from liability for civil damages insofar as their conduct "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." (*Morgan v. City of Pleasant Hill* (2005) 2005 U.S. Dist. LEXIS 40382, 7.) "The central purpose of affording public officials qualified immunity is to protect them 'from undue interference with their duties and from potentially disabling threats of liability.'" (*Elder v. Holloway* (1994) 510 U.S. 510, 515.) Where the law is determined to be clearly established the court analyzes whether, under the law, "a reasonable official could have believed his conduct was lawful." If the court finds that the conduct was reasonably believed to be lawful, the immunity will apply. Thus, sworn officers and government officials have a qualified immunity for acts of sworn law enforcement. While the risks may be similar, this protection is not extended to security personnel wielding lethal force.