



## DEPARTMENTAL GENERAL ORDER

### **K-03: USE OF FORCE**

Effective Date:

Coordinator: Training Division

---

### **Summary of Policy Draft Edits – August 2020 Status Report**

At the end of June 2020, the Ad Hoc committee on use of force designated ACLU staff attorney Allyssa Victory, Esq. as a legal/policy expert on use of force. The following is the August draft of proposed changes by ACLU which have been reviewed and discussed with the Ad Hoc Commissioners.

#### **Summary of key changes:**

##### **1) Clarity and Consistency**

Technical edits to simplify organization of document, headings, and numbering and flow of policy. Removal of duplicative, conflicting, and repetitive sections on the same topic. E.g. prior draft used “immediate threat” when AB 392 standard uses “imminent threat”. There were also numerous places where the force standards for nonlethal (objective reasonable) was conflated with the standard for lethal force (necessary).

##### **2) Reconceptualization of Use of Force**

The prior version of the policy categorizes various levels of use of force each connected to levels of “resistance”. Resistance may be only one factor in the totality of circumstances of whether force was lawful. As we know, officers have used force when there is no “resistance” at all and/or when the resistance is minimal and not threatening any injuries. Connecting force options to resistance levels also unduly focuses the policy on what individuals may be doing instead of what the policy is for officers. The current policy proposes complete removal of “resistance” standards and focuses instead on officers’ options being de-escalation; less-lethal force; and lethal force. The force options had varying of levels of force that are now simplified and keyed to the two standards for less lethal force (objective reasonable) and lethal force (necessary). The current policy also proposes an explicit section on “prohibited” force to codify bans already enacted including carotid and chokehold restraints which were previously listed only in the “definitions” section of the policy. The prohibited section also proposed to remove many less-lethal weapons leaving officers with options that focus on de-escalation in hopes to encourage force in only rare encounters.

##### **3. Review and Training Guidance**

Detailed guidance on review of use of force including factors of review are mandated by SB 230 which goes into effect Jan 1, 2021. An entire section on review of use of force was added to begin to meet the requirements. The prior version of the policy included only guidance on admin leave and counseling for officers.

<b>A. MISSION, PURPOSE, AND CORE PRINCIPLES</b>	<b>4</b>
<b>A-1. PROTECTION AND SANCTITY OF HUMAN LIFE PARAMOUNT</b>	<b>4</b>
<b>A-2. DEPARTMENT COMMITMENT TO LAW, DEFENSE OF CIVIL RIGHTS AND DIGNITY, AND THE PROTECTION OF HUMAN LIFE</b>	<b>4</b>
<b>A-3. POLICY DIRECTION BEYOND CONSTITUTIONAL PRINCIPLES</b>	<b>4</b>
<b>A-4. DEPARTMENT PURPOSE</b>	<b>4</b>
<b>A-5. STRICT PROHIBITIONS ON INAPPROPRIATE FORCE</b>	<b>4</b>
<b>A-6. DUTY TO INTERVENE</b>	<b>5</b>
<b>A-7. COMMITMENT TO DE-ESCALATION</b>	<b>5</b>
<b>A-8. COMMITMENT TO SERVING MEMBERS OF THE COMMUNITY WITH PHYSICAL, MENTAL HEALTH, DEVELOPMENTAL, OR INTELLECTUAL DISABILITIES</b>	<b>5</b>
<b>A-9. COMMITMENT TO MEDICAL AID</b>	<b>6</b>
<b>A-10. COMMITMENT TO THOROUGH AND FAIR EVALUATION OF FORCE</b>	<b>6</b>
<b>B. DEFINITIONS</b>	<b>6</b>
<b>B-1. CAROTID RESTRAINT HOLD</b>	<b>6</b>
<b>B-2. CHOKEHOLD</b>	<b>6</b>
<b>B-3. COMPLAINT OF PAIN</b>	<b>6</b>
<b>B-4. COOPERATION / COMPLIANCE</b>	<b>6</b>
<b>B-5. CROWD CONTROL</b>	<b>6</b>
<b>B-6. DE-ESCALATION</b>	<b>7</b>
<b>B-7. EXIGENT CIRCUMSTANCES</b>	<b>7</b>
<b>B-8. FEASIBLE</b>	<b>7</b>
<b>B-9. FORCE</b>	<b>7</b>
<b>B-10. FORCE OPTIONS</b>	<b>7</b>
<b>B-11. GREAT BODILY INJURY</b>	<b>8</b>
<b>B-12. IMMEDIATE THREAT / IMMINENT THREAT</b>	<b>8</b>
<b>B-13. LESS LETHAL FORCE</b>	<b>8</b>
<b>B-14. LETHAL FORCE</b>	<b>8</b>
<b>B-15. MEDICAL AID</b>	<b>8</b>
<b>B-16. MINOR BODILY INJURY</b>	<b>8</b>
<b>B-17. NECESSARY</b>	<b>9</b>
<b>B-18. OBJECTIVELY REASONABLE</b>	<b>9</b>
<b>B-19. OFFICER</b>	<b>10</b>
<b>B-20. POLICE CANINE</b>	<b>11</b>
<b>B-21. PROCEDURAL JUSTICE</b>	<b>11</b>
<b>B-22. PROPORTIONAL FORCE</b>	<b>11</b>
<b>B-23. RESISTANCE</b>	<b>11</b>
<b>B-24. RESTRAINED PERSON</b>	<b>12</b>

<del>B-25. SERIOUS BODILY INJURY</del>	<del>12</del>
<del>B-26. TOTALITY OF CIRCUMSTANCES</del>	<del>12</del>
<del>B-27. VEHICLE RAMMING MASS-CASUALTY ATTACK</del>	<del>12</del>
<del>C. DE-ESCALATION</del>	<del>12</del>
<del>C-1. GOALS OF DE-ESCALATION</del>	<del>13</del>
<del>C-2. CONSIDERATIONS SURROUNDING THE USE OF DE-ESCALATION</del>	<del>13</del>
<del>C-3. POLICY REQUIREMENT REGARDING DE-ESCALATION</del>	<del>14</del>
<del>C-4. DE-ESCALATION TACTICS, TECHNIQUES, AND PRINCIPLES</del>	<del>14</del>
<del>D. USE OF FORCE – GENERAL CONSIDERATIONS AND POLICY</del>	<del>17</del>
<del>D-1. USE OF FORCE SHALL BE REASONABLE, NECESSARY, AND PROPORTIONAL, AND FOR A LAWFUL PURPOSE OR OBJECTIVE</del>	<del>17</del>
<del>D-2. PROHIBITIONS ON UNREASONABLE FORCE</del>	<del>17</del>
<del>D-3. DUTY TO INTERVENE</del>	<del>17</del>
<del>D-4. IDENTIFICATION AND WARNINGS PRIOR TO THE USE OF FORCE</del>	<del>18</del>
<del>D-5. USE OF FORCE ON RESTRAINED PERSONS</del>	<del>18</del>
<del>D-6. DE-ESCALATION OF FORCE AFTER FORCE HAS BEEN USED</del>	<del>18</del>
<del>D-7. PROVIDING MEDICAL ASSISTANCE TO PERSONS SUBJECT TO THE USE OF FORCE</del>	<del>19</del>
<del>E. LEVELS OF RESISTANCE</del>	<del>19</del>
<del>E-1. NON-COMPLIANCE</del>	<del>19</del>
<del>E-2. PASSIVE RESISTANCE</del>	<del>19</del>
<del>E-3. ACTIVE RESISTANCE</del>	<del>20</del>
<del>E-4. ASSAULTIVE RESISTANCE</del>	<del>20</del>
<del>E-5. LIFE-THREATENING RESISTANCE</del>	<del>20</del>
<del>F. LEVELS OF FORCE</del>	<del>20</del>
<del>F-1. CONTACT CONTROLS</del>	<del>20</del>
<del>F-2. COMPLIANCE TECHNIQUES AND DEFENSIVE TACTICS</del>	<del>20</del>
<del>F-3. INTERMEDIATE LESS-LETHAL FORCE</del>	<del>21</del>
<del>F-4. LETHAL FORCE</del>	<del>21</del>
<del>G. COMMANDS AND LESS-LETHAL FORCE</del>	<del>21</del>
<del>G-1. PRESENCE/COMMAND OPTIONS</del>	<del>21</del>
<del>G-2. PHYSICAL CONTROL/PERSONAL WEAPONS OPTIONS</del>	<del>21</del>
<del>G-3. LESS-LETHAL TOOL OPTIONS</del>	<del>22</del>
<del>G-4. REQUIREMENT TO CARRY AT LEAST ONE LESS-LETHAL TOOL</del>	<del>23</del>

<del>G-5. RESTRICTIONS ON USE OF LESS LETHAL TOOLS AGAINST RESTRAINED PERSONS</del>	<del>23</del>
<del>H. LETHAL FORCE</del>	<del>23</del>
<del>H-1. LETHAL FORCE OPTIONS</del>	<del>23</del>
<del>H-2. DRAWING, EXHIBITING, OR UNHOLSTERING FIREARMS</del>	<del>24</del>
<del>H-3. POINTING FIREARMS AT A PERSON</del>	<del>24</del>
<del>H-4. DISCHARGING FIREARMS AT A PERSON</del>	<del>24</del>
<del>H-5. DISCHARGING FIREARMS AT MOVING VEHICLES</del>	<del>25</del>
<del>H-6. DISCHARGING FIREARMS FROM MOVING VEHICLES</del>	<del>25</del>
<del>H-7. DISCHARGING FIREARMS AT ANIMALS</del>	<del>26</del>
<del>H-8. GENERAL PROHIBITIONS REGARDING FIREARMS</del>	<del>26</del>
<del>H-9. FORCE LIKELY TO CAUSE GREAT BODILY INJURY OR DEATH</del>	<del>26</del>
<del>I. CONSIDERATIONS AFTER FORCE</del>	<del>27</del>
<del>I-1. PREVENTING POSITIONAL ASPHYXIA</del>	<del>27</del>
<del>I-2. ADMINISTRATIVE LEAVE AFTER LETHAL FORCE INCIDENTS</del>	<del>27</del>
<del>I-3. COUNSELING SERVICES AFTER LETHAL FORCE INCIDENTS</del>	<del>27</del>
<del>J. TRAINING</del>	<del>28</del>
<del>J-1. ANNUAL TRAINING ON USE OF FORCE POLICY</del>	<del>28</del>
<del>J-2. USE OF FORCE POLICY TRAINING INCORPORATION INTO PRACTICAL TRAINING</del>	<del>28</del>
<del>J-3. TRAINING BULLETINS</del>	<del>28</del>

**A. MISSION, PURPOSE, AND CORE PRINCIPLES**

**A1 Mission**

**A2 Department Purpose**

**A3 Core Principles**

- **Commitment to Law, Defense of Civil Rights and Liberties, and the Protection of Human Life**
- **Policy Direction Beyond Minimum Legal Requirements**
- **Strict Prohibitions on Inappropriate Force**

**Commented [AV1]:** Final edits should include: corrected table (headings and page numbers) And link to each section heading

**Formatted:** Space After: 0 pt, Line spacing: Double

- Duty to Intervene
- Commitment to De-Escalation
- Commitment to Persons with Physical, Mental Health, Developmental, or Intellectual Disabilities
- Commitment to Anti-Racism and Non-Discrimination
- Procedural Justice
- Commitment to Medical Aid
- Commitment to Thorough and Fair Evaluation of Use of Force

**B. DEFINITIONS**

- B1 Complaint of Pain**
- B2 Cooperation/Compliance**
- B3 Crowd Control**
- B4 De-Escalation**
- B5 Force**
- B6 Force Options**
- B7 Great Bodily Injury**
- B8 Imminent threat**
- B9 Medical Aid**
- B10 Necessary**
- B11 Objectively Reasonable**
- B12 Officer**
- B13 Restrained Person**
- B14 Serious Bodily Injury**

**Commented [AV2]:** May delete in final tables. Wanted to show how sections have remained but been reorganized for clearer main headings and flow of the policy

**Formatted:** Indent: Hanging: 0.5", Space After: 0 pt, Line spacing: Double, Numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.75" + Indent at: 1"

B15 Vehicle Ramming Mass Casualty Attack

C. DE-ESCALATION

C1 Goals of De-Escalation

C2 Considerations for Use of De-Escalation

C3 De-escalation Requirement

C4 De-escalation Tactics, Techniques, and Principles

- Communication
- Isolation/Containment
- Positioning and Spatial Awareness
- Time, Distance, and Cover
- De-Escalation Resources

D. USE OF FORCE – GENERAL POLICY CONSIDERATIONS

D1 Prohibitions on Unlawful Force

D2 Duty to Intervene

D3 Duty to Report Use of Force

D4 Identification and Warnings Prior to Use of Force

D5 Use of Force on Restrained Persons

D6 De-Escalation After Force Has Been Used

D7 Duty to Provide Medical Aid

E. USE OF FORCE – PERMITTED LESS-LETHAL FORCE OPTIONS

E1 Present/Command Options

E2 Compliance and Contact Controls

E3 Requirement to Carry at Least One Less-Lethal Tool

Formatted: Space After: 0 pt, Line spacing: Double

Formatted: Indent: Hanging: 0.5", Space After: 0 pt, Line spacing: Double, Numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.75" + Indent at: 1"

Formatted: Space After: 0 pt, Line spacing: Double

Formatted: Indent: Hanging: 0.5", Space After: 0 pt, Line spacing: Double, Numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.75" + Indent at: 1"

Formatted: Space After: 0 pt, Line spacing: Double

Formatted: Indent: Hanging: 0.44", Space After: 0 pt, Line spacing: Double, Numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.75" + Indent at: 1"

**F. USE OF FORCE – PERMITTED LETHAL FORCE OPTIONS**

**F1 Drawing, Exhibiting, or Unholstering Firearms**

**F2 Pointing Firearms at a Person**

**F3 Discharging Firearms**

**G. USE OF FORCE – PROHIBITED USES OF FORCE**

**G1 General Policy**

**G2 Prohibited Force**

**H. CONSIDERATIONS AFTER FORCE**

**H1 Preventing Positional Asphyxia**

**H2 Counseling Services After Lethal Force Incidents**

**H3 Reporting**

**I. REVIEW OF USE OF FORCE**

**I1 Principles Regarding Review of Use of Force**

**I2 Administrative Leave After Lethal Force**

**I3 Review Standards**

**J. TRAINING**

**J2 Training on Use of Force Policy**

**J3 Incorporation in Other Departmental Training**

**J4 Training Bulletins**

**K. MUTUAL AID**

Formatted: Space After: 0 pt, Line spacing: Double

Formatted: Indent: Hanging: 0.5", Space After: 0 pt, Line spacing: Double, Numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.75" + Indent at: 1"

Formatted: Space After: 0 pt, Line spacing: Double

Formatted: Indent: Hanging: 0.5", Space After: 0 pt, Line spacing: Double, Numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.75" + Indent at: 1"

Formatted: Space After: 0 pt, Line spacing: Double

Formatted: Indent: Hanging: 0.5", Space After: 0 pt, Line spacing: Double, Numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.75" + Indent at: 1"

Formatted: Space After: 0 pt, Line spacing: Double

Formatted: Indent: Hanging: 0.5", Space After: 0 pt, Line spacing: Double, Numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.75" + Indent at: 1"

Formatted: Space After: 0 pt, Line spacing: Double

Formatted: Indent: Hanging: 0.5", Space After: 0 pt, Line spacing: Double, Numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.75" + Indent at: 1"

Formatted: Space After: 0 pt, Line spacing: Double

Formatted: Font: Bold

Formatted: Normal, No bullets or numbering

Formatted: Left, Indent: Left: 0", Hanging: 0.5"



DEPARTMENTAL GENERAL ORDER

K-03: USE OF FORCE

Effective Date:
Coordinator: Training Division

A. MISSION, PURPOSE, AND CORE PRINCIPLES

A - 1. Protection and Sanctity of Human Life Paramount Mission

The overarching mission and utmost priority of the Oakland Police Department is the protection of human life. The authority to use force, conferred on peace officers by § 835a of the California Penal Code, is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life.

Commented [AV3]: Reorganized subheadings to reflect section heading of "mission, purpose, and core principles"

Commented [TJ4]: AB392, 835a(a)(1) PC

A - 2. Department Purpose

The purpose of the Department is to respond to dangerous and violent crime and to serve the community through fair, quality policing. Officers may, at times, be required to make forcible arrests, defend themselves or others, and overcome resistance. The Department's goal for the protection of both officers and the community is that officers should attempt to use non-force alternatives, including de-escalation, unless time and circumstances do not allow for the use of these alternatives at all times.

Commented [TJ5]: Denver 105.01 (1)

A - 3. Core Principles

> Department Commitment to Law, Defense of Civil Rights and Dignity, and the Protection of Human Life

Every member of the Oakland Police Department is committed to upholding the Constitution, Laws of the United States, Laws of the State of California, and defending the civil rights and dignity of all individuals, while protecting all human life and property and maintaining civil order.

Formatted: Outline numbered + Level: 4 + Numbering Style: Bullet + Aligned at: 0.75" + Tab after: 1.5" + Indent at: 1"

Commented [TJ6]: Seattle, 8.000

While As the ultimate objective of every law enforcement encounter is to protect the public, officers shall use de-escalation tactics and techniques in order to reduce the need for force whenever safe and feasible. nothing in this policy requires a member to retreat or be exposed to possible physical injury before applying reasonable force.

Commented [TJ7]: De-escalation - is there a better way to talk about that here?

> Policy Direction Beyond Constitutional Principles

Commented [TJ8]: NOPD p.5

The Fourth Amendment requires that an officer's use of force be "objectively reasonable." (Graham v. Connor, 490 U.S. 386 (1989)). The Constitution provides a "floor" for government action. The Oakland Police Department aspires to go beyond Graham and its minimum requirements. The state of California has passed increasingly restrictive legislation on peace officer use of force and officer accountability for misconduct, including excessive force. The City of Oakland has mandated strong accountability and oversight measures including creation of the Oakland Police Commission and the Citizens Police Review Agency. The Oakland Police Department aspires to go beyond Graham and its these minimum requirements Sound judgment and the appropriate exercise of discretion preservation of human life

Formatted: Outline numbered + Level: 4 + Numbering Style: Bullet + Aligned at: 0.75" + Tab after: 1.5" + Indent at: 1"

Formatted: Font: Not Italic

Commented [AV9]: SB 230; proposed AB 846 (Burke) requiring de-emphasis of paramilitary aspects of policing and emphasis on community policing and collaborative problem solving in peace officer training



will always be the foundation of police officer decision-making in the broad range of ~~possible~~feasible use of force situations. It is not ~~possible~~feasible to entirely replace judgment and discretion with detailed policy provisions. Nonetheless, this policy is intended to ensure that de-escalation techniques are used whenever feasible, that force is used only when necessary to protect human life, and that the amount of force used is proportional to the ~~situation~~-imminent threat that an officer encounters.

Commented [TJ10]: De-escalation-first language

Commented [TJ11R10]: Worked on a few ways of rewording this and propose that it stay as written – it is a direct grab from one of the most progressive policies (Camden) and puts de-escalation first in order of mention, which fits the spirit of the discussion raised at this point.

Commented [TJ12]: Camden, p.2

Formatted: Outline numbered + Level: 4 + Numbering Style: Bullet + Aligned at: 0.75" + Tab after: 1.5" + Indent at: 1"

**Department Purpose**

~~The purpose of the Department is to reduce crime and serve the community through fair, quality policing. Officers may, at times, be required to make forcible arrests, defend themselves or others, and overcome resistance. The Department's goal for the protection of both officers and the community is that officers should attempt to use non-force alternatives, including de-escalation, unless time and circumstances do not allow for the use of these alternatives.~~

Commented [TJ13]: Denver 105.01 (1)

**Strict Prohibitions on Inappropriate Force**

Oakland Police Department officers are prohibited from using force to punish, retaliate, or interrogate. Force that ~~is not reasonable and necessary under the totality of the circumstances will be subject to~~corrective is unlawful under this policy will be subject to corrective action, including discipline up to and including termination. ~~Every officer has an obligation to ensure compliance, by themselves and others, with Department policy, as well as all applicable laws, regarding use of force. Any officer who observes another officer about to use force that is illegal, excessive, or otherwise inconsistent with this policy shall, absent extraordinary circumstances, do whatever he/she can to interrupt the flow of events and intervene as soon as feasible and, ideally, before the fellow officer does something that makes any official discipline action necessary. It is the expectation of the Department that when an individual is under control, either through the application of physical restraint or the individual's compliance, only the amount of force necessary to maintain control will be used.~~ Under no circumstances will an officer use force solely because another officer is using force. Officers shall not use force based on bias against a person's race, ethnicity, nationality, religion, disability, gender, gender identity, sexual orientation, or any other protected characteristic.

Commented [TJ14]: Seattle 8.2

Commented [TJ15]: Up to and including termination.

Commented [TJ16]: Denver 105.01 4, c.

Commented [TJ17]: Denver 105.01 5, c.

Commented [TJ18]: NOPD p.6

Commented [TJ19]: Camden p.4

Formatted: Outline numbered + Level: 4 + Numbering Style: Bullet + Aligned at: 0.75" + Tab after: 1.5" + Indent at: 1"

**Duty to Intervene**

Every officer has an obligation to ensure compliance, by themselves and others, with Department policy, as well as all applicable laws, regarding use of force. Any officer who observes another officer about to use force that is illegal, excessive, or otherwise inconsistent with this policy shall, absent extraordinary circumstances, do whatever he/she can to interrupt the flow of events before the fellow officer does something that makes any official action necessary. Officers can serve each other and the public by simply saying or doing the right thing to prevent a fellow officer from resorting to force illegally or inappropriately. Similarly, any officer who observes an officer using force that is illegal, excessive, or otherwise inconsistent with this directive

shall, absent extraordinary circumstances, do whatever he/she can to interrupt the flow of events and *stop* the use of force. Members witnessing instances of misconduct must also follow the direction given in Department Manual of Rules Section 314.48, *Reporting Violations of Laws, Ordinances, Rules, or Orders*.

**➤ Commitment to De-Escalation**

When safe, feasible, and without compromising law enforcement priorities, officers shall use de-escalation tactics and techniques in order to reduce the need for force. The goal of the Department is to promote thoughtful resolutions to situations and to reduce the likelihood of harm to all persons involved. In concert with using proportional force, officers shall de-escalate the amount of force used when the officer reasonably believes that a lesser level or no further force is appropriate.

**➤ Commitment to Serving Members of the Community with Physical, Mental Health, Developmental, or Intellectual Disabilities**

The Department recognizes that individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from officers. The Department is committed to reducing these deleterious effects with a focus on communication, prescriptions in this policy, de-escalation, and training, among other remedies.

**➤ Commitment to Anti-racism and Non-Discrimination**

The Department recognizes that the institution of American policing was birthed as part of the system to maintain African chattel slavery in the U.S. After the Emancipation Proclamation, law enforcement agencies enforced segregationist laws and other codifications of racial and economic caste in America. American law enforcement, as a whole, has been deployed domestically to quell demands for civil and human rights. Civil Rights statutes were created to address officers acting under the “color of law” to deprive people of their rights. It is well-documented that law enforcement agencies were complicit or directly involved in racial terror including, but not limited to mob lynching and membership in organizations classified as domestic terrorists. It is well-documented that as the U.S. expanded westward, so too did the system of American policing often recruiting the same officers who engaged in racist and terrorist projects in other parts of the country. Police agencies across the U.S. have inherited a structurally oppressive system.

The Department is committed to repairing public trust with the Oakland community which begins by the acknowledgment of the various breaches of trust and the origins of distrust of U.S. law enforcement generally. The Oakland Police Department is a part of the fabric of this complicated and complex history. The Department recognizes that it has a history of deploying greater levels of force during police interactions on individuals, and even entire communities, based on identity, citizenship, and/or socio-economic status disproportionate to other groups. The Department has been under a Negotiated Settlement Agreement in a civil rights

**Commented [TJ20]:** Needs a concluding sentence that mandates that members report misconduct, and failure to do so could lead to disciplinary action / or reference DGO M-03, *Complaints Against Personnel*.

**Commented [TJ21R20]:** Actual rule for reporting is in MOR, reference added.

**Commented [TJ22]:** Camden, p.9

**Formatted:** Outline numbered + Level: 4 + Numbering Style: Bullet + Aligned at: 0.75" + Tab after: 1.5" + Indent at: 1"

**Commented [TJ23]:** Seattle 8.1

**Commented [TJ24]:** Seattle 8.1

**Commented [TJ25]:** NOPD p.5

**Commented [TJ26]:** Review this title – person-first but specific

**Formatted:** Outline numbered + Level: 4 + Numbering Style: Bullet + Aligned at: 0.75" + Tab after: 1.5" + Indent at: 1"

**Commented [TJ27]:** Consistent with officer safety, officers shall make every attempt to communicate with these individuals as an alternative to force.

**Commented [TJ28R27]:** A prescription like the one referenced above likely belongs in section C, on De-Escalation

**Commented [TJ29]:** AB 392, 835a(a)(5) PC

misconduct case for the last seventeen (17) years and wishes to make true progress in all areas agreed to. Furthermore, the Department recognizes that it has a history of using significantly more force against individuals with physical, mental health, developmental, or intellectual disabilities. The Department is committed to reducing these deleterious effects with a focus on communication, prescriptions in this policy, de-escalation, and training, among other remedies.

Formatted: Indent: Left: 0.5", First line: 0.25"

Formatted: Normal, Indent: First line: 0.25"

**> Commitment to Procedural Justice**

Procedural justice in the context of policing focuses on the nature and quality of the way that police personnel deliver services, with the understanding that the legitimacy of police personnel in the eyes of the community they serve is based in part on personnel exhibiting procedurally just behavior. Procedurally just behavior is based on four main principles:

Commented [AV30]: Moved from definition section. "procedural justice" is not used anywhere in the prior version or this proposed version of the policy. Definition is based on principles so it seems to fit best with core principles. I suggest further edits of combining with the previous principle on antidiscrimination.

- o Respect: Treating all people with dignity and respect;
- o Voice: Giving people an opportunity to be heard;
- o Neutrality: Being neutral and fair when making decisions; and
- o Trustworthiness: Conveying trustworthy motives, such as doing what is best for the community.

Formatted: Bulleted + Level: 1 + Aligned at: 1.25" + Indent at: 1.5"

**> Commitment to Medical Aid**

Whenever a person is injured by a use of force, complains of injury from a use of force, or requests medical attention after a use of force, as soon as it is safe and practical, officers shall request medical aid and provide appropriate medical care consistent with the officer's training and skillset.

Formatted: Normal, No bullets or numbering

Formatted: Outline numbered + Level: 4 + Numbering Style: Bullet + Aligned at: 0.75" + Tab after: 1.5" + Indent at: 1"

**> Commitment to Thorough and Fair Evaluation of Force**

The Department is committed to evaluating force by reviewing the totality of the circumstances facing the officer at the time force was used, in a manner that reflects the gravity of the authority to use force and the serious consequences of the use of force by police officers.

Commented [TJ31]: Think about how this works with guarantees

Commented [TJ32R31]: Consistent with discussion at the ad hoc, I think leaving this as is and then addressing other documents on medical assistance as needed is the best route

Commented [TJ33]: Camden, p. 9

Evaluations of the necessity of actions shall be done from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or reasonably perceived by the officer at the time, rather than with the benefit of hindsight, and shall account for occasions when officers may be forced to make quick judgments about taking action. The evaluation of necessity shall be on a case-by-case basis, and with the understanding that necessity does not require that all possible alternatives be exhausted prior to the use of force.

Formatted: Outline numbered + Level: 4 + Numbering Style: Bullet + Aligned at: 0.75" + Tab after: 1.5" + Indent at: 1"

Commented [TJ34]: AB 392, 835a(a)(4) PC

Commented [TJ35]: AB 392 835a(a)(4) PC

Commented [TJ36]: Re-state below? To ensure that point one is not taken as an absolute.

~~Any evaluation of force must also allow for the fact that law enforcement officers must sometimes make split-second decisions about the amount of force that is necessary in a particular situation with limited information and in circumstances that are tense, uncertain, rapidly evolving, and dangerous.~~

**B. DEFINITIONS**

**B - 1. Complaint of Pain**

A report of pain that persists beyond the use of a physical control hold or other use of force, but where there is no visible injury corresponding to that pain.

**B - 2. Cooperation / Compliance**

Responsiveness to and compliance with officer requests.

**B - 2, B - 3. Crowd Control**

Those techniques used to address unlawful public assemblies, including a display of large numbers of police officers, crowd containment, dispersal tactics, and arrest procedures. Reference **Training Bulletin III-G, Crowd Control and Crowd Management.**

**B - 3, B - 4. De-Escalation**

Actions or verbal/non-verbal communication during a potential force encounter used to:

- stabilize the situation and/or reduce the immediacy of the threat, so that more time, distance, or other options and resources are available for resolution without the use of force or with a reduced type of force, or
- reduce or end a use of force after resistance or an **immediate threat imminent threat** has ceased or diminished.

**Exigent Circumstances**

~~Those circumstances that would cause a reasonable person to believe that a particular action is necessary to prevent physical harm to an individual, the destruction of relevant evidence, or the escape of a suspect.~~

**B - 4, B - 5. Feasible**

Capable of being done or carried out to successfully achieve a lawful objective without increasing risk to the officer or another person.

**B - 5, B - 6. Force**

Any physical or mechanical intervention used by an officer **against an individual for any purpose** ~~to defend against, control, overpower, restrain, or~~

**Commented [TJ37]:** Although some split-second decisions are inevitable, officers shall use de-escalate to try and limit them. -Perhaps we call out attempting to limit split-second decisions in A-7?

**Commented [TJ38R37]:** Tried a few different formations but they felt like they were just re-wording what was already present in A-7, especially the idea that the Department promotes “thoughtful resolutions” which are basically the opposite of split-second decisions. I think A-7 sets a solid expectation that thoughtfulness and wise decision making be the rule, not the exception.

**Commented [TJ39]:** NOPD p.5

**Commented [AV40]:** Fix numbering in all sub-sections

**Formatted:** Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.75"

**Commented [TJ41]:** SFPD p. 7

**Formatted:** Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.75"

**Commented [TJ42]:** Camden p. 16

**Commented [TJ43]:** Replaced “formidable”

**Commented [TJ44]:** “Force posture and reasonable force *may* be used during crowd control, and are subject to additional restriction beyond this policy when used in a crowd control setting.”

This would be in a use policy.

**Commented [TJ45]:** Make this into multiple sentences

**Commented [TJ46R45]:** Broke the two prongs into separate bullet points

**Commented [TJ47]:** Can we create a de-escalation resource section?

Or perhaps add in a de-escalation resources Training Bulletin.  
-Armored vehicle  
-MET Team  
-800 Language Line  
-And other examples

**Commented [TJ48R47]:** Added this into C-4 instead

**Commented [JT49]:** Denver

**Commented [TJ50]:** Ensure that this is consistent with case law - OCA

**Commented [JT51]:** IACP Model Policy

**Formatted:** Not Highlight

<sup>†</sup> Based on the definition from *United States v. McConney*, 728 F.2d 1195, 1199 (9<sup>th</sup> Cir.), cert. denied, 469 U.S. 824 (1984).

~~overcome the resistance of an individual.~~ Force includes less lethal and lethal force options.

**~~B-6,~~B - 7. Force Options**

The force options trained and deployed by the Oakland Police Department ~~include as expressly prohibited or permitted by this policy. These include~~ lethal and less-lethal options.

~~Baton / Impact Weapons~~

~~Chemical Agents~~

~~Control Holds / Defensive Tactics / Compliance Techniques~~

~~Electronic Control Weapons~~

~~Firearms~~

~~Oleoresin Capsicum (OC) Spray~~

~~Personal Body Weapons~~

~~Physical Control Techniques, including escorts~~

~~Police Canines~~

~~Specialty Impact Munitions~~

~~Takedowns~~

~~Verbal Commands / Instructions / Command Presence~~

~~Verbal Persuasion~~

~~Less-lethal force options are further explained in section C-1, Less Lethal Force Options, while lethal force options are further explained in section H-1, Lethal Force Options.~~

**~~B-7,~~B - 8. Great Bodily Injury**

Great bodily injury is significant or substantial physical injury which involves a substantial risk of death, a substantial risk of serious permanent disfigurement, or a substantial risk of protracted loss or impairment of the function of any part or organ of the body. It is an injury that is greater than minor or moderate harm, and is more severe than serious bodily injury.

**~~B-8,~~B - 9. Immediate Imminent Threat**

~~A threat is immediate when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that the person threatening has the present intent, means, opportunity, and ability to complete the threat, regardless of whether the threatened action has been initiated. An immediate threat imminent threat is ready to take place, impending, likely to happen, or at the point of happening, and is not merely a fear of future harm; instead, an immediate threat imminent threat is one that, from appearances, must be instantly confronted and addressed. A threat is imminent when, based~~

Commented [TJ52]: Denver 105.01 2

Commented [TJ53]: Seattle 8.05

Commented [TJ54]: CalCRIM

Commented [AV55]: AB 392 uses "imminent" threat and provides definition in the statute. Updated throughout policy for consistency

Commented [TJ56]: SFPD p.2, taken from OPD DGO K-03 (Rev 2015)

Commented [TJ57]: Denver 105.01 2

Commented [TJ58]: AB 392, 835a(e)(2) PC

on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed. The following are presumed to NOT be imminent threats: (1) persons threatening or actually harming only themselves; (2) persons fleeing; (3) and persons threatening or engaging in property crimes.

**Commented [AV59]:** SB 230 does not permit lethal force against people who are only danger to themselves

**Less Lethal Force**

~~Any use of force, other than lethal force, which by design and application is less likely to cause great bodily injury or death. The possibility of an unintended lethal outcome, although very rare, still exists.~~

**Lethal Force**

~~The application of force by firearm or any other means which create a substantial risk of causing death or great bodily injury.~~

**B-9, B-10. Medical Aid**

Medical interventions and life-saving techniques, ranging from home remedies and first-aid to lifesaving or -sustaining interventions. Such efforts are not considered force. Medical aid includes monitoring an engaged person's vital signs while calling for medical assistance from first responders with higher medical skills, such as fire department or ambulance personnel.

**Commented [TJ60]:** Seattle 8.05

**Minor Bodily Injury**

~~Corporal injury, illness, or an impairment of physical condition greater than transitory pain but less than great or serious bodily injury (e.g. bruises, cuts, and abrasions).~~

**Commented [TJ61]:** Seattle 8.05

**B-10, B-11. Necessary**

An action is necessary if it is reasonably believed to be required by the totality of the circumstances objectively reasonable and required under the totality of the circumstances. In determining whether deadly force is necessary, officers shall evaluate each situation in light of particular circumstances of each case, and shall use other available resources and techniques if reasonably safe and feasible. Evaluations of the necessity of actions shall be done from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and shall account for occasions when officers may be forced to make quick judgments about taking action. The evaluation of necessity shall be on a case-by-case basis, and with the understanding that necessity does not require that all possible alternatives be exhausted prior to the use of force.

**Commented [AV62]:** Deleted because phrase not used anywhere in prior draft and not included in proposed edits

**Commented [TJ63]:** Potential for modification

**Commented [TJ64]:** Denver 105.01 2

**Commented [TJ65]:** AB 392 835a(a)(4) PC

**Commented [TJ66]:** Re-state below? To ensure that point one is not taken as an absolute.



~~An action is necessary if it is reasonably believed to be required by the totality of the circumstances. The evaluation of whether an action was necessary shall be based on whether~~

Formatted: Highlight

Commented [TJ67]: Denver 105.01 2

~~Objectively reasonable alternatives to the action were available and as practical as possible.~~

~~Whether the action was reasonably likely to effect the lawful purpose intended.~~

Commented [TJ68]: Seattle 8.05

### ~~B-11~~**B - 12. Objectively Reasonable**

~~Objective reasonableness is a test to measure whether a particular intrusion on an individual's person or interests by government agents was justified. The test of whether or not an intrusion—such as the use of force—is objectively reasonable requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake. The “test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application”<sup>2</sup>, however its proper application requires careful attention to the facts and circumstances of each particular case.~~

~~Any evaluation of the reasonableness of a particular use of force shall be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight, and must allow 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. All evaluations of reasonableness shall also be carried out in light of the facts and circumstances facing the officer at the time of the force, without regard to their underlying intent or motivation.~~

~~Factors which may be considered in determining the objective reasonableness of force – and which may be used by officers to determine whether force is reasonable based on a situation in which they are involved – include, but are not limited to:~~

Commented [TJ69]: Could these factors be moved to D?

Maybe different formats instead of bullets?

Commented [TJ70]: AB 392, 835a(a)(2) PC

- ~~The seriousness/severity of the crime or suspected offense;~~
- ~~The level of threat or resistance presented by the engaged person;~~
- ~~Whether the engaged person was posing an ~~immediate threat~~~~imminent threat~~~~imminent threat~~ to officers or a danger to the public;~~
- ~~The potential for injury to members of the public, officers, or engaged persons;~~
- ~~The risk or apparent attempt by the engaged person to escape;~~
- ~~The conduct of the engaged person being confronted (as reasonably perceived by the officer at the time);~~
- ~~The conduct of officers leading up to the use of force;~~
- ~~The apparent need for immediate control of the engaged person for a prompt resolution of the situation versus the ability to step back, regroup,~~

Commented [TJ71]: AB 392, 835a(e)(3) PC

<sup>2</sup> ~~Bell v. Wolfish, 441 U.S. 520, 559 (1979)~~

- and develop an alternative approach, and the time available to the officer to make that decision;
- Efforts made by officers to de-escalate the situation, and the reactions of the engaged person(s) to those efforts;
  - The time available to the officer to make a decision;
  - The availability of other resources;
  - The training received by the officer;
  - The proximity or availability of weapons, or items which could be used as weapons, to the engaged person;
  - Officer versus engaged person factors such as age, size, relative strength, skill level, injury/exhaustion, and number of officers versus engaged persons;
  - Environmental factors and/or other exigent circumstances; as used in this section, “exigent circumstances” means those circumstances that would cause a reasonable person to believe that a particular action is necessary to prevent physical harm to an individual, the destruction of relevant evidence, or the escape of a suspect.
  - Whether the engaged person had any perceived physical disability;
  - Whether a person is unresponsive and the reasons for that unresponsiveness;
  - Whether the engaged person was under the influence of alcohol or drugs, or was influenced by mental illness or a mental health crisis.

**B-12, B-13. Officer**

Any sworn member of the Oakland Police Department, at any rank. Although the use of force is primarily intended for sworn officers, various professional staff job classifications include Departmental training in specific force options normally reserved for sworn officers. In these cases, professional staff are held to the same standard as officers for the application of these authorized force options, and policy directed towards “officers” shall apply to these professional staff members as well.

**Procedural Justice**

~~Procedural justice in the context of policing focuses on the nature and quality of the way that police personnel deliver services, with the understanding that the legitimacy of police personnel in the eyes of the community they serve is based in part on personnel exhibiting procedurally just behavior. Procedurally just behavior is based on four main principles:~~

~~**Respect:** Treating all people with dignity and respect;~~

~~**Voice:** Giving people an opportunity to be heard;~~

~~**Neutrality:** Being neutral and fair when making decisions; and~~

Commented [TJ72]: NOPD p.7

Commented [TJ73]: \*\* This is different than GvC

Commented [TJ74R73]: Pinned still for ad hoc 18 Jun 2020

Formatted: Don't add space between paragraphs of the same style

Commented [JT75]: IACP Model Policy

Formatted: Font: Bold

Commented [TJ76]: Denver 105.01 5.a,11

Commented [TJ77]: Make definition of Professional Staff?

Commented [TJ78]: This needs to be made somewhere, but does it belong here...?

<sup>3</sup> Based on the definition from *United States v. McConney*, 728 F.2d 1195, 1199 (9<sup>th</sup> Cir.), cert. denied, 469 U.S. 824 (1984).



~~Trustworthiness: Conveying trustworthy motives, such as doing what is best for the community.~~

~~Proportional Force~~

~~Proportional force is force which is deemed reasonably effective to overcome the level of resistance posed, taking into account the severity of the offense or law enforcement need facing the officer(s) using force. Officers must rely on training, experience, and assessment of the situation to decide an appropriate level of force to be applied. Reasonable and sound judgment will dictate the force option to be employed, consistent with the constraints of this policy, and assessments of proportionality shall be based on an objectively reasonable officer standard.~~

~~Proportional force does not require officers to use the same type or amount of force as the engaged person. The more immediate the threat and the more likely that the threat will result in death or injury, the greater the level of force that may be proportional, objectively reasonable, and necessary to counter it. (See section F, LEVELS OF FORCE)~~

~~Resistance~~

~~Resistance is the absence of cooperation, an indication of unwillingness to comply with an officer's lawful orders or direction, physical obstruction of an officer's attempts to gain compliance, or physical attacks on an officer or others. Resistance can range in severity from non-compliance to life-threatening. The severity, or level (see section E, LEVELS OF RESISTANCE), of resistance offered by a person to the lawful commands or actions of officers is an important factor in determining the immediacy of the threat, if any, posed by the person as well as whether the force used to overcome the resistance was proportional to the resistance posed.~~

~~B-13, B-14. Restrained Person~~

~~A restrained person is a person who has been fully placed in a Department-authorized restraint device such as both hands handcuffed, a WRAP, or a RIPP Hobble.~~

~~B-14, B-15. Serious Bodily Injury~~

~~Serious bodily injury is any injury which involves temporary but substantial disfigurement of the body or a body part, temporary but substantial loss or impairment of the function of any body part, or fracture of any body part. Serious bodily injury includes, but is not limited to, loss of consciousness, concussion, dislocation of joints or appendages, and wounds requiring suturing. Serious bodily injuries typically require treatment in a hospital or medical facility beyond what is required by basic first aid. Serious bodily injuries are serious in nature, but not as severe as great bodily injuries.~~

~~Totality of Circumstances~~

Commented [AV79]: Fundamentally restructured to categorize as lethal force; less lethal force; and prohibited force

Commented [TJ80]: SFPD p.2

Commented [TJ81]: Seattle 8.05

Commented [TJ82]: AB 392, 835a(a)(4) PC

Commented [TJ83]: Seattle 8.05

Commented [TJ84]: Denver 105.01 3

Commented [TJ85]: Seattle 8.05

Commented [TJ86]: AB 392, 835a(e)(3) PC  
Denver 105.01 2

~~All of the facts and circumstances an officer knew, or reasonably should have known, without mere conjecture or speculation, at the time of the incident, action, or decision being assessed, based upon a continual assessment of the situation, however rapid. This includes, but is not limited to, the seriousness of the threat of injury posed to the officer or other persons, the seriousness of the crime in question, and the conduct of the officer and engaged person leading up to the use of force, all viewed from the perspective of a reasonable officer.~~

**B-15, B-16. Vehicle Ramming Mass-Casualty Attack**

An attack in which a person deliberately rams, or attempts to ram, a motor vehicle at a crowd of people with the intent to inflict fatal injuries.

**C. DE-ESCALATION**

Officers have the ability to impact the direction and outcome of an incident with their decision making and employed tactics. All members of the Oakland Police Department must remember the overarching mission and utmost priority of the Department: the protection of human life. De-escalation is an integral tool in furtherance of that mission. The Department values thoughtful resolutions to situations where public, engaged subject, and officer safety are enhanced by sound decision making and tactics that further the Department’s mission.

~~Policing, at times, requires that an officer exercise control of a violent or resisting person, or a person experiencing a mental or behavioral crisis. At other times, policing may require an officer to serve as a mediator between parties, or defuse a tense situation.~~ At all times, however, officer actions must be in furtherance of the mission of the Department: to attempt to resolve situations while preserving life and limiting reliance on the use of force.

~~An officer who makes or attempts to make an arrest need not retreat or desist from their efforts by reason of the resistance or threatened resistance of the person being arrested. An officer shall not be deemed an aggressor or lose the right to self-defense by the use of objectively reasonable force to effect the arrest or to accomplish the lawful purpose or objective.~~ Tactical repositioning or other de-escalation tactics are not considered “retreat” for the purposes of this policy.

**C - 1. Goals of De-Escalation**

The goal of the Department is to promote thoughtful resolutions to situations and to reduce the likelihood of harm to all persons involved. When used appropriately, de-escalation techniques may reduce the immediacy of the threat, so that more time, options, and resources are available for resolution without the use of force or with a reduced level of force.

**C - 2. Considerations Surrounding the use of For De-Escalation**

De-escalation is one facet of an overall strategy designed to lower the tensions inherent in a police encounter, promote cooperation and peaceful resolution, effectively utilize police resources, and enhance officer, engaged person, and

Commented [TJ87]: DC Metro p.5

Commented [AV88]: SB 230 mandates de-escalation policy using alternatives to force whenever feasible

Commented [TJ89]: Added

Commented [TJ90]: Cleveland, p. 1

Commented [TJ91]: Added to qualify these two sentences and ensure that the mission stays at the forefront.

Commented [TJ92]: Reverse this sentence so subject is first.  
Tactical...are not defined “retreat” for the purposes of this policy.

Commented [TJ93R92]: Changed

public safety while limiting reliance on the use of force. While the Department mandates that officers use de-escalation techniques when safe and feasible, the Department also recognizes that whether de-escalation is reasonable, safe, and feasible, and the extent to which de-escalation techniques are used, is based on the totality of the circumstances of the encounter at hand.

Factors, including law enforcement priorities, which may be considered when evaluating the totality of the circumstances surrounding the reasonableness and feasibility of de-escalation include:

- The officer's use of a critical decision-making structure;
- The benefits and drawbacks of immediate resolution or pre-emptive action on the part of the officer to resolve the situation;
- Facts and circumstances which influenced the chances of de-escalation strategies being successfully implemented;
- Whether limited intervention early in the encounter may have forestalled more marked or severe intervention later in the encounter;
- The availability of additional de-escalation resources;
- Whether the engaged person involved in the police encounter is believed to have a physical, mental health, developmental, or intellectual disability;
- The level of resistance posed;
- Circumstances existing (such as the presence of a weapon) which increase the chance of the encounter escalating to a significant or lethal force encounter.

Commented [TJ94]: Think about this...why might they not be available?

C - 3. **Policy Requirement Regarding De-Escalation Requirement**

**When safe, feasible, and without compromising law enforcement priorities, officers shall use de-escalation tactics and techniques in order to reduce the need for force.** De-escalation is reviewed and evaluated under the totality of the circumstances present at the time of the incident, and assessments of the feasibility and safety of de-escalation tactics shall be based on an objectively reasonable officer standard.

Commented [TJ95]: Seattle 8.1

Commented [TJ96]: Seattle 8.1

Team approaches to de-escalation are encouraged and should consider officer training and skill level, number of officers, and whether any officer has successfully established rapport with the engaged person. Where officers use a team approach to de-escalation, each individual officer's obligation to de-escalate will be satisfied as long as the officer's actions complement the overall approach.

Commented [TJ97]: Seattle 8.1

C - 4. **De-Escalation Tactics, Techniques, and Principles**

De-escalation may take many forms, and can vary from incident to incident. Just because a tactic or technique is not mentioned in this policy does not mean it is prohibited from being used as a de-escalation technique; officers are

encouraged to creatively problem-solve to find and employ de-escalation techniques which are focused on protecting life, limiting force, respecting the dignity of others, enhancing officer, engaged person, and public safety, and completing the law enforcement mission.

Broadly, de-escalation techniques fall under the following categories:

➤ **Communication**

Communication is often the most effective de-escalation technique, and involves active listening as much as, if not more than, what is said by the officer. Communication includes:

- Calm and respectful tone, body language, and interaction – this includes avoiding placing hands on weapons on the tool belt when not necessary for safety reasons
- Avoidance of language, such as taunting or insults, which could escalate the incident
- Clear instructions and commands
- Active listening, repetition, and indications of understanding
- Gathering information
- Assessing communication barriers
- Warnings and clear indications of the consequences of resistance
- Considering whether any lack of compliance is a deliberate attempt to resist rather than an inability to comply based on factors including, but not limited to:
  - i. Medical conditions
  - ii. Mental impairment
  - iii. Developmental disability
  - iv. Physical limitation
  - v. Language barrier
  - vi. Drug interaction
  - vii. Behavioral crisis
  - viii. Fear or anxiety
- Seeking to communicate in non-verbal ways when a verbal warning would be inadequate (such as when a person does not speak English or is unable to hear or understand warnings)
- Giving the engaged person a reasonable amount of time to comply with commands.

Commented [TJ98]: Another option for H-2 language.

Commented [TJ99]: Seattle 8.1

Commented [TJ100]: Seattle 8.1

➤ **Isolation/Containment**

Isolating the engaged person (limiting or preventing access to officers, the public, or possible/feasible victims of resistance, including officers) and containing the engaged person (limiting the ability of the engaged person to move away from an area controlled by officers) are both important aspects of de-escalation, as they limit the exposure of the public to the engaged person

and allow officers to lower the number of variables that they are attempting to control during the encounter. Isolation/containment includes actions such as:

- Separating parties in disputes;
- Handcuffing or restraining agitated persons to prevent their agitation from turning to active resistance, if appropriate;
- Placing barriers between officers and uncooperative engaged persons;
- Setting police perimeters, and limiting access to the scene;
- Using additional personnel to cover ~~possible~~feasible escape routes; and
- Transitioning incidents from dynamic to static by limiting access to unsecured areas, limiting mobility, and preventing the introduction of non-involved community members.

➤ **Positioning and Spatial Awareness**

Closely related to the concepts of distance and cover, positioning and spatial awareness covers both the positioning of the officer and the engaged person. Officers should constantly be assessing their positioning relative to the engaged person and seeking a position of advantage which affords the best opportunity to control the situation. Positioning and spatial awareness includes:

- Proper interview stance;
- Separation of parties during disputes;
- Handcuffing or restraining agitated persons to prevent their agitation from turning to active resistance, if appropriate; and
- Consideration of environmental hazards and other environmental factors which may enhance or detract from safety.

Officers are prohibited from intentionally positioning themselves in a location vulnerable to an imminent threat, including a vehicular attack, and, whenever feasible, shall reposition in a safe location.

➤ **Time, Distance, and Cover**

Time, distance, and cover may allow officers additional time to assess the totality of the incident, including resistance, and to formulate a response. The main goal of using time, distance, and cover to de-escalate situations is to slow the momentum of a charged or critical incident to allow for more time, options, and resources to become available for incident resolution. Time, distance, and cover may be enhanced by utilizing:

- Additional resources such as crisis intervention trained officers or mental-health crisis response units;
- Avoidance or minimization of physical confrontation, unless necessary (for example to protect someone or stop dangerous behavior);
- Using cover and concealment for tactical advantage, such as:
  - Placing barriers between an uncooperative engaged person and officers
  - Using natural barriers in the immediate environment

Commented [TJ101]: Seattle 8.1

Commented [TJ102]: Work in a better word here. "Relative"

Commented [AV103]: Expanded from existing language on vehicle mass ramming attacks

Commented [TJ104]: Seattle 8.1

- Officers with stand-off or longer-distance force options; or
- Armored vehicles.

➤ **De-Escalation Resources**

De-escalation resources are continuously evolving, and the Department encourages creative, thoughtful de-escalation strategies to resolve situations. Some of the de-escalation resources utilized by the Department include:

- Armored vehicles
- Mental Health Professionals working with Law Enforcement (e.g. Mobile Evaluation Team)
- Language Assistance (e.g. language translation line, multi-lingual Department personnel)
- Crisis intervention-trained officers

**D. USE OF FORCE – GENERAL POLICY CONSIDERATIONS**

**D - 1. Prohibitions on Unlawful Force**

Oakland Police Department officers are prohibited from using force or the threat of force to punish, retaliate, or unlawfully coerce.

It is the expectation of the Department that when an individual is under control, either through the application of physical restraint or the individual's compliance, only the amount of force necessary to maintain control will be used. Under no circumstances will an officer use force solely because another officer is using force. Officers shall not use force based on bias against a person's race, ethnicity, nationality, religion, disability, gender, gender identity, sexual orientation, or any other protected characteristic.

**Commented [TJ105]:** Denver 105.01 4,b,4  
Also in current OPD policy

**Commented [TJ106]:** Denver 105.01 5, c.

**Commented [TJ107]:** NOPD p.6

**D - 2. Duty to Intervene**

Any officer who observes another officer about to use force that is illegal, excessive, or otherwise inconsistent with this policy shall, absent extraordinary circumstances, do whatever he/she can to interrupt the flow of events *before* the fellow officer does something that makes any official action necessary.

Similarly, any officer who observes an officer using force that is illegal, excessive, or otherwise inconsistent with this directive shall, absent extraordinary circumstances, do whatever he/she can do to interrupt the flow of events and *stop* the use of force.

Members witnessing instances of misconduct must also follow the direction given in Department Manual of Rules Section 314.48, *Reporting Violations of Laws, Ordinances, Rules, or Orders*<sup>4</sup>, and members who fail to report excessive force are subject to appropriate discipline.

**Commented [TJ108]:** Think about re-wording...

**Commented [TJ109R108]:** Added a footnote instead to the applicable MOR section with the full text.

<sup>4</sup> Manual of Rules 314.48: "Members and employees who become aware that other members or employees violated laws, ordinances, rules of the Department, or disobeyed orders, of a Class I violation or any Class

**D - 3. Duty to Report Use of Force**

Any officer when present and observing another officer using force that the officer believes to be beyond that which is lawful and permitted under this policy must promptly report the force to a superior officer.

The Department shall promptly notify and report uses of force, including all lethal uses of force, in accordance with this policy, the Department Manual of Rules, and all applicable court orders.

Formatted: List Paragraph, Indent: Left: 0.75"

**D-3.D - 4. Identification and Warnings Prior to the Use of Force**

When feasible, and without sacrificing officer, engaged person, or public safety, officers shall:

- Identify themselves as law enforcement officers;
- Verbally warn the engaged person that force may be used unless their resistance ceases; and
- Give the engaged person a reasonable opportunity to comply with a warning that force may be used.

Commented [AV110]: Add language to consider people with disabilities and/or list other warning options

Commented [TJ111]: Think about language here regarding not using unwarranted threats of force... (malicious, overtly threatening, must have legitimate law enforcement purpose)

Warnings about the use of force shall not be made with malicious or arbitrary intent to threaten, but instead shall have a legitimate law enforcement purpose.

Commented [TJ112]: Speak to language sent by Mr. Chanin here.

**D-4.D - 5. Use of Force on Restrained Persons**

Officers may only use objectively lawful and proportional force on restrained persons. The fact that the person was restrained shall be evaluated both as part of the totality of the circumstances. Typically, less-lethal force and lethal force may not be used against restrained persons (see G-5). Lethal force may not be used against restrained persons under any circumstances.

Commented [TJ113R112]: Done – added 3<sup>rd</sup> line to D-4

Commented [TJ114]: Modified in response to comments about warnings. Allows for flexibility and use of warnings of force to de-escalate and hopefully end incidents without force, while still setting a standard to which personnel can be held.

**D-5.D - 6. De-escalation of Force After Force has been Used**

Officers shall de-escalate the use of force whenever feasible and the officer shall de-escalate his/her own force proportional to a reduced need for force and/or an eliminated threat. It is the expectation of the Department that when an individual is under control, either through the application of physical restraint or the individual's compliance, only the amount of force necessary to maintain control will be used.

Commented [TJ115]: Seattle 8.2

Commented [TJ116]: DC Metro p. 13

Commented [TJ117R116]: We cut this line.

**D-6.D - 7. Duty to Provide Prompt Medical Aid**

When feasible, officers shall request medical aid for any minor, serious, or great bodily injury, complaint of serious or great bodily injury, or sign of

Commented [TJ118]: Denver 105.01 5, c

Commented [AV119]: SB 230 mandates: "A requirement that officers promptly provide, if properly trained, or otherwise promptly procure medical assistance for persons injured in a use of force incident, when reasonable and safe to do so."

II violation which indicates a pattern of misconduct of which they are aware, shall within 24 hours or sooner, if practical, report the offense, orally or in writing, to his/her supervisor or the Internal Affairs Division." The use of unreasonable or excessive force is **Class I** misconduct.



medical distress for persons subject to the use of force, even if the aid is declined.

After requesting medical aid, officers shall, if feasible, render aid within the full scope of their training and skillset unless aid is declined. Consent should be assumed for unconscious persons or persons incapable of providing consent.

Commented [TJ120]: Seattle 8.2

~~Officers shall automatically request medical aid for persons who have been struck, contacted, or contaminated by the following force options, regardless of injury:~~

- ~~➤ Lethal ammunition fired from a firearm;~~
- ~~➤ Electronic Control Weapons, whether probe or drive stun;~~
- ~~➤ Specialty Impact Munitions;~~
- ~~➤ Impact or impromptu impact weapon strikes with contact; or~~
- ~~➤ Oleoresin Capsicum spray.~~

**E. USE OF FORCE - LEVELS OF RESISTANCE**

~~Resistance (Section E, LEVELS OF RESISTANCE) and response (Section F, LEVELS OF FORCE) are dynamic. The engaged person's behavior and the use of force to control it may escalate or de-escalate during any given interaction until complete control of the engaged person is achieved. This policy does not require that an officer attempt to select or exhaust each force option or level of force before moving to another level; rather, gradations on the levels of resistance (Section E) and force which may be used to overcome that resistance (Section F) are set forth below to guide officers in making reasonable decisions on the use of force and to provide a framework to allow for evaluation of decisions made during use of force incidents.~~

Commented [TJ121]: Is there a need for an explanatory sentence here? Possibly to explain why it is that these are called out specifically?

Commented [TJ122R121]: I moved the last part of section F, which had been moved to the beginning of section F, to here: the beginning of section E. This introduces these two sections and hopefully allows for the purpose to be made clear.

Commented [AV123]: Reorient policy to focus on officer conduct and UOF at all times. Resistance may only be one consideration in totality of circumstances standard. Not opposed to including levels of resistance and noncompliance in training but UOF policy levels should not be correlated to this 1 aspect.

~~Proportional force does not require officers to use the same type or amount of force as the engaged person. The more immediate the threat and the more likely that the threat will result in death or injury, the greater the level of force that may be proportional, objectively reasonable, and necessary to counter it.~~

Commented [TJ124]: Is there a better word than "subject"?

Find the "Note" that disappeared. (Found it, it's still in F)

~~Nothing in this document removes the rights of officers to reasonably protect themselves or others from immediate threat/imminent threats to their safety or the safety of others.~~

Commented [TJ125]: DC Metro, Use of Force Framework

Commented [TJ126]: Denver 105.01 5, b

**E-1. Non-Compliance**

Commented [TJ127]: Seattle 8.05

~~Verbal and physical actions indicate the engaged person is not responding to verbal commands but also offers no form of physical resistance.~~

Commented [TJ128]: SFPD p. 5

**Passive Resistance**

~~Engaged person responds without compliance or takes physical actions that do not prevent an officer's attempts to exercise control of a person or place them in custody.~~

Commented [TJ129]: Denver 105.01 3, c



~~Verbal responses indicating an unwillingness to comply with an officer's directions which do not rise to the level of threats are also considered passive resistance.~~

Commented [TJ130]: Denver 105.01 3, b

**Active Resistance**

~~Physically evasive movements to defeat an officer's attempts at control including bracing, tensing, or pulling / running away.~~

~~Verbal responses indicating an unwillingness to comply with an officer's directions which do rise to the level of threats are also considered active resistance.~~

**Assaultive Resistance**

~~Physical movements which demonstrate an intent and present ability to assault the officer or another person. Assaultive resistance is resistance that is not immediately life-threatening.~~

Commented [TJ131]: SFPD p. 6

**Life-Threatening Resistance**

~~Any action likely to result in death, great bodily injury, or serious bodily injury to the officer or another person.~~

Commented [TJ132]: Physical movements which demonstrate an intent and present ability...

**F. LEVELS OF FORCE**

**Note:** Clear commands, warnings, command presence, and increased officer numbers are essential aspects of all levels of force, as well as of de-escalation attempts both before and after any use of force incident.

**Contact Controls**

~~Low level physical tactics used to gain control and overcome non-compliance or passive resistance. These include physical control techniques (e.g. pulling, pushing, or maneuvering an engaged person's body), escorts, or simply using a firm grip. This level of force is not intended to cause injury or pain.~~

**Compliance Techniques and Defensive Tactics**

Commented [TJ133]: Overcoming passive

~~Low level physical tactics used to gain control and overcome passive resistance and active resistance, depending on the totality of the circumstances. While not intended to cause injury, these techniques may cause transitory pain or discomfort, and are occasionally intended to cause pain in order to gain compliance (e.g. control holds). Techniques and tactics used to overcome passive resistance shall be objectively reasonable based on the totality of the circumstances, and the level of resistance is an important calculation regarding the proportionality of force.~~

~~Techniques and tactics to overcome passive resistance include control holds, objectively reasonable takedowns, and non-striking use of the baton. OC spray shall not be used on those engaged persons who go limp or offer no physical resistance.~~

Commented [TJ134]: Added, also in G-3

~~Techniques and tactics to overcome active resistance include control holds, oleoresin capsicum (OC) spray, takedowns, non-striking use of the baton, and personal body weapons.~~

**Intermediate Less-Lethal Force**

~~Intermediate level force options which pose a foreseeable risk of injury or harm, but are neither likely nor intended to cause death or great bodily injury. Intermediate less-lethal force is intended to overcome active and assaultive resistance, and includes personal body weapons, impact weapons, electronic control weapons (ECW), oleoresin capsicum (OC) spray, police canines, and specialty impact munitions.~~

**Lethal Force**

~~Any use of force that creates a substantial risk of causing great bodily injury or death, intended to overcome life-threatening resistance. Lethal force includes, but is not limited to, impact weapon strikes to the head, the discharge of a firearm loaded with lethal ammunition, and intentionally striking a person with a vehicle.~~

**G.E. COMMANDS AND PERMITTED LESS-LETHAL FORCE OPTIONS**

Officers shall only use **objectively reasonable** force, **proportional** to the level of resistance posed, threat perceived, or urgency of the situation, to achieve the lawful purpose or objective.

Officers may use objectively reasonable **less-lethal** force options in the performance of their duties in the following circumstances:

- To effect a lawful arrest, detention, or search;
- To overcome resistance or prevent escape;
- To prevent the commission of a public offense;
- In defense of others or in self-defense;
- To gain compliance with a lawful order;
- To prevent a person from injuring him/herself.

The Oakland Police Department trains on multiple different tools and techniques which constitute commands or less-lethal force options. These options can be broadly categorized into three realms: **Presence/Command Options, Physical Control/Personal Weapons Options, and Less-Lethal Tool Options.**

**E1. Presence/Command Options**

Officer presence, verbal commands, measured tone, and command presence of a uniformed officer are all part of the larger field of **Presence/Command Options**. These are communication techniques, both verbal and non-verbal, which are ~~not a use of force but which are essential~~ **encouraged** in resolving tense, uncertain, and rapidly-developing incidents or incidents where force is

Commented [TJ135]: Style staying uniform

Commented [TJ136]: Ensure we reconcile with H-1

Commented [TJ137R136]: Both now read "force that creates a substantial risk of causing great bodily injury or death"

Commented [TJ138]: Seattle 8.2

Formatted: Font: Bold

Commented [TJ139]: AB 392, 835a(b) PC

Commented [AV140]: Reorganized as lethal force (necessary standard); less lethal force (objective reasonable standard); and prohibited force.

used. Verbal commands shall be respectful and clearly relay the police objective, and presence/command options are an integral part of de-escalation (see section C, **De-Escalation**).

**E2. ~~Physical Control/Personal Weapons Options~~ Compliance and Contact Controls**

~~Depending on the manner and intensity in which they are used, **Physical Control/Personal Weapons Options** may fall into multiple force levels: **Contact Controls, Compliance Techniques and Defensive Tactics, or Intermediate Less Lethal Force.**~~ Less than lethal physical tactics used to maintain safety or to defend against a non-lethal imminent threat of great bodily injury. While not intended to cause serious or lethal injury, these techniques may cause transitory pain or discomfort. These options include, but are not limited to:

- ~~➤ Escorts and physical body manipulation without pain compliance~~
- Control Holds. This is the lowest level of physical force which includes physical force to escorts, physical manipulation without pain compliance, or simply using a firm grip. This level of force is not intended to cause any harm or injury;
- Takedowns;
- Vulnerable Area manipulation;
- Bean bags rounds; and
- Personal Weapon strikes—NOTE: Personal Weapon strikes to a restrained person are considered Intermediate Less Lethal Force. Strikes to disarm/disable a imminent threat.

~~Absent exigent circumstances, all~~ **All Physical Control/Personal Weapons Options** shall be compliant with Oakland Police Department policy and training. Refer to **Training Bulletin III-I.1, Weaponless Defense.** Officers will only carry and use tools that have been approved by the Department and that the officer has been properly trained and certified to use.

**E3. Requirement to Carry at Least One Less-Lethal Tool**

Uniformed sworn officers who are working field assignments shall carry at least one hand-held less-lethal tool.

**Less Lethal Tool Options**

~~Less lethal tools are used to interrupt an engaged person's threatening behavior so that officers may take physical control of the engaged person with less risk of injury to the engaged person or officer than posed by other force applications. Less lethal tools alone cannot be expected to render an engaged person harmless.~~

Commented [TJ141]: Seattle 8.3

~~Officers will only carry and use tools that have been approved by the Department and that the officer has been properly trained and certified to use; use of improvised or impromptu weapons may be permissible under exigent circumstances.~~

Commented [TJ142]: Seattle 8.3

~~Less-lethal tools most often fall into the level of Intermediate Less Lethal Force, although certain tools, depending on the totality of the circumstances, may fall to the level of Compliance Techniques and Defensive Tactics (e.g. non-striking use of a baton or OC Spray).~~

~~Less-lethal tools, depending on the nature of the tool and the manner in which they are used, have the potential to cause serious consequences. Officers are reminded that they shall follow the specific policy and guidance contained in Departmental Training Bulletins that govern any specific tool. Important warnings regarding specific less-lethal tools, covered below, are not a substitute for a complete understanding of the specific policy and guidance for any particular force option as described in the appropriate Training Bulletin or policy.~~

~~The Less-lethal tools authorized by the Department include:~~

~~Patrol Canine—See DGO K-09, Department Canine Program~~

~~Electronic Control Weapon (ECW)—See DGO (Lexipol) 304, Electronic Control Weapon (TASER)~~

~~Important warning: When feasible, a verbal warning of the intended use of the ECW shall precede its use, to warn the engaged person and other officers.~~

~~Impact Weapons: Includes the ASP® expandable baton, long wood baton, and short wood baton—See Training Bulletin III-H.02, Hand-held Impact Weapons~~

~~Important warning: Unless exigent circumstances exist, officers shall not intentionally strike the head, neck, throat, spine, kidneys, groin, or left armpit with impact weapons.~~

~~Specialty Impact Weapons: Includes direct-fired ranged impact munitions, regardless of weapons platform—See Training Bulletin III-H, Specialty Impact Weapons~~

~~Important warning: SIM use during crowd control situations is further limited—see Training Bulletin III-G, Crowd Control and Crowd Management.~~

~~Oleoresin Capsicum (OC) Spray—See Training Bulletin V-F.02, Chemical Agents~~

~~Important warning: OC spray shall not be used to wake up or arouse unconscious or sleeping individuals who otherwise pose no threat.~~

~~Important warning: OC spray shall not be used on passive resisters who go limp or offer no physical resistance.~~

Commented [TJ143]: Add prohibited areas here.

Commented [TJ144R143]: See above paragraph added plus "Important Warning"

Commented [TJ145]: Language from the TB V-F.02 on decontamination and medical assistance:

Steps to Decontaminate a Person Exposed to a Chemical Agent 1.Steps to Decontaminate a Person Exposed to Level 1 and Level 2 Contamination Perform the following steps to help decontaminate a person exposed to level 1 and 2 contamination: a.Remove the contaminated individual from the contaminated environment. b.Calm the subject and remind the subject to breathe normally and relax. c.Monitor the subject's condition. d.Summon medical attention to the scene for the purpose of flushing the contaminated areas. Any subject exposed to chemical agents must receive medical assistance as soon as practical. e.Flush the contaminated area with copious amounts of cool water. The effects of the chemical agent should dissipate within 30 to 45 minutes 1)Do Not rub the affected area. Do Not use creams, salves, or lotions to ease the pain. 2)Do Not leave the individual unattended.

After officers handcuff a subject, the subject should be turned on his/her side or placed in a seated position. Medical assistance should be summoned as soon as practical. The subject should not be left unattended while waiting for medical response.

Commented [TJ146]: Want to ensure this does not preclude less-lethal force options to safely resolve situations of an armed unresponsive person or similar.

~~Crowd Control and Tactical Team Chemical Agents—See Training Bulletin V-F.02, Chemical Agents and Training Bulletin III-G, Crowd Control and Crowd Management.~~

~~(e.g. ECW, impact weapon, and/or OC).~~

**Restrictions on Use of Less Lethal Force Against Restrained Persons**

~~—Officers are prohibited from using less lethal tools against restrained persons unless that person is exhibiting Assaultive or Life-Threatening resistance or there is an immediate threat/imminent threat of serious or great bodily injury or death.~~

**H.F. USE OF FORCE – PERMITTED LETHAL FORCE OPTIONS**

Lethal force is any force that creates a substantial risk of causing great bodily injury or death. Lethal uses of force must be **necessary, proportional** to the level of resistance or threat posed, or urgency of the situation, to achieve the lawful purpose or objective. ~~These force options include firearms loaded with lethal ammunition, force likely to cause great bodily injury or death, and using a vehicle to intentionally strike the body of another person.~~ Lethal force is strictly prohibited solely to protect property or against a person who presents only a danger to himself/herself and does not pose an ~~immediate threat/imminent threat/imminent threat~~ of death or serious bodily injury to another person or officer.

For the purpose of this section of the policy, the term “firearm” shall indicate firearms loaded with lethal ammunition.

Lethal uses of force are only permitted in narrow circumstances announced herein.

Whenever feasible, an officer shall identify themselves as a police officer and give a verbal warning that deadly force may be used.

**F1 Drawing, Exhibiting, or Unholstering Firearms**

~~Officers are only permitted to point a firearm at another person if there is an objectively reasonable perception of a substantial risk that the situation may escalate to create an imminent threat that would justify lethal force. An officer may draw, exhibit, or unholster their firearm in the line of duty when the officer reasonably believes it is necessary for his or her own safety or for the safety of others.~~ The drawing, exhibiting, or unholstering of a firearm by law enforcement officers can be perceived as threatening and intimidating and, when unwarranted, may cast a negative impression on officers. Unwarranted emphasis on the police possession of weapons, such as an officer placing their hand on a holstered firearm during an interaction with the public when not justified by a safety concern, can also create negative impressions and damage rapport.

Officers may draw, exhibit, or unholster their firearms only when ~~justified by appropriate circumstances~~ the conditions under this policy are met, and the

**Commented [TJ147]:** Seattle 8.3

**Commented [AV148]:** Removed. “Use of force on restrained subjects” added into prior section on general policy considerations for UOF

**Commented [TJ149]:** AB 392, 835a(e)(1) PC

**Commented [TJ150R149]:** F-4 says “Any use of force substantially likely to cause great bodily injury or death”

**Commented [TJ151]:** AB392 835a(a)(2) PC, 835a(c)(1)(A) and (B)

**Commented [AV152]:** AB 392 sets more restrictive “necessary” standard for lethal use of force

SB 230 requires specific and detailed policy on when officer may unholster, exhibit, threaten to discharge weapon

**Commented [AV153]:** Exchanged standard from “pointing firearm” section below

**Commented [TJ154]:** Seattle 8.3

drawing, exhibiting, and unholstering of firearms will be tracked by the Department (see **DGO K-04, Reporting and Investigating the Use of Force**).

~~When an officer determines that the threat is over, the~~ The officer shall holster his or her firearm, when feasible.

**Commented [TJ155]:** Seattle 8.3

Whenever feasible, an officer shall identify themselves as a police officer and give a verbal warning that deadly force may be used.

**Commented [TJ156]:** AB392 835a(a)(2) PC, 835a(c)(1)(A) and (B)

### F2 Pointing Firearms at a Person

The pointing of a firearm at another person is a Fourth Amendment seizure and a use of force.<sup>5</sup> The pointing of a firearm by law enforcement officers can be perceived as threatening and intimidating and, when unwarranted, may cast a negative impression on officers.

**Commented [AV157]:** AB 392 sets more restrictive “necessary” standard for lethal use of force

SB 230 requires specific and detailed policy on when officer may unholster, exhibit, threaten to discharge weapon

~~An officer may draw, exhibit, or unholster their firearm in the line of duty only when necessary to defend against an imminent threat. Officers are only permitted to point a firearm at another person if there is an objectively reasonable perception of a substantial risk that the situation may escalate to create an imminent threat that would justify lethal force.~~

**Commented [TJ158]:** Seattle 8.3

If an officer points a firearm at a person ~~the officer, the person shall,~~ when safe and feasible, ~~be advised~~ shall advise the person of the reason why the officer(s) pointed the firearm. ~~When an officer determines that the threat is over, the~~ The officer shall cease pointing his or her firearm, when feasible.

**Commented [TJ159]:** SFPD p. 12

**Commented [TJ160R159]:** Keep working here – feasible might cause an issue with compromising investigations or having multiple officers explain their use of force.

Whenever feasible, an officer shall identify themselves as a police officer and give a verbal warning that deadly force may be used.

**Commented [TJ163R162]:** Changed to the passive voice. This allows for multiple things:  
-Field supervisors can come and take a complaint or resolve a situation, and advise of the reasons why force was used;  
-Investigators can explain why force was used on a subject after the investigatory interviews are done, avoiding compromising the investigation;  
-One officer (such as FTO, senior officer on scene, Sergeant, etc.) explains the entire incident, as opposed to each officer being required to speak to the subject  
-Specialized units (e.g. CIT, negotiators) developing and keeping rapport and using that rapport to explain the situation.

### F3 Discharging Firearms at a Person

An officer is justified in discharging a firearm at another person only when ~~the officer believes~~ that the discharge is necessary for either of the following reasons:

- a. To defend against an ~~immediate threat~~ imminent threat imminent threat of death, great bodily injury, or serious bodily injury to the officer or another person; or
- b. To apprehend a fleeing person for a felony when all of the following three conditions are met:
  - i. There is probable cause to arrest the engaged person for the commission of a felony that threatened or caused death, great bodily injury, or serious bodily injury;
  - ii. The officer reasonably believes that the person will cause death or great bodily injury to another unless immediately apprehended; and

**Commented [TJ161]:** Seattle 8.3

**Commented [TJ162]:** AB392 835a(a)(2) PC, 835a(c)(1)(A) and (B)

**Commented [AV164]:** AB 392 sets more restrictive “necessary” standard for lethal use of force

SB 230 requires specific and detailed policy on when officer may unholster, exhibit, threaten to discharge weapon

<sup>5</sup> *Robinson v. Solano County*, 278 F. 3d 1007 (9<sup>th</sup> Cir. 2002)



- iii. There are no other reasonably available or practical alternatives to apprehend the person.

Whenever feasible, an officer shall identify themselves as a police officer and give a verbal warning that deadly force may be used.

**Commented [TJ165]:** AB392 835a(a)(2) PC, 835a(c)(1)(A) and (B)

~~Discharging Firearms at Moving Vehicles~~

~~Discharging firearms at occupants in moving vehicles poses an increased risk for the occupants of the vehicle, officers, and the public at large.~~

~~Officers are prohibited from intentionally positioning themselves in a location vulnerable to a vehicular attack, and, whenever possible, shall move out of the way of the vehicle instead of discharging their firearm at the operator. Officers are also prohibited from discharging their firearms at the operator of a vehicle when the vehicle has passed and is attempting to escape, except in the case of a vehicle ramming mass casualty attack.~~

~~Officers shall not discharge firearms at occupants of moving vehicles, with the following exceptions:~~

~~Officers may discharge firearms at occupants of moving vehicles to defend the officer or another person against the vehicle occupant's immediate threat/imminent threat of death, great bodily injury, or serious bodily injury by means other than the vehicle;~~

~~Officers may discharge firearms at the operator of a moving vehicle to defend the officer or another person against the operator's use of the vehicle to cause death, great bodily injury, or serious bodily injury where the officer or other person has no reasonable avenue of protection or escape.~~

~~Officers may discharge firearms at the operator of a moving vehicle who is committing or attempting to commit a vehicle ramming mass casualty attack.~~

~~Officers are prohibited from intentionally positioning themselves in a location vulnerable to a vehicular attack, and, whenever possible, shall move out of the way of the vehicle instead of discharging their firearm at the operator. Officers are also prohibited from discharging their firearms at the operator of a vehicle when the vehicle has passed and is attempting to escape, except in the case of a vehicle ramming mass casualty attack.~~

~~Discharging Firearms from Moving Vehicles~~

~~Officers shall not discharge a firearm from a moving vehicle unless a person is immediately threatening the officer or another person with life threatening resistance. This behavior is strongly discouraged and should be considered a last resort.~~

**Commented [TJ166]:** Seattle 8.3

~~Discharging Firearms at Animals~~

~~Officers may discharge firearms at animals under the following circumstances if it is not feasible to control the animal by using Oakland Animal Services (OAS) personnel or services:~~

**Commented [TJ167]:** Added this to control all discharges of firearms against animals.  
Also, removed euthanizing: per OAS staff, they have a 24/7/365 staffer that can be summoned via Communications to euthanize badly injured animals. They also have contractual ties with VCA San Leandro, a 24/7 Vet clinic.

~~Against a dangerous animal to deter an attack or to prevent injury to persons present; or~~

**Commented [TJ168]:** Seattle 8.3

~~If an animal is a threat to human safety and cannot be controlled by the responsible person, or there is no responsible person present, or the animal is a wild animal, and the threat is such that the animal must be dispatched (killed) in order to ameliorate the threat.~~

**Commented [TJ169]:** Needs to reference that need to take every effort to have Animal Control manage these situations.

~~Other than when the animal presents an immediate threat/imminent threat of attack or injury to a human, and when it has been determined that it is not feasible to control the animal by using OAS personnel or services, officers shall summon a supervisor or commander to the scene prior to dispatching an animal. The supervisor or commander shall either dispatch the animal (if necessary) or delegate the responsibility to a designated officer.~~

**Commented [TJ170R169]:** Added the feasibility test to all uses of firearms against animals, above.

**Commented [TJ171]:** Reiteration of reliance on OAS as primary option.

Also changed from patrol district sergeant to supervisor or commander to allow for more flexibility (e.g. if patrol district sergeant is unavailable, Watch Command LT can respond). Supervisors and commanders are rank of Sergeant and above.

**General Prohibitions Regarding Firearms**

Officers are prohibited from the following actions:

~~Using firearms as impact weapons, unless any of the following circumstances exist:~~

**Commented [TJ172]:** Seattle 8.3

~~When a person is attempting to take the firearm away from the officer;~~

~~When lethal force is permitted; or~~

**Commented [TJ173]:** Added – this was missed in previous iterations but is a taught technique.

~~When using long gun specific defensive tactics muzzle strikes as taught by Patrol Rifle or Firearms training staff;~~

~~Firing warning shots; and~~

~~Life is sacred and the loss of life due to the actions of a Department officer will be addressed swiftly, transparently, and seriously. – No policy can anticipate every conceivable situation or exceptional circumstance which officers may face. In all circumstances, officers are expected to exercise sound judgment and critical decision-making when using force options.~~

~~The Department acknowledges that policy regarding the use of lethal force does not, and cannot, cover every situation that may arise. – Any deviations from the provisions of this policy shall be examined rigorously and will be critically reviewed on a case-by-case basis. The involved officers must be able to articulate clearly the reasons for the use of lethal force, including whether the officer’s life or the lives of others were in immediate peril and if there was no reasonable alternative.~~

**F4 Discharging Firearms at Animals**

~~e.a. Officers may discharge firearms at animals only under the following circumstance AND when it is not feasible to control the animal by using Oakland Animal Services (OAS) personnel or services:~~

**Commented [AV174]:** Remove altogether? Need more information: How often do police get animal calls? Why is the policy lethal force the only consideration? Why would there need to be a supervisor/commander to come out to put the animal down if there’s no imminent threat?

- ~~i. Against a dangerous animal to deter an attack or to prevent injury to persons present.~~

**Formatted:** Font: Bold

**Formatted:** Font: Bold

**Force Likely to Cause Great Bodily Injury or Death**

**Formatted:** List Paragraph, Indent: Left: 0.5", Hanging: 0.5", Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

~~Other than firearms, certain other force options create a substantial risk of causing death or great bodily injury. These include:~~

- ~~➤ Intentional impact weapon strikes to the head; and~~



~~➤ Intentional use of a vehicle, at any vehicle speed, to strike the person of another.~~

~~— Officers may use force likely to cause great bodily injury or death only when the officer believes, based on the totality of the circumstances, that the force is necessary for either of the following reasons:~~

~~➤ To defend against an immediate threat imminent threat of death or serious bodily injury to the officer or another person; or~~

~~➤ To apprehend a fleeing person for a felony when the following three conditions are met:~~

- ~~• There is probable cause to arrest the engaged person for the commission of a felony that threatened or caused death, great bodily injury, or serious bodily injury;~~
- ~~• The officer reasonably believes that the person will cause death or great bodily injury to another unless immediately apprehended; and~~
- ~~• There are no other reasonably available or practical alternatives to apprehend the person.~~

## G. PROHIBITED USES OF FORCE

### G - 1. General Policy

The Department recognizes and affirms that uses of force may often be incongruent with the Department’s mission and purpose which considers the protection of human life paramount. Thus, certain uses of force are absolutely prohibited in all instances. The reasons for prohibition may vary including legal mandate, public mandate, and centering the protection of human lives.

### G - 2. Prohibited Force

The following techniques, mechanism, tools, and uses of force are prohibited and banned from use in the Department. Any such use will result in immediate disciplinary action up to, and including termination.

Prohibited uses of force against persons include:

- ~~➤ Restraints that obstruct breathing and/or the airway. Such restraints include, but are not limited to: carotid restraints; chokeholds; sitting, kneeling, standing, or pressing on a person’s head, neck, throat, and/or chest. For purposes of this section, “Carotid Restraint Hold” means a physical technique where continuing compression on the carotid arteries on both sides of an individual’s neck, with no effect on the respiratory structures of the throat, is applied in order to gain control.~~

Formatted: Normal, Indent: Left: 0.56"

Formatted: Indent: Left: 1", Space Before: 12 pt, After: 0 pt, Line spacing: 1.5 lines, Bulleted + Level: 1 + Aligned at: 1.38" + Indent at: 1.63"

California Peace Officers are required by the Commission on Peace Officer Standards and Training (POST) to demonstrate competency in the carotid restraint hold during the basic police academy. The carotid restraint hold is considered **lethal force** by the Oakland Police Department, and members are prohibited from using the carotid restraint hold. For purposes of this section, “**Chokehold**” means a physical maneuver that restricts an individual’s ability to breathe for the purposes of incapacitation. This does not include the carotid restraint hold. A chokehold is considered **lethal force** by the Oakland Police Department, and members are prohibited from using chokeholds:-

- Chemical agents including, but not limited to: tear gas, CS gas, and other airborne chemical weapons;
- Electrical conducting weapons including, but not limited to: taser dart guns and electrified batons;
- Projectile weapons other than those listed in the “Permitted Less-Lethal Force Options” and “Permitted Lethal Force Options”-;
- Warning shots with a firearm;
- Police canines;
- Officers are also prohibited from discharging their firearms at the operator of a vehicle when the vehicle has passed and is attempting to escape, except in the case of a **vehicle ramming mass-casualty attack**;
- Officers shall not discharge firearms at occupants of moving vehicles, with the following exceptions:
  - Officers may discharge firearms at occupants of moving vehicles to defend the officer or another person against the vehicle occupant’s imminent threat of death, great bodily injury, or serious bodily injury by means other than the vehicle;

**Commented [TJ175]:** Prohibitions for this and chokeholds (B-2) added 17 Jun 2020

**Commented [AV176]:** Reorganized from “definition” section B. Does not make sense to include only some prohibited uses of force in definitional section that will apply to the entire policy

**Commented [AV177]:** this is intended solely for uses of force against persons and do not prohibit canine uses, for example, in search and rescue operations.

- Officers may discharge firearms at the operator of a moving vehicle to defend the officer or another person against the operator's use of the vehicle to cause death, great bodily injury, or serious bodily injury where the officer or other person has no reasonable avenue of protection or escape:
- Officers shall not discharge a firearm **from** a moving vehicle under any circumstance;
- Using firearms as **impact weapons**, unless lethal force is permitted;
- Using lethal force solely to protect property; and
- Using lethal force against a person who presents only a danger to himself/herself and does not pose an imminent threat of death, great bodily to any other person

Formatted: Font: Bold

Commented [AV178]: Prohibited by SB 230

Commented [AV179]: Reorganized under "prohibited" force heading

Formatted: Normal, No bullets or numbering

## **I.H. CONSIDERATIONS AFTER FORCE**

### **I-1.H - 1. Preventing Positional Asphyxia**

In addition to requesting medical assistance after certain uses of force or when the engaged person has sustained injuries or demonstrates signs of medical distress (see section **D-7**), officers shall, consistent with officer safety, evaluate the positioning of an engaged person to mitigate the chances of positional asphyxia. This includes positioning the person in a manner to allow free breathing once the engaged person has been controlled and placed under custodial restraint using handcuffs or other authorized methods.

Engaged persons under an officer's control should be positioned in a way so that their breathing is not obstructed. This means that officers should not sit, kneel, or stand on an engaged person's head, neck, chest or back, and whenever feasible should not force the engaged person to lie on his or her stomach. Officers must also comply with the duty to provide prompt medical aid after the use of force (see section A- ).

Commented [TJ180]: DC Metro, p. 10

Commented [TJ181]: Subject/person – still working on words.

Find/replace throughout the doc.

Pin whether this should stay here.

Commented [TJ182]: Added head and neck here

### **I-2.H - 2. Counseling Services after Lethal Force Incidents**

#### **Administrative Leave after Lethal Force Incidents**

- ~~Officers involved in a lethal force incident shall be placed on paid administrative leave for not less than three days, unless otherwise directed by the Chief of Police. The Incident Commander may recommend other personnel be placed on paid administrative leave to the Chief of Police. The assignment to administrative leave shall not be interpreted to imply or indicate that an officer acted improperly.~~

~~While on administrative leave, officers shall remain available at all times for official Departmental business, including interviews and statements regarding the incident.~~

Officers involved in a force incident that results in a person being seriously injured or killed shall attend employee assistance and counseling services provided by the City before his/her return to normal duties. Supervisors shall verify attendance only and document completion in an SNF entry. Command officers shall ensure involved officers are advised of the services available and shall direct their attendance. As needed, officers and employees who witness such incidents may also be referred to counseling services.

**H - 3. Reporting Use of Force**

~~Any officer when present and observing another officer using force that the officer believes to be beyond that which is lawful and permitted under this policy must promptly report the force to a superior officer.~~

~~The Department shall promptly notify and report uses of force, including all lethal uses of force, in accordance with this policy, the Department Manual of Rules, and all applicable court orders.~~

~~Any officer when present and observing another officer using force that the officer believes to be beyond that which is lawful and permitted under this policy must promptly report the force to a superior officer.~~

~~a.~~

~~Alameda County District Attorney's Office;~~

**I. REVIEW OF USES OF FORCE**

**I - 1. Principles of Review**

**> Transparency**

~~The Department is committed to maintaining transparency in its internal reviews of any instances of use of force.~~

~~The Department shall also promptly publicly release official records relating to uses of force resulting in grievous bodily injury and/or death including, but not limited to names of officers involved, body camera footage, and official 911 reports.~~

**> Cooperation and Non-Interference**

~~The Department and all officers shall refrain from actions, statements, conduct and/or policies that interfere with, obstruct, and/or undermine review of use of force by the Department or any other agency. This also includes affirmative cooperation with other agencies conducting parallel reviews.~~

**> Retaliation Prohibited**

**Commented [AV183]:** SB 230 requires detailed and specific review policy including: role of supervisors; prompt process for notification and reporting; factors for evaluating and reviewing all uses of force;

**Formatted:** Outline numbered + Level: 4 + Numbering Style: Bullet + Aligned at: 0.75" + Tab after: 1.5" + Indent at: 1"

**Formatted:** Indent: Left: 0.5", First line: 0"

**Formatted:** Outline numbered + Level: 4 + Numbering Style: Bullet + Aligned at: 0.75" + Tab after: 1.5" + Indent at: 1"

The Department is prohibited from retaliating against any employee who engages in any lawful conduct or activity including, but not limited to, interceding in uses of force and reporting uses of force as provided in this policy. Retaliation is likewise prohibited for cooperating, assisting, documenting, testifying, or in any way participating in the review of a use of force.

**I-3.I-2. Administrative Leave after Lethal Force Incidents**

Officers involved in a lethal force incident shall be placed on unpaid administrative leave for not less than three days, unless otherwise directed by the Chief of Police. The Incident Commander may recommend other personnel be placed on paid administrative leave to the Chief of Police. The assignment to administrative leave shall not be interpreted to imply or indicate that an officer acted improperly.

While on administrative leave, officers shall remain available at all times for official Departmental business, including interviews and statements regarding the incident.

**I-3. Review of Use of Force**

The following announce the standards required for review of uses of force.

**> Internal Reporting and Notifications**

As soon as feasible following any use of force, an officer must notify an immediate supervisor about the use of force and provide a report by documenting the force using the required forms.

A supervisor receiving notification of use of force must ensure a report documenting the incident is completed within 24 hours of the force whenever feasible.

A supervisor must respond to the scene for any notifications of use of force that is unlawful under this policy and/or use of force that results in death.

The Department shall send notification of all instances of uses of force in writing to:

- A. the California Department of Justice in compliance with Gov't Code §12525.2;
- B. The Oakland Police Commission pursuant to.....
- D. The Chief of Police and/or Mayor's Office; and
- E. The independent federal monitor and related counsel pursuant to the Negotiated Settlement Agreement.

All uses of force must be reported as soon as feasible and no later than the end of the officer's shift.

**> At the Scene**

Formatted: Font: Bold

Formatted: Don't add space between paragraphs of the same style

Formatted: Font: Bold

The following procedures and requirements apply when responding to and investigating any use of force at the scene of the incident.

• **Involved Officers**

When conducting use of force review at the scene of an incident, any involved officer shall be isolated and kept apart from other communicating with other officers and Departmental staff including physical separation and communication cut off through cell phones and dispatch channels.

Involved officer(s) must provide a statement for the Use of Force report whenever feasible. All involved officer statements must be made prior to officer's review of written reports, audio or video recordings, or other event summaries and recollections. The involved officers must be able to articulate clearly the reasons for the use of force, including whether the officer's life or the lives of others were in immediate peril and if there was no reasonable alternative.

Formatted: Indent: Left: 1.25", Tab stops: 1", Left

• **Use of Force Report**

The on-scene supervisor or superior officer at the scene is responsible for completing the appropriate Use of Force reporting form and determining whether supplemental reports are necessary. The Use of Force report must document all physical evidence including photographs and summary and analysis of evidence collected and identified. The supervisor must also document why any portion of the Use of Force report is not completed.

Formatted: Tab stops: 1", Left

Formatted: Indent: Left: 1.25", Tab stops: 1", Left

• **Non-Departmental Witnesses**

The on-scene supervisor or superior officer at the scene is responsible to locate and to identify non-departmental witnesses that may have information helpful to a thorough and fair review. Identification including name, address, and phone contact shall be documented and shall state if and why this information was unavailable to the reporting officer. Whenever feasible, interviews of non-departmental witnesses should take place at the scene or as soon as possible thereafter. Any identification of and reports from non-departmental witnesses must be included in the Use of Force report form.

Commented [AV184]: Required by NSA

Formatted: Tab stops: 1", Left

Formatted: Indent: Left: 1.25", Tab stops: 1", Left

Commented [AV185]: Required by NSA

• **Resources for Bystanders**

The on-scene supervisor or superior officer at the scene is responsible for assessing bystander support needs which may include counseling and other mental health services after a use of force incident. Referrals to non-law enforcement resources must be made available to

Formatted: Tab stops: 1", Left

Formatted: Indent: Left: 1.25", Tab stops: 1", Left

any person who requests them. Any such requests and referrals must be documented in the Use of Force reports.

**• Notification to Victims' Families**

In the event of a use of force that results in death or grievous bodily injury, the Department must promptly identify the relatives including: next of kin, legal guardian, and/or legal dependents. The Department must promptly notify the relatives of the victim's condition and location with information on how to contact the Department in response. In all instances, the Department must provide notice to families before releasing any information to the public that would identify the victim.

**➤ Agency Review**

The Department shall promptly conduct an internal agency review all uses of force. Life is sacred and the harm to or loss of life due to the actions of a Department officer will be addressed swiftly, transparently, and seriously. This policy shall serve as evidence in any review process. However, no policy can anticipate every conceivable situation or exceptional circumstance which officers may face. In all circumstances, officers are expected to exercise sound judgment and critical decision-making when using force options.

Any deviations from the provisions of this policy shall be examined rigorously and will be critically reviewed on a case-by-case basis.

**• Materials Considered in Review**

Records and materials appropriately considered in review of use of force include:

- Use of Force policy and related training bulletins;
- Use of Force Report and included attachments;
- Dispatch calls and reports;
- Body worn camera footage; and
- Footage and documents from non-departmental witnesses

Records will be given little to no weight in the review proceedings if any of the following are present:

- Boiler plate language and/or repetition of statutory language. E.g. "suspect's actions made lethal force necessary under the law";
- Indicia of evidence tampering, editing, including unlawful and excessive redactions;
- Missing chain of custody record;

**• Standards of Review**

Formatted: Tab stops: 1", Left

Formatted: Indent: Left: 1.25", First line: 0", Tab stops: 1", Left

Formatted: Font: Bold

Formatted: Indent: Left: 0.5"

Formatted: Font: Not Bold

Formatted: Indent: Left: 1.19", Tab stops: 1.44", Left + 2", Left + Not at 1"

Formatted: Indent: Left: 0.75", First line: 0", Tab stops: Not at 1"

Formatted: Indent: Left: 1.25", Outline numbered + Level: 5 + Numbering Style: Bullet + Aligned at: 1" + Tab after: 2" + Indent at: 1.25"

Formatted: Font: Not Bold

Formatted: Normal, No bullets or numbering

Formatted: Font: Not Bold

Officers shall only use **objectively reasonable less-lethal** force, **proportional** to the level of resistance posed, threat perceived, or urgency of the situation, to achieve the lawful purpose or objective.

**Commented [TJ186]:** Seattle 8.2

Lethal uses of force must be **necessary, proportional** to the level of resistance or threat posed, or urgency of the situation, to achieve the lawful purpose or objective. ~~These force options include firearms loaded with lethal ammunition, force likely to cause great bodily injury or death, and using a vehicle to intentionally strike the body of another person.~~ Lethal force is strictly prohibited solely to protect property or against a person who presents only a danger to himself/herself and does not pose an ~~immediate threat~~ imminent threat of death or serious bodily injury to another person or officer.

**Commented [TJ187R186]:** F-4 says "Any use of force substantially likely to cause great bodily injury or death"

An action is necessary if objectively reasonable and required under the totality of the circumstances. In determining whether deadly force is necessary, officers shall evaluate each situation in light of particular circumstances of each case, and shall use other available resources and techniques if reasonably safe and feasible. Evaluations of the necessity of actions shall be done from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and shall account for occasions when officers may be forced to make quick judgments about taking action.

All review proceedings must meet the following minimum standards:

- Provide written summary of all records used in the review;
- An encounter may involve multiple uses of force. Each use of force shall be reviewed separately with the other(s) as consideration in the totality of the circumstances;
- Written decision of whether the use(s) of force complied with departmental policy and training;
- Written specific and detailed findings supporting the decision on whether force used complied with Departmental policy and training;
- Opportunity for officers to dispute findings and/or records relied on to make findings;
- Accessibility to ensure fair and full participation including, but not limited to, language translation and disability access tools.

• Review by Force Review Board.

Findings and conclusions of all reviews shall be documented and maintained as a regular business record of the Department and a copy of all review records placed within the personnel file of the involved officer(s).

**Formatted:** Indent: Left: 1.44", No bullets or numbering

**Formatted:** Font: Not Bold



All internal reviews of uses of force shall be reviewed again by the Force Review Board pursuant to the NSA.

➔

➔ External Reviews

Formatted: Tab stops: 1", Left

Formatted: Normal, Indent: Left: 1", No bullets or numbering

Formatted: Normal, No bullets or numbering

**J. TRAINING**

**J - 1. Annual Training on Use of Force Policy**

Sworn officers of all ranks, and professional staff members who are trained on and authorized to use ~~specific~~ any force options, shall receive training at least annually on the specific provisions of this policy. This training may include, but is not limited to, instruction during continued professional training (CPT) and written refresher training distributed via Department intranet or other document management system.

Training must include guidelines regarding vulnerable populations including, but not limited to, children, elderly persons, people who are pregnant, and people with physical, mental, and developmental disabilities.

All supervisors shall receive annual training on Departmental review of uses of force and responding to scenes of use of force.

Commented [TJ188]: Comport with CPT 18 months?

Formatted: Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.75"

Commented [AV189]: Language from SB 230

Formatted: Normal, Indent: Left: 0.75", No bullets or numbering

**J - 2. ~~Use of Force Policy Training~~ Incorporation into ~~Practical~~ Other Departmental Training**

All practical force and force option training for Department members that is delivered by Department training staff shall incorporate into the lesson plan or training materials instruction on this policy and how the force options or skills being practiced are specifically evaluated and used in light of this policy.

Commented [AV190]: Required by NSA

Formatted: Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.75"

**J - 3. Training Bulletins**

Officers are reminded that they shall follow the specific policy and guidance contained in Departmental Training Bulletins. This document supersedes any conflicting training content.

Commented [TJ191]: Create Appendix 1 – Referenced policies and training bulletins.

Formatted: Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.75"

**K. MUTUAL AID**

This policy shall remain in effect at all times including when the Department provides and/or receives mutual aid. A copy of this policy must be attached or included with all requests for mutual aid.

Formatted: Font: Bold

Formatted: Heading 2, Indent: Left: 0.25", First line: 0.25"

By order of

DEPARTMENTAL GENERAL ORDER K-03  
OAKLAND POLICE DEPARTMENT

Effective Date

Susan Manheimer  
Interim Chief of Police

Date Signed: \_\_\_\_\_

DRAFT

OPD Highlighting Guide/Bibliography

Commented [AV192]: Provided by Sgt Joseph Turner to June draft

**Note:** This draft includes liberal borrowing of ideas, and oftentimes exact phrasing, from a multitude of sources, including the policies, laws, and decisions listed below. While the attempt was made to highlight all instances where ideas or exact phrases borrowed from other sources occur in this document, some may have been missed. Where possible/feasible, direct references to borrowed phrasing is noted. Any places where credit was not appropriately attributed is an error solely of the drafter of this policy.

Assembly Bill 392 – text of Penal Code § 835a, which takes effect January 1<sup>st</sup>, 2020;

Denver Police Policy on Use of Force – Includes content from Denver PD Operations Manual 101.00 (General Philosophy), 105.01 (Use of Force Policy), 105.02 (Force and Control Options), 105.03 (Reporting), 105.04 (Shooting by and/or of Police Officers), and 105.05 (Use of Force Review Board)

New Orleans Police Department Policy on Use of Force – Includes content from NOPD Operations Manual Chapter 1.3, Title: “Use of Force”

Camden County Police Department Order on Use of Force – Effective date January 28<sup>th</sup>, 2013, revision date August 21<sup>st</sup>, 2019.

District of Columbia Metropolitan Police Department General Order on Use of Force – Effective Date November 3<sup>rd</sup>, 2017

Cleveland Division of Police General Order on De-Escalation – Effective Date January 1<sup>st</sup>, 2018

Seattle Police Department Manual, Title 8 – Use of Force. Includes Chapters:

8.000 - Use of Force Core Principles (Effective Date September 15<sup>th</sup>, 2019)

8.050 - Use of Force Definitions (Effective Date September 15<sup>th</sup>, 2019)

8.100 - De-Escalation (Effective Date September 15<sup>th</sup>, 2019)

8.200 - Using Force (Effective Date September 15<sup>th</sup>, 2019)

8.300 - Use of Force Tools (Effective Date September 15<sup>th</sup>, 2019)

8.310 - OC Spray Chain of Custody (Effective Date September 1<sup>st</sup>, 2019)

8.400 - Use of Force Reporting and Investigation (Effective Date September 15<sup>th</sup>, 2019)

8.500 - Reviewing Use of Force (Effective Date September 15<sup>th</sup>, 2019)

National Consensus Policy on Use of Force – International Association of Chiefs of Police, October 2017

San Francisco Police Department General Order 5.01, Use of Force – Revised December 21<sup>st</sup>, 2016.

California Jury Instructions 3160, Great Bodily Injury – CalCRIM 2017 Edition, Judicial Council of California.

*Graham v. Connor*, 490 U.S. 386 (1989)

**Sources of ACLU Input/Guidance on policy suggestions:**

1) Organization/Individual input

- ACLU statewide police practices team and northern CA criminal justice team
- RAHEEM council members and organizations;
- Public comment
  - Police Commission meetings
    - July 23, 2020, item #12 “Use of Force Ad Hoc Public Engagement”
    - Jan 9, 2020, item #10 “Use of Force working group”
    - December 12, 2019
      - Item #8: “Policing of Oakland’s Unhoused Communities” report by Coalition for Police Accountability and UC Berkeley
      - Item #10: Use of Force Working Group
- Youth Use of Force Townhall; February 29, 2020 at East Oakland Youth Development Center
  - Transcript notes provided by Comm. Jackson
  - Mayor Schaaf’s [Townhall on Police Reform](#) hosted July 16, 2020
  - Alameda County Bar Association Webinar on Law Enforcement and People in Mental Health Crises (August 13, 2020) (held as MCLE for attorneys)
  - NAACP Richmond Policing Townhall (August 15, 2020) (public forum hosted via Zoom)

2) Existing State Law/policy

- [SB 230](#) Caballero– passed and goes into effect Jan. 1, 2020
  - adds chapter 17.4 to Gov’t Code and add Penal Code 13519.10 requiring POST revised training on UOF and any policy must provide guidelines on the use of force, utilizing de-escalation techniques and other alternatives to force when feasible, specific guidelines for the application of deadly force, and factors for evaluating and reviewing all use of force incidents, among other things. The bill would require each agency to make their use of force policy accessible to the public.
- [SB 1421](#)

- amend sections 832.7 and 832.8 of the Penal Code making disclosable under the PRA peace officer records of (1) any use of force resulting in grievous bodily injury and/or lethal use of force; (2) sustained incidents of sexual assault by a peace officer; and (3) sustained incidents of dishonesty by a peace officer.
- [AB 392](#) (Weber)
  - Amend Sections 196 and 835a of the Penal Code. Revised use of force standard for lethal force to “necessary” based on totality of circumstances analysis which is higher standard than previous
- The 1925 Geneva Protocol categorized tear gas as a chemical warfare agent and banned its use in war shortly after World War I. In 1993, nations could begin signing the U.N.’s Chemical Weapons Convention (CWC) that outlawed the use of riot control agents in warfare
- 

3) Proposed State Law/policy

- [AB 2054 CRISES Act](#) (Kamlager)
  - Would amend Gov’t Code 8601 to provide grants for 3 years for community-based alternatives to emergency mental health, intimate partner violence, community violence, substance abuse, and natural disasters calls
- [AB 846](#) (Burke)
  - Would amend Gov’t Code 1031 and adds 13651 of the Penal Code to requires POST include bias training and bias is a basis for disqualification; requires departments to review all job postings to remove emphasis on paramilitary aspects of employment and train with emphasis on “community-based policing, familiarization between law enforcement and community residents, and collaborative problem solving”
- [AB 1709](#) (Weber) – expansion of AB 392
  - Would further amend Penal Code 835a after AB 392 to require officers use de-escalation tactics, as defined, in an effort to reduce or avoid the need to use force, to render medical aid immediately or as soon as feasible, and to intervene to stop a violation of law or an excessive use of force by another peace officer. This bill would define “necessary” to mean that, as specified, there was no reasonable alternative to the use of deadly force that would prevent imminent death or serious bodily injury to the peace officer or to another person.

- [AB 1022](#) (Holden) proposes requiring officers to immediately report potential excessive force, and to intercede when present and observing an officer using excessive force.
  - Would amend Govt Code 1029 to require officers to immediately report potential excessive force, and to intercede when present and observing an officer using excessive force, prohibit retaliation against officers that report violations of law or regulation of another officer to a supervisor, as specified, and to require that an officer who fails to intercede be disciplined in the same manner as the officer who used excessive force.
- [AB 1291](#) (Salas) proposes reporting requirements from agencies to POST about disciplined and separated officers
  - This would add 13510.6 to the Penal Code requiring any agency that employs peace officers to notify the POST when a peace officer separates from employment, including details of any termination or resignation in lieu of termination, to notify the commission if an officer leaves the agency with a complaint, charge, or investigation pending, and would require the agency to complete the investigation and notify the commission of its findings. The bill would require the commission to include this information in an officer's profile and make that information available to specified parties including any law enforcement agency that is conducting a preemployment background investigation of the subject of the profile.
- [SB 731](#) (Bradford) proposed decertification standards incorporating the Bane Act
  - Would amend Gov't C 1029 and add Penal Codes 13503 et seq. to require reporting of officer misconduct and provide bases to decertify officers with POST so that they cannot be re-employed as peace officers anywhere else
- [AB 66](#) (Gonzalez, Kalra)
  - Would amend sections 7286 and 12525.2 of the Government Code, and to add Section 832.14 to the Penal Code to prohibit the use of kinetic energy projectiles or chemical agents to disperse any assembly, protest, demonstration, or other gathering of persons and would prohibit their use solely due to a violation of an imposed curfew, verbal threat, or noncompliance with a law enforcement directive. The bill would prohibit the use of chloroacetophenone tear gas or 2-chlorobenzalmalonitrile gas to disperse any assembly, protest, demonstration, or other gathering of persons.
- [SB 776](#) (Skinner)

- Would further amend Sections 832.5, 832.7, and 832.12 of, and to add Section 832.13 to, the Penal Code to expand SB 1421 access to peace officer records including: any use of force, unlawful arrests and searches, sustained incidents of prejudice or discrimination by a peace officer
  - [AB 1314](#) (McCarty)
    - Add 12525.3 to Gov't code creating annual public posting requirements of legal settlements paid for UOF incidents by local gov'ts
  - [AB 1652](#) (Wicks)
    - amend Section 7286 of the Government Code, and to amend Sections 148 and 408 of the Penal Code to ban using force on individuals engaged in, or members of the press covering, a lawful assembly or protest. Intentional violations mandate officer suspension.
  - [SB 629](#) (McGuire) proposes to ensure media access to protests and demonstrations. Violation would be a misdemeanor.
    - add Section 409.7 to the Penal Code to prohibit a peace officers from assaults, interference with, or obstructing a duly authorized media representative who is gathering, receiving, or processing information for communication to the public during protest, demonstration, march, gathering, or other constitutional activities. Punishable as misdemeanor.
  - [AB 1506](#) (McCarty)
    - Adds Section 12525.3 to the Government mandates independent Cal Dept of Justice investigation on any request by law enforcement, city, county, board of supervisors, city council, or district attorney, and establishes new investigatory unit
  - [SB 773](#) (Skinner)
    - Amend 53115.1 of the Government Code to revise composition of state 911 Advisory Board to include welfare and health directors. Goal is “when an incident involves an issue of mental health, homelessness, and public welfare, the calls are directed to the appropriate social services agency and not to law enforcement”
  - [AB 1196](#) (Gibson) proposed
    - Would add Section 7286.5 to Gov't code to ban carotid restraint or a choke hold, and techniques or transport methods that involve a substantial risk of positional asphyxia
- 4) Local law/policy
- Oakland City Council Resolution No. 88167 (June 16, 2020; passed as item 2.21 with unanimous approval from council).

**Commented [AV193]:** All Oakland city council meetings and related documents can be found at: <https://oakland.legistar.com/calendar.aspx>. Click on “minutes” for appropriate meeting date. Minutes document includes internal links to legislation proposed and adopted.



- establishes “zero-tolerance policy for City employees with respect to racist practices, behaviors, actions, and/or association and affiliation with white supremacist groups, organizations or cells” and specifically directing City Administrator to not hire and to terminate those found in violation.
- City Council Resolution No. 88168 (June 16, 2020; passed as item #9 with 7 out of 8 council voting aye).
  - Resolution Urging The City Of Oakland To Immediately Halt The Use Of Tear Gas For Crowd Control During The Covid-19 Pandemic And Requesting The Oakland Police Commission To Immediately Review And Propose Changes To The Oakland Police Department's Policy In Order To Halt Such Use directing Commission to draft a complete ban of tear gas during pandemic
- Oakland City Council Resolution No. \_ (June 30, 2020; passed as item #8 with unanimous vote of the council)
  - Resolution Requesting The Oakland Police Commission To Immediately Review And Propose A Change To The Oakland Police Department's Use Of Force Policy That Would Ban The Use Of Carotid Restraints And Chokeholds Under Any And All Circumstances
- City of Berkeley complete ban on tear gas including mutual aid
  - The resolution was [proposed](#) by Mayor Jesse Arreguin citing incidents of use of teargas in Oakland by OPD. The Berkeley City council voted unanimously to approve the legislation on June 9, 2020.
- Taser disputes & policies
  - ACLU
    - Maryland best practices & guidance on tasers (2011)
    - Nebraska Taser use report (2007)
    - [Arizona taser report](#) (2011)
    - Correspondence to City of San Francisco concerning taser pilot program (July 2012)
  - Bar Association of San Francisco, “[Supplemental Memorandum in Support of the BASF's Recommendation Against Allowing Electronic Control Weapons \(ECVs\) formerly known as TASERS to be Adopted at this Time](#)” (Sept 18, 2017)
  - Eugene, OR taser use policy #309 (2011)
  - US DOJ COPS, “Conducted Energy Devices: Development of Standards for Consistency and Guidance” (Nov. 2006)
  - U.S. Commission on Civil Rights, “[Police Use of Force: An Examination of Modern Police Practices](#)” (Nov. 2018)
  - CBS “[United Nations: Tasers Are a Form of Torture](#)” (Nov. 25, 2007)

- UCSF questions TASER safety studies. Jan 22, 2009 [article](#). May 6, 2011 [article](#).
  - Amnesty International “[Human Rights Impact of Less Lethal Weapons and Other Law Enforcement Equipment](#)” (April 2015)
  - Teargas/chemical weapons
    - Health effects
      - Emily Deruy, “[Coronavirus: Public health experts urge police to stop using tear gas during the pandemic to prevent spread](#)” Mercury News (June 2, 2020)
      - Dhruvi Chauhan et al., “[Using tear gas on protesters perpetuates patterns of reproductive harm](#)”, The Hill (June 26, 2020).
      - The Realist Woman, “[Protesters Blame Tear Gas For Multiple Periods In A Month’s Time](#)” (July 8, 2020)
  - OPD reports
    - OPD Bureau of Services Training Section 2010 [annual report](#)
  - MOUs
    - [OPOA MOU](#) (effective until June 30, 2024)
    - [OPMA MOU](#) (effective until June 30, 2024)
- 5) Court Orders
- Negotiated Settlement Agreement (“NSA”) in Allen et al. v. City of Oakland et al. Case No. C00-4599 THE (JL) and reports of the Independent Monitor
    - Task 24: UOF notification and reporting policy and procedures
    - Task 26: review of UOF
  - [Injunction ordered](#) in APTP et al. v. City of Oakland et al., case no 3:20-cv-03866-JSC dated June 18, 2020
  - Federal Judge in Seattle grants a preliminary injunction prohibiting use of tear gas in effect currently until Sept. 30, 2020

**Commented [AV194]:** NSA and all related reports and docs available [HERE](#)