



DEPARTMENTAL GENERAL ORDER

K-03: USE OF FORCE

DRAFT BY POLICE COMMISSION WITH CPA ADDITIONS

COALITION FOR POLICE ACCOUNTABILITY DISCUSSION DRAFT 9-9-20

(Proposed CPA Edits and Additions=RED. Black is existing Police Commission Draft. Additional suggestions welcomed - purpose of draft.)

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CPA DRAFT
9.9.20

A. MISSION, PURPOSE, AND CORE PRINCIPLES

A.1. Protection and Sanctity of Human Life Paramount

1. 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.
2. The Oakland Police Department is committed to transformative, equitable policing that values and serves the entirety of our community. The Department recognizes that historically policing and law enforcement, - including too many members of OPD - have often failed in these responsibilities.

A.2. Department Commitment to Law, Defense of Civil Rights and Dignity, and the Protection of Human Life

1. 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.
2. While the ultimate objective of every law enforcement encounter is to protect the public, nothing in this policy requires a ~~an officer to member to retreat or~~ be exposed to possible physical injury before applying ~~reasonable~~ necessary force within the directives restrictions.

A.3. Policy Direction Beyond Constitutional Principles

1. 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~~ sets standards beyond the minimum requirements of Graham ~~and its minimum requirements~~. Sound judgment and the appropriate exercise of discretion will always be the foundation of police officer decision-making in the broad range of possible use of force situations. It is not possible to entirely replace judgment and discretion with detailed policy provisions. Nonetheless, this policy is ~~intended to ensure~~ requires that de-escalation techniques are used whenever feasible, that force is used only when necessary, and that the amount of force used is proportional to the ~~situation that an officer encounters~~ threat or resistance of the subject under the circumstances.

A.4. Department Purpose

1. 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, **and gravity of the situation** do not allow for the use of these alternatives.

2. **Officers who violate those values by using (unnecessary) force degrade the confidence of the community, violate the rights of individuals upon whom unreasonable force is used, and may expose the Department and fellow officers to legal and physical hazards.**

A.5. Strict Prohibitions on Inappropriate Force

1. 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 action, including discipline up to and including termination.~~ **(SEE #2 re strikeout)** 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.
2. **Actions inconsistent with this directive (prohibiting unnecessary force under the totality of the circumstances) shall result in (corrective action and) discipline, up to and including termination.**
3. **Any action taken by an officer that is inconsistent with the provisions of this directive shall be considered an unauthorized use of force by the department and not be considered as activity within the proper scope of the officer's departmental duties as an employee of the city of Oakland from a legal perspective.**
4. **Officers whose actions are consistent with the law and the provisions of this directive will be strongly supported in any subsequent review of their conduct regarding the use of force. (Camden NJ)**

A.6. Disparities and Bias (NEW SECTION)

1. 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.
2. **Data from numerous academic studies of policing* demonstrate that a person's race affects the likelihood and severity of use of force, even when all variables are considered. OPD data on racial profiling continues to show that a subject's race is a significant factor in determining police response and**

behavior. (* Ross, Winterhalder, McElreath - 2020; Goff, Lloyd, Geller, Raphael, Glaser - 2016; Fryer - 2016.)

3. It is fundamental to Oakland Police Department values and the communities we serve that use of force policies, training and discipline recognize the history and continued racial disparities in use of force, that the Department is committed to eliminating these practices. Any officer who engages in any such patterns of behavior cannot fulfill the duties of a police officer effectively and shall be subject to corrective action up to and including termination.

A.7. Duty to Intervene & Report

1. 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 **using or** about to use force that is **not objectively reasonable and proportional to the risk presented**, or otherwise inconsistent with this policy shall, ~~absent extraordinary circumstances, do whatever he/she can to interrupt the flow of events~~ **stop** ~~before the fellow officer before the officer does something that makes any official action necessary~~ **as quickly as possible**. 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~~ **as quickly as possible**. 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*.
2. The duty to intervene requires that officers accurately report any use of force by fellow officers that is not objectively reasonable or is otherwise inconsistent with this policy. Failure to accurately report will subject an officer to discipline.

A.8. Commitment to De-Escalation

1. When safe, feasible, and without compromising **essential** law enforcement priorities, officers shall use de-escalation tactics and techniques in order to reduce the need for force. **Officers shall attempt to control an incident through the use of time, distance, communications, tactical repositioning, available resources area containment; surveillance; waiting out a subject; summoning reinforcements; and/or calling in specialized units such as mental health and crisis response resources, in order to reduce the need for force, and**

increase officer and civilian safety. *(AB392 original language as proposed by the bill's author, Dr. Weber and New Orleans PD Use of Force directive)*

2. 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, the officers shall ~~de-escalate~~ **reduce** the amount of force used as the resistance decreases, **as soon as** ~~whenever~~ it is safe, feasible, and reasonable to do so..

A.9. Commitment to Serving All Members of the Community: (NEW SECTION)

1. (The Oakland) Police Department recognizes the magnitude of the responsibility that comes with the constitutional authority to use force. This responsibility includes maintaining vigorous standards and transparent oversight systems to ensure accountability to the community in order to maintain their trust. This includes: Force prevention efforts, Effective tactics and Eliminating persistent racial disparities in use of force and ongoing, Objective review of all use of force.
2. Uses of force, even if lawful and proper, can have a damaging effect on the public's perception of the Department and the Department's relationship with the community. Both the Department and individual officers need to be aware of the negative effects of use-of-force incidents and be empowered to take appropriate action to mitigate these effects, such as:
 - Explaining actions to engaged persons or members of the public
 - Offering all reasonable aid to those affected by a use-of-force
 - Treating subjects, witnesses, and bystanders with professionalism, respect and courtesy
 - Department follow-up with neighbors or family to explain police actions and hear concerns and feedback.

A.10. Commitment to Serving Members of the Community with Physical, Mental Health, Developmental, or Intellectual Disabilities

1. 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~~ **harmful** effects with a focus on communication, prescriptions in this policy, de-escalation, and training, among other remedies. **Commitment to Medical Aid.**

A.11. Commitment to Medical Aid

1. Whenever a person is injured by a use of force, complains of injury from a use of force, requests medical attention after a use of force, **or when medical aid is required by policy**, 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~~ **and OPD policy**.

A.12. Commitment to Thorough and Fair Evaluation of Force

1. 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.
2. Any evaluation of force, de-escalation or disengagement must also allow for the fact that law enforcement officers must sometimes make split-second decisions about the best strategy to utilize amount of force that is necessary in a particular situation with limited information and in circumstances that are tense, uncertain, rapidly evolving, and where the officer is still assessing the risk. dangerous.

A.13. Additional Core Principles in Use of Force Policies Mandated In This General Order

1. **DISENGAGEMENT:** In addition to de-escalation, officers shall use tactical disengagement - i.e. leave the scene - when continued contact may result in an unreasonable risk to the subject, the public or the officer and no crime or a minor crime has occurred, the subject is experiencing a mental health crisis or the officer has means to follow up later such as ID or a license number.

Disengagement can also mean quickly bringing another form of assistance to bear, such as crisis intervention or mental health services. (P23)

2. **PROPORTIONALITY:** Officers shall only use objectively reasonable and necessary force, proportional to objective circumstances, the seriousness of the infraction and the level of resistance posed, threat perceived, or urgency of the situation, to achieve the lawful purpose or objective. (P16)

3. **FURTHER RESTRICTIONS ON USE OF FORCE:** Force may not be used to resolve a situation more quickly unless to serve public safety nor to force compliance with an officer's request unless the request is necessary to serve public safety. ~~or criminal adjudication.~~

Officers shall identify themselves and issue warnings prior to use of force and give subjects reasonable time to comply. Typically intermediate less lethal and lethal force may not be used against restrained subjects.

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 of death or serious bodily injury to another person or officer.

4. ASPHYXIA BAN: Chokeholds, carotid holds and other neck holds are banned. Additionally, officers shall not sit, kneel, or stand on a person's chest, back, or shoulders, thereby reducing the person's ability to breathe. (See SO 9205 - 7-1-21)

5. ELECTRONIC CONTROL WEAPONS: Use of ECWs is only allowed when the subject is causing or clearly threatening immediate bodily harm. ECW's are never allowed on physically vulnerable individuals.

6. SPECIALTY IMPACT WEAPONS: SIM is banned in crowd control situations. Warning is required and SIM shall be used only in situations where lethal force is justified. (P.33)

7. CHEMICAL AGENTS: (CONSIDER TOTAL BAN OR...)

Chemical agents can be used to subdue an unarmed attacker or resistance with a weapon other than a firearm that is likely to cause physical injury.

Chemical agents shall not be used on crowds except in extreme violent circumstances that pose serious physical danger to the public or officers, nor shall they be used on individuals with physical vulnerabilities. (P.33)

8. POINTING A FIREARM: The pointing of a firearm at another person is a Fourth Amendment seizure and a use of force. Officers shall only point a firearm at another person if there is an objectively reasonable perception of a substantial risk that the situation may escalate to justify lethal force. (P.36)

9. FIRING AT MOVING VEHICLES: Firearms shall not be discharged at a moving vehicle. The only exception is to defend against the vehicle being used to cause death or great bodily injury to the officer or members of the public, with no other reasonable avenue of protection or escape. (P.37)

10. WARNING SHOTS: Officers are prohibited from firing warning shots. (P. 38)

11. USE OF FORCE REPORTING AND REVIEW: The Department is committed to full reporting of use of force incidents, to thorough, objective and fair evaluation of all incidents of reportable force and outcomes. Failure to report is a serious cause for discipline.

Reporting and Review shall be used to evaluate overall department practices, revise policy and improve training as well as to evaluate particular incidents and actions by individual officers. (P.40)

12. CROWD CONTROL: Special Impact Weapons and Chemical Agents are banned for crowd control, excepting circumstances that seriously endanger the public or officers.

Agencies that are not trained in and bound to OPD Use of Force and related general orders shall not be brought in to assist in crowd control. (P.35)

13. MILITARY WEAPONS: INCORPORATE ELEMENTS OF THE PROPOSED MILITARY WEAPONS ORDINANCE THAT ARE APPROPRIATE TO USE OF FORCE GENERAL ORDER.

14. CANINES: Direct apprehension by canines shall be used only when the officer has probable cause to believe that the subject poses an imminent threat of harm to the officers or public or apprehension in very serious crimes that threaten public safety. (P.31.)

B. DEFINITIONS

B.1. Carotid Restraint Hold

1. A physical technique where continuing compression on the carotid arteries on both sides of an individual's neck, **which restricts blood flow to the brain with no effect on the respiratory structures of the throat, is applied in order to gain control.**
2. The carotid restraint hold is considered lethal force by the Oakland Police Department and members are prohibited from using **any neck hold, including the carotid restraint hold.**

B.2. Chokehold

1. 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 **any neck holds, including chokeholds.**

B.3. Complaint of Pain

1. 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.4. Cooperation /Compliance

1. Responsiveness to and compliance with officer requests.

B.5. Crowd Control

1. 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.* **(Bulletin has not been vetted by CPA.)**

B.6. De-Escalation

1. 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, **risk assessment** 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 has ceased or diminished.~~ Force reduction shouldn't be confused with de-escalation, which is a strategy to avoid using force and shouldn't be conflated. Find another place for this - as a separate definition?

B.7. Disengagement

1. **Disengagement is the tactical decision to leave, delay contact, delay custody or plan to make contact at a different time and under different circumstances.**

B.8. Exigent Circumstances

1. Those circumstances that would cause an **objectively** reasonable person to believe that a particular action is necessary to prevent physical harm to an individual, the destruction of relevant evidence **in a serious crime**, or the escape of a suspect.¹

B.9. Feasible

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

B.10. Force

1. Any physical or mechanical intervention used by an officer to defend against, control, overpower, restrain, or overcome the resistance of an individual. Force includes less-lethal and lethal force options.

B.11. Force Options

1. The force options trained and deployed by the Oakland Police Department include:
 - Baton / Impact Weapons
 - Chemical Agents
 - Control Holds / Defensive Tactics / Compliance Techniques
 - Electronic Control Weapons
 - Firearms
 - Oleoresin Capsicum (OC) Spray
 - Personal Body Weapons

¹ Based on the definition from *United States v. McConney*, 728 F.2d 1195, 1199 (9th Cir.), cert. denied, 469 U.S. 824 (1984).

- Physical Control Techniques, including escorts
 - **Police Canines**
 - Specialty Impact Munitions
 - Takedowns
 - Verbal Commands / Instructions / Command Presence
 - Verbal Persuasion
2. Less-lethal force options are further explained in section G-1, Less-Lethal Force Options, while lethal force options are further explained in section H-1, Lethal Force Options. **(H & I in this draft)**

B.12. Great Bodily Injury

1. 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.13. Immediate Threat

1. 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 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 is one that, from appearances, must be instantly confronted and addressed.

B.14. Less-Lethal Force

1. 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.

B.15. Lethal Force

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

B.16. Medical Aid

1. Medical interventions and life-saving techniques, ranging from home remedies and first-aid to life-saving or -sustaining interventions. Such efforts are not considered force. Medical aid includes monitoring a subject's vital

signs while calling for medical assistance from first responders with higher medical skills, such as fire department or ambulance personnel.

B.17. Minor Bodily Injury

1. 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).

B.18. Necessary and Objectively Reasonable

1. 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.
2. An action is necessary if it is reasonably **known by the officer** believed to be required by the totality of the circumstances. The evaluation of whether an action was necessary shall be based on whether objectively reasonable alternatives to the action were available and/or practical AND whether the action was reasonably likely to effect the lawful purpose intended **and was proportional to the circumstances and dangers posed.**
3. **Necessity and** 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 **necessary** 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~~ **necessity** under the Fourth Amendment is not capable of precise definition or mechanical application however its proper application requires careful attention to the facts and circumstances of each particular case.
4. Any evaluation of the ~~necessity~~ **reasonableness** of a particular use of force shall be judged from the perspective of an **objectively** reasonable, **experienced, properly trained** 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 ~~necessity~~ **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.

5. Factors which may be considered in determining the objective **necessity** ~~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:
- The seriousness/severity of the crime or suspected offense;
 - The level of threat or resistance presented by the subject;
 - Whether the subject was posing an immediate threat to officers or a danger to the public;
 - The potential for injury to members of the public, officers, or subjects;
 - The risk or apparent attempt by the subject to escape;
 - The conduct of the subject 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 subject for a prompt resolution of the situation versus the ability to step back, regroup, 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 subject(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;~~ *CPA: NOTE: The “reasonableness” or necessity of using force in a particular situation should be as objective a criterion as possible, and not a variable based on the subjective inexperience or possible deficiencies in training of a particular officer. Those are appropriate considerations in determining disciplinary action or retraining of an individual officer or upgrading departmental training, but should not be the criterion for determining whether or not a subject was treated properly or improperly according what should be objective departmental and legal standards.*
 - The proximity or availability of weapons, or items which could be used as weapons, to the subject;
 - Officer versus subject factors such as age, size, relative strength, skill level, injury/exhaustion, and number of officers versus subjects;
 - Environmental factors and/or other exigent circumstances;
 - Whether the subject had any perceived physical disability;

- Whether a person is unresponsive and the reasons for that unresponsiveness;
- Whether the subject was under the influence of alcohol or drugs, or was influenced by mental illness or a mental health crisis.
- **If a person indicates they wish self-harm, such as indicating they want officers to shoot them.**

B.19. Officer

1. Any sworn member of the Oakland Police Department, at any rank.
2. 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. All members of the Oakland Police Department shall maintain their right to self-defense by any objectively reasonable means.

B.20. Police Canine

1. A **dog** ~~canine~~ that is specifically trained and deployed to search for, locate and assist in the apprehension of criminal suspects. The Police Canine is certified by a Peace Officer Standards and Training (POST) certified canine evaluator as meeting current voluntary POST canine standards. A Police Canine may also be cross-trained in the tracking method and narcotics detection. Reference DGO K-09, Department Canine Program. **(Manual not vetted by CPA.)**

B.21. Procedural Justice

1. 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
 - Trustworthiness: Conveying trustworthy motives, such as doing what is best for the community.

B.22. Proportional Force

1. 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.
2. Proportional force does not require officers to use the same type or amount of force as the subject. 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 - **G in this draft**)

B.23. Resistance

1. 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 - **F in this draft**), 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.24. Restrained Person

1. 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.25. Serious Bodily Injury

1. 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.

B.26. Totality of Circumstances

1. 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 subject leading up to the use of force, all viewed from the perspective of a reasonable officer.

B.27. Vehicle Ramming Mass-Casualty Attack

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

B.28. Vulnerable Populations

1. Vulnerable people include children (especially those under 14 years old), elderly persons (especially those over 64 years old), pregnant women, people with physical, mental health or intellectual challenges, people of small stature, and people with limited English proficiency or other communications challenges

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 subject, or a subject 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, and tactical disengagement are not considered “retreat” for the purposes of this policy.

C.1. Goals of De-Escalation

1. 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 De-Escalation

1. 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, subject, and 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.
2. 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.
 - Indications that a person is in crisis, such as if a person indicates that they wish self-harm, such as saying that they want officers to shoot them.

C.3. Policy Requirement Regarding De-Escalation

1. 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.
2. 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 subject. 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.

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

1. 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, subject, and public safety, and completing the law enforcement mission.
2. Officers must recognize in assessing de-escalation versus use of force that racial bias, even if implicit, is a reality and consider their actions prior to, during and after any incident in context of how race impacts decisions to use force, particularly lethal force, versus choosing de-escalation.
3. Officers must recognize that real and perceived racial bias in outcomes of their encounters with the community can improve or diminish effective law enforcement. OPD commits to the highest standards of officer training and discipline in confronting this challenge.
4. Officer's conduct prior to the use of force, including the display of a weapon, may be a factor which can influence the level of force necessary in a given situation. Officers shall take reasonable care that their actions do not precipitate an unnecessary or disproportionate use of force, by placing themselves or others in jeopardy. Officers should continually assess the situation and changing circumstances, and modulate the use- of-force appropriately.
5. 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 the weapons tool belt when not necessary for safety reasons

~~Avoidance of~~ **Not** using disrespectful language, such as taunting or insults, which **could** will escalate **situations** ~~the incidents~~.

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,

Medical conditions

Mental impairment

Developmental disability

Physical limitation

Language or communications barrier

Drug interaction

Behavioral Crisis

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 subject a reasonable amount of time to comply with commands.

Isolation/Containment

Isolating the subject (limiting or preventing access to officers, the public, or possible victims of resistance, including officers) and containing the subject (limiting the ability of the subject 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 subject 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;~~ Physical separation implies a use of force that should not be included in de-escalation section.

Encouraging people who are having conflict to move away from each other, often with officers having separate conversations with the parties.

~~Handcuffing or restraining agitated persons to prevent their agitation from turning to active resistance, if appropriate;~~ (Handcuffs are uses of force - should not be included in de-escalation, even if appropriate in this circumstance as a low-level use of force.)

Placing barriers between officers and uncooperative subjects;

Setting police perimeters, and limiting access to the scene;

Using additional personnel to cover possible 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 subject. Officers should constantly be assessing their positioning relative to the subject 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.

Time, Distance, and Cover

Time, distance, and cover may allow officers additional time to assess the totality of the incident, including resistance, and risk 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 subject and officers

Using natural barriers in the immediate environment

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
- Mobile Assistance Community Responders of Oakland (when/where implemented.)
- Mental Health Professionals working with Law Enforcement (e.g. Mobile Evaluation Team, MATT, CATT)
- Language Assistance (e.g. language translation line, multi-lingual Department personnel)
- Crisis intervention-trained officers

D. Disengagement (NEW SECTION)

1. Disengagement is the tactical decision to leave, end an interaction, delay contact, delay custody or plan to make contact at a different time and under different circumstances. This tactic should be used when an officer reasonably believes continued contact may result in an unreasonable risk to the person in crisis, the public and/or Department members, especially in situations involving a barricaded suspect, a suicidal subject or a person believed to be experiencing a mental health crisis.
2. While some situations require immediate police action, other circumstances may allow officers the opportunity to tactically disengage. Under the appropriate circumstances, tactical disengagement may improve officer safety, mitigate threats, reduce injuries, build public trust, and preserve life.
3. Tactical situations vary and there is no single solution to resolving every incident. Disengagement is only one of many tactics that should be

considered, if feasible, to potentially reduce the intensity of the encounter if believed it would de-escalate the situation and no crime or a minor crime has occurred.

Note: Minor crimes include, but are not limited to infractions or crimes that can be followed up with an Investigative Report.

4. Officers should continually assess the situation as circumstances change and new information is received. Officers should additionally evaluate if further contact with the subject may result in an undue safety risk to the person, the public, and/or officers.
5. In the training of officers and in OPD policy, officers have options. For example, in a traffic stop that starts to go really wrong, once you get into that confrontation to enforce an arrest, when things are that excited, the chances for things to go wrong...are pretty high. In such a scenario, the officer should step back. Officer has the person's information - driver's license and tag number, and can get a warrant and make an arrest later. *(May be too vernacular; but this is a prime example of when disengagement needs to be an option, or better yet mandated.)*
6. SUICIDAL SUBJECTS: Not all suicidal subject calls require immediate police action. There is a distinction between a suspect wanted for a crime and an individual who has not committed a crime but has expressed the desire to commit suicide. It is not a criminal act to express the desire or even attempt to commit suicide within one's home and suicidal subjects or persons suffering from a possible mental health crisis are afforded the same constitutional rights as everyone else.
7. The actions of first responders will be weighed against the information known and reasonably believed, governmental interest, subject's actions, and efforts to de-escalate the situation. First responders may choose to strategically disengage to avoid resorting to force when the danger to the subject by self-harm is no longer imminent, and he/she has not committed a serious or violent crime. *(Mostly from LAPD Training Bulletin - "Tactical Disengagement" - 7/19. as well as recommendations from Wash. DC Metro Chief Cathy Lanier, 3/16)*
8. Officers will be judged based on the information available to them at the time, not by "20/20 Hindsight" nor face discipline for objectively reasonable use of disengagement to avoid unnecessary use of force.

E. USE OF FORCE – GENERAL CONSIDERATIONS AND POLICY

- E.1.** Use of Force Shall be ~~Reasonable~~, Necessary, and Proportional, and for a ~~Lawful Purpose~~ **that is lawful and necessary to maintain public safety.** ~~or Objective~~
1. Officers shall only use objectively reasonable and necessary force, proportional to the level of resistance posed, **identified** threat ~~perceived~~, or urgency of the situation, to achieve the ~~lawful purpose~~ **that is lawful and necessary to maintain public safety.** ~~or objective.~~
 2. Lethal force is strictly prohibited solely to protect property.
 3. **Lethal fore is strictly prohibited** ~~or~~ against a person who presents only a danger to himself/herself and does not pose an immediate threat of death or serious bodily injury to another person or officer.
 4. **In order to reduce the likelihood of unnecessary force by officers who are experiencing adrenaline or other physical stress in situations of pursuit or other prolonged or intense physical engagement, another officer should relieve them of restraint and arrest of the engaged person as soon as possible.**
 5. **Vulnerable Populations: The use of force against vulnerable populations - including children (especially those under 14 years old), elderly persons (especially those over 64 years old), pregnant women, people with physical, mental health or intellectual challenges, people of small stature, people experiencing a behavioral crisis, and people with limited English proficiency or other communications challenges. - can undermine public trust, cause even more harm than the same force used against a healthy, able person, and should be used as a last resort, when all other objectively reasonable means have been exhausted. Specific restrictions are in ... OC spray & tasers & higher level of force**
 6. Officers may use objectively reasonable and necessary 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; (Language too broad.)**
 - In defense of others or in self-defense;
 - To gain compliance with an ~~lawful order~~ **that is both lawful and necessary to maintain public safety;**
 - To prevent a person from injuring him/herself. **(Except that an officer may never use a lethal level of force on a person who is threatening or attempting to harm only themselves.)**

E.2. Prohibitions on Unreasonable Force

1. Oakland Police Department officers are prohibited from using force or the threat of force to punish, retaliate, or unlawfully coerce. **Historically, some officers have used unnecessary force to punish a person for running away or trying to escape; this is a violation of policy and will result in discipline.**
2. **Officers are prohibited from using neck and carotid restraints in all circumstances.**
3. **Officers may not threaten to use force in situations where the use of force is not objectively reasonable and proportional to the risk presented or otherwise inconsistent with this policy.**
4. **Officers may not use or threaten to use force for the following reasons:**
 - **To resolve a situation more quickly, unless the extended delay would risk the safety of the person involved, officers, or others.**
 - **To force compliance with an officer's request, unless that request is necessary to serve officer or public safety, ~~or criminal adjudication; (CNJ)~~**
 - **Against individuals who only verbally confront them unless the vocalization impedes a legitimate law enforcement function;**
 - **To stop a subject from swallowing a substance that is already in their mouth; however:**
 - **Officers may use objectively reasonable force, not including hands to the neck or insertion of any objects or hands into a subject's mouth, to prevent a suspect from putting a substance in their mouth**
 - **In the event that an officer reasonably believes that a suspect has ingested a harmful substance, officers shall summon medical assistance as soon as feasible.**
 - **To extract a substance or item from inside the body of a suspect. Exception: This prohibition does not apply when force is necessary to facilitate a forensic blood draw. In that situation, officers will document any use of reportable force.**
5. **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.**
6. **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. It is well documented the Oakland Police Department has not treated all residents equally. Racial disparities in use of**

force by law enforcement are of particular concern for purposes of adhering only to necessary use of force, and also for training, discipline, and ensuring equitable treatment of all members of our community.

E.3. Duty to Intervene and Report

1. 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 **prevent that use of force.** ~~interrupt the flow of events before the fellow officer does something that makes any official action necessary.~~
2. Similarly, any officer who observes an officer using force that is ~~illegal, excessive,~~ **not objectively reasonable and proportional to the risk presented** or is otherwise inconsistent with this directive shall, absent extraordinary circumstances, do whatever he/she can do to **stop any unnecessary** ~~interrupt the flow of events and stop the use of force.~~
3. An officer who observes or has knowledge of a use of force by their peers, supervisors, or employees of an other agency or jurisdiction that is not reasonable, proportional, or is or otherwise inconsistent with this directive shall: a. Notify a supervisor as soon as possible; and b. Submit an individual written report with all relevant information and circumstances to a supervisor before reporting off duty on the day the officer becomes aware of the misconduct. [need to amend MOR says 24 hours]. If extraordinary circumstances prevent reporting by the end of shift, the report shall be submitted within 24 hours.
4. Reporting uses of force completely and honestly is central to the mission of OPD and is essential to public safety, the safety of officers, and public trust in OPD. No officer shall harass, pressure, or publicly degrade a fellow officer for honest and complete reporting of any use of force by themselves, another officer, or supervisor. No employee may retaliate, in any form, against another employee who intercedes in or reports a violation of this directive, or who cooperates with an investigation into a possible violation of this directive.
5. 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.
6. 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 Orders², and members who fail to report excessive force are subject to appropriate discipline.

E.4. Identification and Warnings Prior to the Use of Force

1. When feasible, and without sacrificing officer, subject, or public safety, officers shall:
 - Identify themselves as law enforcement officers;
 - Warn the subject that force may be used unless their resistance ceases; and
 - Give the subject a reasonable opportunity to comply with a warning that force may be used.
2. 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.

E.5. Use of Force on Restrained Subjects

1. Officers may only use objectively reasonable, necessary, and proportional force on restrained subjects. The fact that the person was restrained shall be evaluated both as part of the totality of the circumstances and when determining the level of resistance and the threat posed by the subject. Typically, intermediate less-lethal and lethal force may not be used against restrained subjects (see G-5).

E.6. ~~De-escalation~~ Reduction of Force After Force has been Used

1. Officers shall ~~de-escalate~~ reduce the use of force when the officer reasonably believes a lesser level or no further force is necessary. appropriate. 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.

E.7. Providing Medical Assistance to Subjects of the Use of Force

1. 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 medical distress for subjects of the use of force, even if the aid is declined.
2. After requesting medical aid, officers shall render aid within the full scope of their training unless aid is declined. Consent should be assumed for unconscious subjects or subjects incapable of providing consent.

² 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 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.

3. Officers shall automatically request medical aid for subjects 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.8. Discipline

1. **Actions inconsistent with this directive may result in disciplinary action, up to and including termination. ...Officers whose actions are consistent with the law and the provisions of this directive will be strongly supported in any subsequent review of their conduct regarding the use of force. (Camden NJ)**

F. LEVELS OF RESISTANCE

Resistance (Section E, LEVELS OF RESISTANCE - **F here**) and response (Section F, LEVELS OF FORCE -**G here**) are dynamic. The subject's behavior and the use of force to control it may escalate or de-escalate during any given interaction until complete control of the subject 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.

Proportional force does not require officers to use the same type or amount of force as the subject. 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.

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

F.1. Non-Compliance

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

F.2. Passive Resistance

1. 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.
2. 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.

F.3. Active Resistance

1. Physically evasive movements to defeat an officer's attempts at control including bracing, tensing, or pulling / running away.
2. 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.

F.4. Assaultive Resistance

1. 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.

F.5. Life-Threatening Resistance

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

G. LEVELS OF FORCE

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

G.1. Contact Controls

1. 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 a subject's body), escorts, or simply using a firm grip. This level of force is not intended to cause injury or pain.

G.2. Compliance Techniques and Defensive Tactics

1. 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.

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

G.3. Intermediate Less-Lethal Force

1. 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.

G.4. Lethal Force

1. 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-impact weapon strikes to the head, the discharge of a firearm loaded with lethal ammunition, and intentionally striking a person with a vehicle.

H. COMMANDS AND LESS-LETHAL FORCE

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.

H.1. Presence/Command Options

1. 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 in resolving tense, uncertain, and rapidly-developing incidents or incidents where force is 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 - **D in this draft**).

H.2. Physical Control/Personal Weapons Options

1. 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. These options include, but are not limited to:

- Physically restraining or handcuffing a person is a use of force. The use of handcuffs and other restraints is intrusive and can impact the community's trust in the police. As courts put it, the use of handcuffs "substantially aggravates the intrusiveness of an otherwise routine investigatory detention and is not part of a typical Terry (investigative) stop." The application of restraints shall never be considered a part of standard operating procedure. At the same time, officers must ensure their safety and face many unknowns. When using restraints, members must follow the use-of-force policy and the handcuffing and restraint procedure (Policy Lexipol 302). Only members who have successfully completed Department-approved training on the use of restraint devices are authorized to use them. (Ref SF Policy on Detaining Juveniles)
- When detaining, arresting or taking a juvenile (a person under 18 years of age) into temporary custody, officers shall choose the alternative that least restricts the juvenile's freedom of movement, provided that alternative is compatible with the best interests of the child and the community. Every effort should be made to find alternatives to handcuffing or using other restraints on a child (under 14 years of age).
- Modified restraints or handcuffing in the front of the body should be used for people who cannot comfortably put their arms behind their back.
- *Consider total ban of spit hoods - *Ref. Chicago PD which does not use.*
- Escorts and physical body manipulation without pain compliance.
- Control Holds.
- Takedowns ("Objectively reasonable" takedowns are subject to consideration of the age or other physical vulnerability of the engaged person and conditions related to impact engaged person will experience in course of takedown.)
- Vulnerable Area manipulation
- Personal Weapon strikes – NOTE: Personal Weapon strikes to a restrained subject are considered Intermediate Less-Lethal Force.
- Persons under an officer's control (shall) be positioned in a way so that their breathing is not obstructed. After gaining control of a person, officers should position the person in a manner to allow the person to breath unobstructed. This means that officers (shall) not sit, kneel, or stand on a person's chest or back, and whenever feasible should not force the person to lie on his or her stomach. (Note - ASPHYXIA DIRECTIVE SO 9205-SUPERSEDES ALL PRIOR ASPHYXIA LANGUAGE)

2. Absent exigent circumstances, 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. (Not vetted by CPA)

H.3. ~~Less-Lethal-Tool~~ Weapons Options

1. Less-lethal ~~tools~~ weapons are used to interrupt a subject's threatening behavior so that officers may take physical control of the subject with less risk of injury to the subject or officer than posed by other force applications. Less-lethal ~~tools~~ weapons alone cannot be expected to render a subject harmless.
2. Officers will only carry and use ~~tools~~ weapon 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.
3. Less-lethal ~~tools~~ weapons most often fall into the level of Intermediate Less-Lethal Force, although certain ~~tools~~ weapons, 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).
4. Less-lethal ~~tools~~ weapons, depending on the nature of the ~~tool~~ weapon 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 ~~tools~~ weapon. Important warnings regarding specific less-lethal ~~tools~~ weapons, 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.
5. The Less-lethal ~~tools~~ weapons authorized by the Department include:
 - Patrol Canine – See DGO K-09, Department Canine Program (Have not yet reviewed Canine Policy in detail for CPA.) Direct apprehension by canines shall be used only when the officer has probable cause to believe that the subject poses an imminent threat of harm to the officers or others or apprehension in
 - Homicide
 - Serious Assault
 - Kidnapping
 - Arson with threat of harm to people
 - Domestic Violence felony crimes
 - Serious Sexual Assault

- Electronic Control Weapon (ECW) – See DGO (Lexipol) 304, Electronic Control Weapon (TASER) CPA NOTE - SIMPLY BAN TASERS/ ECWs???? SF has, in effect. One important consideration that favors banning ECW's is that the weapons bring an officer into closer proximity with the subject - so if the ECW fails, an objectively unnecessary use of lethal force may be seen as or become a necessary fallback.

The necessary standard for ECW use is when the subject is causing bodily harm or the officer is satisfied, on reasonable grounds, that the subject's behavior will immediately cause bodily harm.

Even if the above-threshold is met, officers are prohibited from deploying a taser unless 1) no lesser force option has been, or will be, effective in eliminating the risk of bodily harm; and 2) de-escalation and/or crisis intervention techniques have not been or will not be effective in eliminating the risk of bodily harm.

(SF Dept of Police Accountability: - This standard is based upon the Braidwood Commission's recommendations after lengthy evidentiary hearings followed by two comprehensive reports on the death of Robert Dziekanski who died within minutes after being tasered at the Vancouver International Airport in October 2007.)

Officers should understand the problems with ECWs. Although ECWs are a less lethal use of force, people do die and suffer grave harm from being shot with ECWs. Using an ECW can also bring an officer closer to a person for optimal ECW range which can work against efforts at de-escalation; this is especially problematic given the failure rate of ECWs.

Officers shall not use ECWs against particularly vulnerable people — including pregnant women, elderly people over 64 years of age, children under 14 years of age, and people with identifiable physical frailties. *(Ref: Univ. of So. Carolina Law Professor Seth Stoughton, Evaluating Police Uses of Force, forthcoming May 2020. NYU Press. Stoughton was an advisor to CA Assembly-member Dr. Shirley Weber in crafting the language of AB392.)*

- Important **warning**: ~~When feasible, a verbal warning of the intended use of the ECW shall proceed its use, to warn the subject and fellow officers.~~ Officers shall issue a verbal warning to the subject, other officers, and other individuals present, that a (ECW) will be used and defer using the (ECW) a reasonable amount of time to allow the subject to comply with the warning.

- Absent an immediate threat to any person's safety that cannot be reasonably dealt with in any other fashion, (ECW) users shall not target a subject's head, neck, or genital area. The center mass of the back to the buttocks is a viable target. Targeting the chest and heart area should be avoided if possible.
 - Officers shall target below the ribcage down to the upper thigh, splitting the beltline, if possible.
 - When encountering subjects wearing heavy or loose clothing on the upper body, the legs should be considered as targets. (Seattle)
 - Each time an officer shoots a TASER, there must be a separate, individual justification.
 - Officers are required to report each use of a TASER, whether or not the use of the TASER was effective.
 - Whenever a person has been hit with a TASER, officers shall call for medical air as soon as feasible and shall monitor the person while they are in police custody.
 - Officers shall not remove TASER probes or barbs that are embedded in a person's flesh.
- **Impact Weapons:** Includes the ASP® expandable baton, long wood baton, and short wood baton – See Training Bulletin III-H.02, Hand-held Impact Weapons (Training Bulletins not vetted by CPA) **CONSIDER RAISING SIMS TO “LETHAL FORCE”, IN EFFECT BANNING THEIR USE**
- Important warning: Unless exigent circumstances exist, officers shall not intentionally strike the head, neck, throat, spine, kidneys, groin, or left armpit with impact weapons.
 - The use of an impact weapon to a vital area has a likelihood of causing serious bodily injury or death, and the intentional use of an impact weapon to these areas shall only be used in situations where lethal force is justified.
 - Impact weapons shall not be used on individuals with frail health, children under 14 years of age, elderly over 64 years of age, women believed to be pregnant, or people with physical, mental health or cognitive challenges, except under exceptional circumstances involving imminent danger of serious bodily harm where the use of the impact weapon is necessary.
- **Specialty Impact Weapons:** Includes direct-fired ranged impact munitions, regardless of weapons platform –Important warning: SIM use during crowd control situations is further limited -- See Training Bulletin III-G,

Crowd Control and Crowd Management. (Training Bulletin referenced, not vetted by CPA) -

- An impact weapon may be used in accordance to Department training to administer strikes to non-vital areas of the body, which can subdue an assaultive subject who is actively resisting and poses a threat to the safety of officers or others (SF)
 - SIMs shall not be used as a crowd control weapon.
 - Announce a warning to the subject of the intent to use the impact weapon if the subject does not comply with officer's commands.
 - Give the subject a reasonable opportunity to voluntarily comply, except that officers need not do so where it would pose a risk to the public or the officer.
- Oleoresin Capsicum (OC) Spray – See Training Bulletin V-F.02, Chemical Agents (CONSIDER TOTAL BAN, re New Orleans PD.)
- 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.
 - Chemical agents can be used to subdue an unarmed attacker or to overcome active resistance (unarmed or armed with a weapon other than a firearm) that is likely to result in injury to either the subject or the officer. In many instances, chemical agents can reduce or eliminate the necessity to use other force options to gain compliance, consistent with Department training.
 - Only use chemical agents issued by OPD.
 - Officers shall provide a warning prior to deploying a chemical agent, if feasible:
 - Announce a warning to the subject and other officers of the intent to deploy the chemical agent if the subject does not comply with officer commands; and
 - Give the subject a reasonable opportunity to voluntarily comply unless it would pose a risk to the public or the officer, or permit the subject to undermine the deployment of the chemical agent.
 - OC spray shall not be used on individuals with frail health, young children, the elderly, women believed to be pregnant, or persons with known respiratory conditions. In these cases, the spray (shall) only be used under exceptional circumstances involving imminent danger of suffering serious bodily harm, and the use of the pepper spray is

the only and necessary method to control the child or elderly in order to avoid harm.

- OC spray shall not be used in an enclosed, highly populated space where there is a likelihood that innocent people will be affected by the spray.
- Finally, OC spray (shall) not be used in confined spaces or to wake up or arouse unconscious or sleeping individuals. *(language drawn from recommendations by Daigle Law Group - consultants to law enforcement agencies nationwide in developing effective policy.)*
- At the scene or as soon as possible, officers shall administer first aid by:
 - Seating exposed person(s) in an upright position;
 - Flushing his/her eyes out with clean water and ventilating with fresh air, and;
 - If the person exhibits or reports difficulty breathing or allergic reaction or the person indicates that they have a pre-existing condition (such as asthma, emphysema, bronchitis, or heart ailment) that may be aggravated by OC spray, officers shall ensure that the person receives ongoing monitoring and medical aid.
- **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. (Bulletins not yet vetted by CPA)
 - Chemical agents shall not be used on crowds except in extreme violent circumstances that pose serious physical danger to the public or officers, nor shall they be used on individuals with physical vulnerabilities.

ESSENTIAL INTER-DEPARTMENTAL CROWD CONTROL

RESTRICTIONS: Law enforcement or military agencies that are not trained and bound to OPD Use of Force and related general orders for managing crowds shall not be brought in to assist in crowd control.

- H.4.** Requirement to Carry at Least One Less-Lethal ~~Tool~~ Weapon
1. Uniformed sworn officers who are working field assignments shall carry at least one hand-held less-lethal ~~tool~~ weapon (e.g. ECW, impact weapon, and/or OC).
 2. Officers Shall Only Use Department-Issued or Approved Less-Lethal Weapons.

3. Officers will periodically check the manufacturer's date on their issued OC Spray container and ECW cartridges and check that the weapon is fully functional.

H.5. Restrictions on Use of Less-Lethal ~~Tools~~-Weapons Against Restrained Persons

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

I. LETHAL FORCE

I.1. Lethal Force Options

1. Lethal force is any force that creates a substantial risk of causing great bodily injury or death. 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. For the purpose of this section of the policy, the term "firearms" shall indicate firearms loaded with lethal ammunition.
2. 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.

I.2. Drawing, Exhibiting, or Unholstering Firearms

1. 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 or weapons belt during an interaction with the public when not justified by a safety concern, can also create negative impressions and damage rapport.
2. Officers may draw, exhibit, or unholster their firearms only when justified by appropriate circumstances, and the drawing, exhibiting, and unholstering of firearms will be tracked by the Department (see DGO K-04, Reporting and Investigating the Use of Force).
3. When an officer determines that the threat is over, the officer shall holster his or her firearm, when as soon as feasible. Officers shall not place their hand on

a holstered firearm **or weapons belt** when addressing or conversing with members of the public in situations unrelated to potential use of force, thus creating needless anxiety or misperceptions.

4. **To the extent reasonable under the circumstances, officers must consider their surroundings and potential risks to bystanders before drawing, pointing, and discharging a gun.**

I.3. Pointing Firearms at a Person

1. The pointing of a firearm at another person is a Fourth Amendment seizure and a use of force.³ Officers shall only point a firearm at another person if there is an objectively reasonable perception of a substantial risk that the situation may escalate to justify lethal force.
2. If an officer points a firearm at a subject the subject shall, when safe and appropriate, be advised of the reason why the officer(s) pointed the firearm.

I.4. Discharging Firearms at a Person

1. An officer is justified in discharging a firearm at another person only when ~~officer believes~~, based on the totality of the circumstances, ~~that~~ the discharge is necessary for either of the following reasons:
 - To defend against an immediate threat of death, great bodily injury, 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 subject for the commission of a felony that threatened or caused death, great bodily injury, or serious bodily injury;
 - ~~The officer reasonably believes that~~ **It is required, based on the totality of circumstances to stop** the person ~~will~~ **from** causing death or great bodily injury to another **person** unless immediately apprehended; and
 - There are no other reasonably available or practical alternatives to apprehend the person.
2. If feasible, and if doing so would not increase the danger to the officer or others, an officer shall identify themselves as a police officer and give a verbal warning that deadly force may be used before discharging a firearm ~~at a person~~.

I.5. Discharging Firearms at Moving Vehicles

³ *Robinson v. Solano County*, 278 F. 3d 1007 (9th Cir. 2002)

1. Discharging firearms at occupants in moving vehicles poses an increased risk for the occupants of the vehicle, officers, and the public at large.
2. 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 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.
3. Officers ~~shall not~~ ~~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.
4. Officers ~~are also prohibited from~~ ~~shall not~~ 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.

I.6. Discharging Firearms from Moving Vehicles

1. Officers shall not discharge a firearm from a moving vehicle unless a subject is immediately threatening the officer or another person with life-threatening resistance. **Discharging firearms from a moving vehicle poses an increased risk for the occupants of the vehicle, officers, and the public at large** This behavior is strongly discouraged and should be considered a last resort.

I.7. Discharging Firearms at Animals

1. **If feasible, officers should remove themselves and anyone else who may be at risk from an animal to a safer location.**
2. **If feasible, officers should call for Oakland Animal Services (OAS) to control the animal.**
3. **Officers should not shoot animals solely as a time-saving measure if there is no urgent and essential public safety or law enforcement priority.=**

4. 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:
 - Against a dangerous animal to deter an attack or to prevent injury to persons present; or
 - 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.
5. Other than when the animal presents an immediate 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.

I.8. General Prohibitions Regarding Firearms

1. Officers are prohibited from the following actions:
 - Using firearms as impact weapons, unless either of the following circumstances exist:
 - When a subject is attempting to take the firearm away from the officer;
 - When lethal force is permitted; or
 - When using long-gun-specific defensive tactics muzzle strikes as taught by Patrol Rifle or Firearms training staff;
 - Firing warning shots; and
 - Using lethal force solely to protect property or against a person who presents only a danger to himself/herself and does not pose an immediate threat of death, great bodily injury, or serious bodily injury to another person or officer.

I.9. Force Likely to Cause Great Bodily Injury or Death

1. 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.

2. 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 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 subject 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~~ **It is required, based on the totality of circumstances to stop** the person ~~will~~ **from** causing death or great bodily injury to another **person** unless immediately apprehended; and
 - There are no other reasonably available or practical alternatives to apprehend the person.

J. CONSIDERATIONS AFTER FORCE

J.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 – obstruction of a person's breathing could easily lead to death or serious bodily injury. 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.

J.2. Administrative Leave after Lethal Force Incidents

1. 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.

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

J.3. Counseling Services after Lethal Force Incidents

1. 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.

K. REPORTING AND REVIEW: (Add additional references to Reporting/Investigation Policy as relevant to Use of Force)

1. The Department is committed to full an accurate reporting of use of force incidents, to thorough, objective and fair evaluation of all incidents of reportable force and outcomes. Failure to report is a serious cause for discipline.
2. The Department is committed to evaluating force by reviewing the totality of the circumstances facing the officer prior to and 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.
3. 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.
4. Reporting and Review shall be used as part of an ongoing interdepartmental data analysis process to evaluate overall department practices, revise policy and improve training as well as to evaluate particular incidents and actions by individual officers, in order to ensure our enforcement practices are fair, non-discriminatory, and involve the minimum amount of force necessary to accomplish a legitimate law enforcement objective.
5. The Department is responsible for completing an annual analysis of the previous calendar year's use of force incidents, Department polices, and use of force practices. Examples of some analytical categories may include, but are not limited to:
 - Use of force by time of day and day of week;
 - Use of force by type of location (e.g., business, residential, or industrial) and zip code;

- Use of force by type of incident;
- Use of force by race, age, gender of engaged person;
- Use of force by officer/detective involved;
- Use of force by division, bureau, unit;
- Use of force by person's actions;
- Use of force by type (e.g., deadly force);
- Use of force resulting in injury to personnel;
- Use of force resulting in injury to actors;
- Use of force resulting in arrests;
- Percentage of use of force vs. total number of custodial arrests.

6. The annual analysis is designed to: (1) identify any broad patterns or trends that could indicate policy ineffectiveness, training needs, equipment upgrade needs, and/or policy modification needs; and (2) identify any pattern or practice of behavior by particular officers that could warrant intervention, remediation, and/or re-training.

L. TRAINING (Add\ key references from Training Bulletins relevant to use of force. Training manuals not vetted by CPA)

L.1. Annual Training on De-Escalation and Use of Force Policy

1. Sworn officers of all ranks, and professional staff members who are trained on and authorized to use specific 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 distributed via Department intranet or other document management system.

L.2. Use of Force Policy Training Incorporation into Practical Training

1. 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 **de-escalation and** force options or skills being practiced are specifically evaluated and used in light of this policy.

L.3. Training Bulletins

1. Officers are reminded that they shall follow the specific policy and guidance contained in Departmental Training Bulletins. **(All Training Bulletins not vetted by CPA)**

By order of

Susan Manheimer
Interim Chief of Police

Date Signed: _____

CPA DRAFT
9.9.20

CPA NOTES: This version is a revision of the draft that the Use of Force working group, comprised of the Police Commission's Use of Force Committee, attorney in NSA federal oversight Jim Chanin representatives of OPD, have produced for public review and comment.

Much of the CPA draft with edits and revisions, like the Commission draft, is based on research into existing use of force and related directives currently in effect in departments that have recently made significant improvements in use of force practices (several of these were recommended by Dr. Shirley Weber, the state legislator responsible for CA's AB392.) Original draft language deleted or changed is in strike-outs. CPA additions are in RED. *There are formatting anomalies that resulted from re-editing a previously formatted document which have not been fully corrected.*

This research doesn't include information we anticipated from a full community outreach strategy, which voices will need to be included systematically in any final drafting process. Also, some of the inclusion of language from other existing directives will require a more consistent re-formatting.

And the entire document should be re-edited and reformatted in a final form so that the language is consistently accessible and clear to community members and officers in training. To this end we have added a summary of key issues and restrictions for use of force in the first section, i.e. Mission, Purpose and Core Principles.

There should also be maximum clarity when training manuals or other directives are cited - beyond the simple citation - with clarity on what issues are covered.

CPA DRAFT
9.9.20