



## DEPARTMENTAL GENERAL ORDER

### K-03: USE OF FORCE

Effective Date: XX MMM 20  
Coordinator: Training Division

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

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

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.

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

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

While the ultimate objective of every law enforcement encounter is to protect the public, nothing in this policy requires a member to retreat or be exposed to possible physical injury before applying reasonable force.

##### A - 3. Policy Direction Beyond Constitutional Principles

The Fourth Amendment requires that an officer's use of force be "objectively reasonable." (*Graham v. Connor*, 490 U.S. 386 (1989)). The Constitution provides a "floor" for government action. The Oakland Police Department aspires to go beyond *Graham* and its minimum requirements. 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 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.

##### A - 4. Department Purpose

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

##### A - 5. Strict Prohibitions on Inappropriate Force

Oakland Police Department officers are prohibited from using force to punish, retaliate, or interrogate. Force that is not reasonable and necessary under the totality of the circumstances will be subject to corrective action, including discipline up to and including termination. It is the expectation of the Department that when an individual is under control, either through the application of physical restraint or the individual's compliance, only the amount of force necessary to maintain control will be used. Under no circumstances will an officer use force solely because another officer is using force. Officers shall not use force based on bias against a person's race, ethnicity, nationality, religion, disability, gender, gender identity, sexual orientation, or any other protected characteristic.

**A - 6. Duty to Intervene**

Every officer has an obligation to ensure compliance, by themselves and others, with Department policy, as well as all applicable laws, regarding use of force. Any officer who observes another officer about to use force that is illegal, excessive, or otherwise inconsistent with this policy shall, absent extraordinary circumstances, do whatever he/she can to interrupt the flow of events *before* the fellow officer does something that makes any official action necessary. Officers can serve each other and the public by simply saying or doing the right thing to prevent a fellow officer from resorting to force illegally or inappropriately. Similarly, any officer who observes an officer using force that is illegal, excessive, or otherwise inconsistent with this directive shall, absent extraordinary circumstances, do whatever he/she can to interrupt the flow of events and *stop* the use of force. Members witnessing instances of misconduct must also follow the direction given in Department Manual of Rules Section 314.48, *Reporting Violations of Laws, Ordinances, Rules, or Orders*.

**A - 7. Commitment to De-Escalation**

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

**A - 8. Commitment to Serving Members of the Community with Physical, Mental Health, Developmental, or Intellectual Disabilities**

The Department recognizes that individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from officers. The Department is committed to reducing these deleterious

effects with a focus on communication, prescriptions in this policy, de-escalation, and training, among other remedies.

**A - 9. Commitment to Medical Aid**

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

**A - 10. Commitment to Thorough and Fair Evaluation of Force**

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

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

**B. DEFINITIONS**

**B - 1. Carotid Restraint Hold**

A physical technique where continuing compression on the carotid arteries on both sides of an individual's neck, with no effect on the respiratory structures of the throat, is applied in order to gain control.

The carotid restraint hold is considered **lethal force** by the Oakland Police Department, and members are prohibited from using the carotid restraint hold.

**B - 2. Chokehold**

A physical maneuver that restricts an individual's ability to breathe for the purposes of incapacitation. This does not include the carotid restraint hold.

A chokehold is considered **lethal force** by the Oakland Police Department, and members are prohibited from using chokeholds.

**B - 3. Complaint of Pain**

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

**B - 4. Cooperation / Compliance**

Responsiveness to and compliance with officer requests.

**B - 5. Crowd Control**

Those techniques used to address unlawful public assemblies, including a display of large numbers of police officers, crowd containment, dispersal

tactics, and arrest procedures. Reference **Training Bulletin III-G, Crowd Control and Crowd Management**.

**B - 6. De-Escalation**

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

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

**B - 7. Exigent Circumstances**

Those circumstances that would cause a reasonable person to believe that a particular action is necessary to prevent physical harm to an individual, the destruction of relevant evidence, or the escape of a suspect.<sup>1</sup>

**B - 8. Feasible**

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

**B - 9. Force**

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 - 10. Force Options**

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
- Physical Control Techniques, including escorts
- Police Canines

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

- Specialty Impact Munitions
- Takedowns
- Verbal Commands / Instructions / Command Presence
- Verbal Persuasion

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**.

#### **B - 11. Great Bodily Injury**

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

#### **B - 12. Immediate Threat**

A threat is immediate when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that the person threatening has the present intent, means, opportunity, and ability to complete the threat, regardless of whether the threatened action has been initiated. An immediate threat 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 - 13. Less-Lethal Force**

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

#### **B - 14. Lethal Force**

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

#### **B - 15. Medical Aid**

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 an engaged person's vital signs while calling for medical assistance from first responders with higher medical skills, such as fire department or ambulance personnel.

#### **B - 16. Minor Bodily Injury**

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

#### **B - 17. Necessary**

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.

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

1. Objectively reasonable *alternatives* to the action were available and/or practical AND
2. Whether the action was reasonably likely to *effect the lawful purpose* intended.

#### **B - 18. Objectively Reasonable**

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

Any evaluation of the reasonableness of a particular use of force shall be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight, and must allow for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation. All evaluations of reasonableness shall also be carried out in light of the facts and circumstances facing the officer at the time of the force, without regard to their underlying intent or motivation.

Factors which may be considered in determining the objective reasonableness of force – and which may be used by officers to determine whether force is

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

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 engaged person;
- Whether the engaged person was posing an immediate threat to officers or a danger to the public;
- The potential for injury to members of the public, officers, or engaged persons;
- The risk or apparent attempt by the engaged person to escape;
- The conduct of the engaged person being confronted (as reasonably perceived by the officer at the time);
- The conduct of officers leading up to the use of force;
- The apparent need for immediate control of the engaged person for a prompt resolution of the situation versus the ability to step back, regroup, and develop an alternative approach, and the time available to the officer to make that decision;
- Efforts made by officers to de-escalate the situation, and the reactions of the engaged person(s) to those efforts;
- The time available to the officer to make a decision;
- The availability of other resources;
- The training received by the officer;
- The proximity or availability of weapons, or items which could be used as weapons, to the engaged person;
- Officer versus engaged person factors such as age, size, relative strength, skill level, injury/exhaustion, and number of officers versus engaged persons;
- Environmental factors and/or other exigent circumstances;
- Whether the engaged person had any perceived physical disability;
- Whether a person is unresponsive and the reasons for that unresponsiveness;
- Whether the engaged person was under the influence of alcohol or drugs, or was influenced by mental illness or a mental health crisis.

#### **B - 19. Officer**

Any sworn member of the Oakland Police Department, at any rank.

Although the use of force is primarily intended for sworn officers, various professional staff job classifications include Departmental training in specific

force options normally reserved for sworn officers. In these cases, professional staff are held to the same standard as officers for the application of these authorized force options, and policy directed towards “officers” shall apply to these professional staff members as well. All members of the Oakland Police Department shall maintain their right to self-defense by any objectively reasonable means.

#### **B - 20. Police Canine**

A 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*.

#### **B - 21. Procedural Justice**

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

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

#### **B - 22. Proportional Force**

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

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

#### **B - 23. Resistance**

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

**B - 24. Restrained Person**

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

**B - 25. Serious Bodily Injury**

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

**B - 26. Totality of Circumstances**

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

**B - 27. Vehicle Ramming Mass-Casualty Attack**

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

**C. DE-ESCALATION**

Officers have the ability to impact the direction and outcome of an incident with their decision making and employed tactics. All members of the Oakland Police Department must remember the overarching mission and utmost priority of the Department: the protection of human life. De-escalation is an integral tool in furtherance of that mission. The Department values thoughtful resolutions to

situations where public, engaged subject, and officer safety are enhanced by sound decision making and tactics that further the Department's mission.

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

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

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

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

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

De-escalation is one facet of an overall strategy designed to lower the tensions inherent in a police encounter, promote cooperation and peaceful resolution, effectively utilize police resources, and enhance officer, engaged person, and public safety while limiting reliance on the use of force. While the Department mandates that officers use de-escalation techniques when safe and feasible, the Department also recognizes that whether de-escalation is reasonable, safe, and feasible, and the extent to which de-escalation techniques are used, is based on the totality of the circumstances of the encounter at hand.

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

- The officer's use of a critical decision-making structure;
- The benefits and drawbacks of immediate resolution or pre-emptive action on the part of the officer to resolve the situation;
- Facts and circumstances which influenced the chances of de-escalation strategies being successfully implemented;
- Whether limited intervention early in the encounter may have forestalled more marked or severe intervention later in the encounter;

- The availability of additional de-escalation resources;
- Whether the engaged person involved in the police encounter is believed to have a physical, mental health, developmental, or intellectual disability;
- The level of resistance posed;
- Circumstances existing (such as the presence of a weapon) which increase the chance of the encounter escalating to a significant or lethal force encounter.

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

**When safe, feasible, and without compromising law enforcement priorities, officers shall use de-escalation tactics and techniques in order to reduce the need for force.** 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.

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

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

De-escalation may take many forms, and can vary from incident to incident. Just because a tactic or technique is not mentioned in this policy does not mean it is prohibited from being used as a de-escalation technique; officers are encouraged to creatively problem-solve to find and employ de-escalation techniques which are focused on protecting life, limiting force, respecting the dignity of others, enhancing officer, engaged person, and public safety, and completing the law enforcement mission.

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

#### **➤ Communication**

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

- Calm and respectful tone, body language, and interaction – this includes avoiding placing hands on weapons on the tool belt when not necessary for safety reasons
- Avoidance of language, such as taunting or insults, which could escalate the incident
- Clear instructions and commands

- Active listening, repetition, and indications of understanding
- Gathering information
- Assessing communication barriers
- Warnings and clear indications of the consequences of resistance
- Considering whether any lack of compliance is a deliberate attempt to resist rather than an inability to comply based on factors including, but not limited to,
  - Medical conditions
  - Mental impairment
  - Developmental disability
  - Physical limitation
  - Language 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 engaged person a reasonable amount of time to comply with commands.

➤ **Isolation/Containment**

Isolating the engaged person (limiting or preventing access to officers, the public, or possible victims of resistance, including officers) and containing the engaged person (limiting the ability of the engaged person to move away from an area controlled by officers) are both important aspects of de-escalation, as they limit the exposure of the public to the engaged person and allow officers to lower the number of variables that they are attempting to control during the encounter. Isolation/containment includes actions such as:

- Separating parties in disputes;
- Handcuffing or restraining agitated persons to prevent their agitation from turning to active resistance, if appropriate;
- Placing barriers between officers and uncooperative engaged persons;
- Setting police perimeters, and limiting access to the scene;
- Using additional personnel to cover possible escape routes; and

- Transitioning incidents from dynamic to static by limiting access to unsecured areas, limiting mobility, and preventing the introduction of non-involved community members.

➤ **Positioning and Spatial Awareness**

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

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

➤ **Time, Distance, and Cover**

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

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

➤ **De-Escalation Resources**

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

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

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

##### **D - 1. Use of Force Shall be Reasonable, Necessary, and Proportional, and for a Lawful Purpose or Objective**

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

**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.**

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;
- In defense of others or in self-defense;
- To gain compliance with a lawful order;
- To prevent a person from injuring him/herself.

##### **D - 2. Prohibitions on Unreasonable Force**

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

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

##### **D - 3. Duty to Intervene**

Any officer who observes another officer about to use force that is illegal, excessive, or otherwise inconsistent with this policy shall, absent

extraordinary circumstances, do whatever he/she can to interrupt the flow of events *before* the fellow officer does something that makes any official action necessary.

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

Members witnessing instances of misconduct must also follow the direction given in Department Manual of Rules Section 314.48, *Reporting Violations of Laws, Ordinances, Rules, or Orders*<sup>3</sup>, and members who fail to report excessive force are subject to appropriate discipline.

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

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

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

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.

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

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

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

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

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<sup>3</sup> Manual of Rules 314.48: "Members and employees who become aware that other members or employees violated laws, ordinances, rules of the Department, or disobeyed orders, of a Class I violation or any Class 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.

#### **D - 7. Providing Medical Assistance to Persons Subject to the Use of Force**

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

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

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

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

#### **E. LEVELS OF RESISTANCE**

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

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

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.

##### **E - 1. Non-Compliance**

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

##### **E - 2. Passive Resistance**

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

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.

**E - 3. Active Resistance**

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

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

**E - 4. Assaultive Resistance**

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

**E - 5. Life-Threatening Resistance**

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

**F. LEVELS OF FORCE**

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

**F - 1. Contact Controls**

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

**F - 2. Compliance Techniques and Defensive Tactics**

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

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

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.

### **F - 3. Intermediate Less-Lethal Force**

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

### **F - 4. Lethal Force**

Any use of force that creates a substantial risk of causing great bodily injury or death, intended to overcome **life-threatening resistance**. Lethal force includes impact weapon strikes to the head, the discharge of a firearm loaded with lethal ammunition, and intentionally striking a person with a vehicle.

## **G. 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.**

### **G - 1. Presence/Command Options**

Officer presence, verbal commands, measured tone, and command presence of a uniformed officer are all part of the larger field of **Presence/Command Options**. These are communication techniques, both verbal and non-verbal, which are not a use of force but which are essential 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**).

### **G - 2. Physical Control/Personal Weapons Options**

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:

- Escorts and physical body manipulation without pain compliance

- Control Holds
- Takedowns
- Vulnerable Area manipulation
- Personal Weapon strikes – **NOTE:** Personal Weapon strikes to a restrained person are considered Intermediate Less-Lethal Force.

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***.

### **G - 3. Less-Lethal Tool Options**

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

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

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

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

The Less-lethal tools authorized by the Department include:

- Patrol Canine – See [DGO K-09](#), *Department Canine Program*
- Electronic Control Weapon (ECW) – See [DGO \(Lexipol\) 304](#), *Electronic Control Weapon (TASER)*
  - **Important warning:** When feasible, a verbal warning of the intended use of the ECW shall precede its use, to warn the engaged person and other officers.

- Impact Weapons: Includes the ASP® expandable baton, long wood baton, and short wood baton – See **Training Bulletin III-H.02, *Hand-held Impact Weapons***
  - **Important warning:** Unless exigent circumstances exist, officers shall not intentionally strike the head, neck, throat, spine, kidneys, groin, or left armpit with impact weapons.
- Specialty Impact Weapons: Includes direct-fired ranged impact munitions, regardless of weapons platform – See **Training Bulletin III-H, *Specialty Impact Weapons***
  - **Important warning:** SIM use during crowd control situations is further limited – see **Training Bulletin III-G, *Crowd Control and Crowd Management***.
- Oleoresin Capsicum (OC) Spray – See **Training Bulletin V-F.02, *Chemical Agents***
  - **Important warning:** OC spray shall not be used to wake up or arouse unconscious or sleeping individuals who otherwise pose no threat.
  - **Important warning:** OC spray shall not be used on passive resisters who go limp or offer no physical resistance.
- 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***.

#### **G - 4. Requirement to Carry at Least One Less-Lethal Tool**

Uniformed sworn officers who are working field assignments shall carry at least one hand-held less-lethal tool (e.g. ECW, impact weapon, and/or OC).

#### **G - 5. Restrictions on Use of Less-Lethal Tools Against Restrained Persons**

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

### **H. LETHAL FORCE**

#### **H - 1. Lethal Force Options**

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.

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.

## **H - 2. Drawing, Exhibiting, or Unholstering Firearms**

An officer may draw, exhibit, or unholster their firearm in the line of duty when the officer reasonably believes it is necessary for his or her own safety or for the safety of others. The drawing, exhibiting, or unholstering of a firearm by law enforcement officers can be perceived as threatening and intimidating and, when unwarranted, may cast a negative impression on officers. Unwarranted emphasis on the police possession of weapons, such as an officer placing their hand on a holstered firearm during an interaction with the public when not justified by a safety concern, can also create negative impressions and damage rapport.

Officers may draw, exhibit, or unholster their firearms only when justified by appropriate circumstances, 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*).

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

## **H - 3. Pointing Firearms at a Person**

The pointing of a firearm at another person is a Fourth Amendment seizure and a use of force.<sup>4</sup> 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.

If an officer points a firearm at a person the person shall, when safe and appropriate, be advised of the reason why the officer(s) pointed the firearm.

## **H - 4. Discharging Firearms at a Person**

An officer is justified in discharging a firearm at another person only when the 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:

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<sup>4</sup> *Robinson v. Solano County*, 278 F. 3d 1007 (9<sup>th</sup> Cir. 2002)

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

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.

#### **H - 5. Discharging Firearms at Moving Vehicles**

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

Officers 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**.

Officers are prohibited from intentionally positioning themselves in a location vulnerable to a vehicular attack, and, whenever possible, shall move out of the way of the vehicle instead of discharging their firearm at the operator.

Officers are also prohibited from discharging their firearms at the operator of a vehicle when the vehicle has passed and is attempting to escape, except in the case of a **vehicle ramming mass-casualty attack**.

#### **H - 6. Discharging Firearms from Moving Vehicles**

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

### **H - 7. Discharging Firearms at Animals**

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

- 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.

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.

### **H - 8. General Prohibitions Regarding Firearms**

Officers are prohibited from the following actions:

- Using firearms as impact weapons, unless any of the following circumstances exist:
  - When a person 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.

### **H - 9. Force Likely to Cause Great Bodily Injury or Death**

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

- Intentional impact weapon strikes to the head; and
- Intentional use of a vehicle, at any vehicle speed, to strike the person of another.

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

- To defend against an immediate threat of death or serious bodily injury to the officer or another person; or
- To apprehend a fleeing person for a felony when the following three conditions are met:
  - There is probable cause to arrest the engaged person for the commission of a felony that threatened or caused death, great bodily injury, or serious bodily injury;
  - The officer reasonably believes that the person will cause death or great bodily injury to another unless immediately apprehended; and
  - There are no other reasonably available or practical alternatives to apprehend the person.

## **I. CONSIDERATIONS AFTER FORCE**

### **I - 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.

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

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

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

**I - 3. Counseling Services after Lethal Force Incidents**

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.

**J. TRAINING**

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

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

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

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

**J - 3. Training Bulletins**

Officers are reminded that they shall follow the specific policy and guidance contained in Departmental Training Bulletins.

By order of

Susan Manheimer  
Interim Chief of Police

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