

**To:** Chair Regina Jackson, Oakland Police Commission

**From:** Use of Force Ad Hoc Committee Representatives, Commissioner Anderson, Commissioner Harris and Vice Chair Gage.

**Prepared by:** Rania Adwan

**Date:** September 21, 2020

**RE: Use of Force Ad Hoc - Recent Meeting Notes**

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### **Background**

In January 2020, the Oakland Police Commission approved a new version of Department General Order (DGO) K-03 Use of Force. This revision was solely designed to bring the Department into compliance with AB 392, which amended Sections 196 and 835a of the Penal Code.

As a part of the discussion about approving the new DGO K-03, the Oakland Police Commission and Oakland Police Department agreed that a comprehensive revision of K-03 was required. Members of the Use of Force Ad Hoc (UOF Ad Hoc) agreed to reconvene to complete this comprehensive revision. At the January 16th meeting of the UOF Ad Hoc the committee worked to establish purpose and goals for the revision of K-03 and referenced Training Bulletins. During the February 27, 2020 Oakland Police Commission meeting, the UOF Ad Hoc committed to produce regular reports on the progress of the proposed revision. The UOF Ad Hoc submits the following meeting notes as a record of recent activities.

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### **Ad Hoc Prep Meeting, Friday Sep 11 (5:30 - 7:30pm)**

**Meeting purpose:** Provide notice to OPD of ALCU recommended edits. Review and discuss ACLU's suggested edits to the Use of Force policy

#### **Attendees:**

Ginale Harris, Commissioner, Ad Hoc Chair

Tara Anderson, Commissioner

Henry Gage III, Vice-Chair, Oakland Police Commission

James B. Chanin, Civil Rights Attorney

John Alden, Director, Community Police Review Agency

Juanito Rus, Policy Analyst, Community Police Review Agency

LeRonne Armstrong, Deputy Chief, Oakland Police Department

Roland Holmgren, Deputy Chief, Oakland Police Department

Phillip Andrew Best, Police Services Manager, Oakland Police Department

Joseph Turner, Sergeant, Oakland Police Department

Allyssa Victory, ACLU

Rania Adwan, Project Manager

The ACLU, through Allyssa Victory and in collaboration with Oakland community groups and the Unity Council advising the Raheem survey, submitted suggested revisions of the June 2020 draft to the Ad Hoc Commissioners. This draft is available on the project website and is titled "[ACLU's Suggested Policy Edits](#)". Commissioners, along with a subset of the full Ad Hoc Committee, met on Friday evening, September 11, to briefly discuss these suggestions, with discussion largely focused on the recommendations that:

- + The definitions portion of the document be pared down for ease of reference and clarity

- + Authorized intermediate force options be reviewed
- + The term imminent (as related to perceived threats) be included, to mirror the language of SB 392.

#### *Reviewing Intermediate Force Options*

The Ad Hoc Commissioners sought ACLU's policy and organizing expertise to help insure the presence of community voices during the revision of this policy. The ACLU explained the recommendation to prohibit many of the force options, noting the community's desire to see a less weaponized police department. The group discussed the current list of force options, pointing to a recent prohibition on carotid restraints, the special motion pushed forward by the full Police Commission related to positional asphyxia, and the current temporary ban on tear gas.

#### *Imminent vs Immediate*

The ACLU noted that AB 392 uses the term imminent as its standard, and recommended that OPD adopt this term instead of the term "immediate". The group discussed the literal and culturally understood definitions of both terms and decided to use immediate for the purpose of this policy. The group agreed to continue discussion with the full Ad Hoc committee.

#### **Ad Hoc meeting, Monday Sep 14 (6 - 9pm)**

**Meeting purpose:** Review and discuss ACLU's suggested edits to the Use of Force policy.

#### **Attendees:**

Ginale Harris, Commissioner, Ad Hoc Chair  
 Tara Anderson, Commissioner  
 Henry Gage III, Vice-Chair, Oakland Police Commission  
 James B. Chanin, Civil Rights Attorney  
 John Alden, Director, Community Police Review Agency  
 Juanito Rus, Policy Analyst, Community Police Review Agency  
 Susan Manheimer, Chief of Police (Interim), Oakland Police Department  
 LeRonne Armstrong, Deputy Chief, Oakland Police Department  
 Roland Holmgren, Deputy Chief, Oakland Police Department  
 Nishant Joshi, Captain, Oakland Police Department  
 Phillip Andrew Best, Police Services Manager, Oakland Police Department  
 Joseph Turner, Sergeant, Oakland Police Department  
 Brigid Martin, Deputy City Attorney, Office of the Oakland City Attorney  
 Allyssa Victory, ACLU  
 Rania Adwan, Project Manager

The full Ad Hoc Committee, along with Interim Police Chief Susan Manheimer and ACLU representative Allyssa Victory, convened to continue discussing suggested revisions from the ACLU's draft of OPD's Use of Force policy, namely the recommendations that:

- + Imminent replaces Immediate
- + Use of force be untethered from resistance
- + Language addressing the carotid restraint and positional asphyxia be added to a list of prohibited force options
- + Mutual aid be directly addressed

### *Imminent vs Immediate*

The Department noted a change throughout the document to immediate, as per the last meeting.

### *Force Options and Resistance*

The group recognized the national discourse and racial disparity when it comes to using force when a member of the public is resistant. OPD noted the necessity for officers to understand and quickly weigh the level of resistance against a proportional use of force along with the appropriate force options. The group agreed to review the language to clarify and bolster the nexus between resistance, proportionality and force options, prioritizing the sanctity of life.

### *Prohibiting The Carotid Restraint and Preventing Positional Asphyxia*

The Department moved to prohibit the carotid restraint and the group discussed an item before City Council that would address positional asphyxia. The Commissioners reminded the group that this topic had been discussed at length (public meetings on 06/20/2020 and 07/09/2020) and the Commission voted to ban the use of restraint techniques that block the flow of blood to the brain. Commissioners also reminded the group that new asphyxia language was passed by the full Commission on July 9, 2020. The Department, while acknowledging the positive collaborative process for the development of the Special Order, still opposes the language of SO 9205 Banning of the Carotid Restraint and All Forms of Asphyxia, as voted on by the Commission. The Department noted that while it generally agrees with the ban, they would like to wait to hear from the City Council before proceeding with new language. Mr Channin believed the June 2020 Ad Hoc draft DGO K-03 draft language, as it stands, is “woefully vague” - adding his position against the section as it is currently presented.

All participants agreed that the June 2020 draft language should be removed and the language from SO 9205 (Banning of the Carotid Restraint and All Forms of Asphyxia) should be the language used in the final DGO K-03.

Lastly, the group discussed whether the language currently in the policy related to positional asphyxia should move from the section titled, “Consideration After Force” to “Prohibited Force Options.”

### *Mutual Aid*

Commissioners moved to include ACLU’s language in the next published draft. The Department stated that only OPD employees are obligated to abide by this policy, and that OPD has no jurisdiction to impose this policy on outside agents.

Finally, the group agreed to reconvene briefly on Wednesday, September 16 to continue discussing stronger language around resistance, proportionality and force options, as well as carotid/positional asphyxia.

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A smaller subset of the group briefly met on Wednesday Sep 16 and Friday Sep 18 to review the Department’s adjusted language related to resistance and proportionality. The outcome of the meetings culminated in the Department’s submission of a draft policy submitted Friday Sep 18. (titled “[Ad Hoc Committee revisions](#)”) currently online on the project webpage and provided as supplemental materials ahead of the September 21 Special Meeting.

Use of Force policy revision project website: <https://www.oaklandca.gov/topics/opd-use-of-force-policy-ad-hoc-committee>