



## POLICE COMMISSION

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**TO:** Oakland Police Commission  
Members of the Oakland Community

**FROM:** Police Commission / Police Department Ad Hoc Working Group on Policy:  
General Order K-03 – *Use of Force*

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Honorable Commissioners and Members of the Public,

In the agenda packet before you, you can see the product of an extensive number of meetings (averaging several hours per meeting) of an ad hoc working group dedicated to re-writing the Oakland Police Department's *Use of Force* policy from the ground up. In January 2020, the Oakland Police Commission voted to approve a new version of Department General Order (DGO) K-03 Use of Force, to comply with Assembly Bill 392 Peace Officer: Deadly Force an act to amend Sections 196 and 835a of the Penal Code, relating to peace officers. This was the first phase of a two-phase project and immediate need to bring Oakland's Use of Force policy to legal compliance. As a part of the discussion about approving the new K-03, effective January 1, 2020, the Oakland Police Commission, external stakeholders and community groups, and the Oakland Police Department collectively asserted during this meeting that the ultimate goal, to best serve the community, was a more comprehensive revision of K-03. Members of the Use of Force Ad Hoc (UOF Ad Hoc) agreed to reconvene to complete the comprehensive revision. The UOF Ad Hoc group met nearly every other Thursday evening, and weekly after the shelter-in-place order, for almost six months to produce a comprehensive document which gives both broad conceptual guidance and specific instruction to Oakland's sworn officers on the Use of Force in the course of their duties. Beyond leveraging the experience and knowledge of all ad hoc group members, the group also borrowed concepts and language from leading use of force policies from agencies throughout the United States (see section II, below).

### **I. Highlights of the Draft Policy**

The draft policy created by the ad hoc working group seeks to set forth plain-language guidance and instruction for Oakland's sworn officers while at the same time keeping the policy transparent and easily understandable by the community. Some of the highlights of the draft policy include:

- ❖ **Core Principles and Overall Mission First:** The first section of the document is dedicated to important overarching concepts that must guide all decisions surrounding the use and evaluation of force, including the primary mission of protecting life, a commitment to de-escalation, a duty to intervene to stop excessive force, a commitment to medical aid, and a commitment to through and fair evaluation of force.

- ❖ **Specific Policy Direction Mandating De-Escalation:** Sworn officers are required by the draft policy (in Section C) to utilize de-escalation tactics and techniques in order to reduce the need for force, and de-escalation is tied specifically to the Department’s mission of preserving life and limiting reliance on the use of force.
- ❖ **Overarching, Easily Understood Concepts Applicable to All Force:** Before getting into more specific rules and prohibitions, the draft policy sets forth (in Section D) general policy requirements that apply to all force, regardless of type or intensity. These include:
  - Requirements that force be reasonable, necessary, and proportional;
  - Prohibitions on unreasonable force;
  - Requirements for identification and warnings prior to all use of force;
  - Requirements to de-escalate force after force has been used; and
  - Requirements to provide medical aid after force has been used.
- ❖ **Extensive Discussion of Levels of Resistance, Force, and Less-Lethal Force Options**
- ❖ **Strict Necessity Requirements for Lethal Force in Line with AB 392**
- ❖ **Prohibitions on Discharging Firearms at Moving Vehicles**
- ❖ **Specific Rules on Preventing Positional Asphyxia:** These include specific direction against sitting, standing, or kneeling on a persons’ head, neck, chest, or back and to ensure that a subject under control is in a position to allow free breathing.

## II. Policies and Sources Consulted

The draft policy owes much of its language and concepts to other policies. Each addition from other sources, however, was reviewed and often modified or added upon in the draft policy by the ad hoc group. The policies and sources consulted during the drafting of this policy include:

- ❖ **Assembly Bill 392** – text of Penal Code § 835a, which took effect January 1<sup>st</sup> 2020;
- ❖ **Denver Police Policy on Use of Force** – Includes content from Denver PD Operations Manual 101.00 (General Philosophy), 105.01 (Use of Force Policy), 105.02 (Force and Control Options), 105.03 (Reporting), 105.04 (Shooting by and/or of Police Officers), and 105.05 (Use of Force Review Board)
- ❖ **New Orleans Police Department Policy on Use of Force** – Includes content from NOPD Operations Manual Chapter 1.3, Title: “Use of Force”
- ❖ **Camden County (NJ) Police Department Order on Use of Force** – Effective date January 28th, 2013, revision date August 21st, 2019.
- ❖ **Campaign Zero’s “8 Can’t Wait” proposals** (available at [www.8cantwait.org](http://www.8cantwait.org))
- ❖ **District of Columbia Metropolitan Police Department General Order on Use of Force** – Effective Date November 3rd, 2017
- ❖ **Cleveland Division of Police General Order on De-Escalation** – Effective Date January 1st, 2018
- ❖ **Seattle Police Department Manual, Title 8 – Use of Force.** Includes Chapters:
  - 8.000 - Use of Force Core Principles (Effective Date September 15th, 2019)
  - 8.050 - Use of Force Definitions (Effective Date September 15th, 2019)
  - 8.100 - De-Escalation (Effective Date September 15th, 2019)

- 8.200 - Using Force (Effective Date September 15th, 2019)
- 8.300 - Use of Force Tools (Effective Date September 15th, 2019)
- 8.310 - OC Spray Chain of Custody (Effective Date September 1st, 2019)
- 8.400 - Use of Force Reporting and Investigation (Effective Date September 15th, 2019)
- 8.500 - Reviewing Use of Force (Effective Date September 15th, 2019)
- ❖ **National Consensus Policy on Use of Force** – International Association of Chiefs of Police, October 2017
- ❖ **San Francisco Police Department General Order 5.01, Use of Force** – Revised December 21st, 2016.
- ❖ **California Jury Instructions 3160, Great Bodily Injury** – CalCRIM 2017 Edition, Judicial Council of California.
- ❖ ***Graham v. Connor***, 490 U.S. 386 (1989)
- ❖ **California Attorney General Xavier Becerra’s recommended force policy reforms** (available at <https://www.oag.ca.gov/news/press-releases/attorney-general-becerra-calls-broad-police-reforms-and-proactive-efforts>)

### **III. Members of the Ad Hoc Group**

Ginale Harris, Commissioner, Oakland Police Commission  
 Tara Anderson, Commissioner, Oakland Police Commission  
 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  
 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

### **IV. Next Steps**

While the UOF Ad Hoc group is formally presenting this draft to the whole of the Commission and to the public during this public meeting, the work is not done. The UOF Ad Hoc group formally endorses and recommends three activities to engage the public to inform the final development of DGO K-03. After additional work by the ad hoc group to review and modify the draft in consideration of public input, the ad hoc group will formally propose that the policy be approved by the entirety of the Police Commission. In order to facilitate authentic and meaningful inclusion of the information provided through these activities the UOF Ad Hoc believes that the final draft of the revised DGO K-03 will be presented to the Commission as a whole in September 2020.

### **Town Halls**

A series of public town hall-style meetings to solicit public comment and input, where third party facilitators assist with organizing and collecting/contextualizing public feedback. Further discussions from the full Commission regarding planning for the fullest representation in any public outreach strategy is suggested to ensure that the voices of those most impacted will be welcomed and heard.

### **Public Posting & Written Feedback**

The draft revisions to DGO K-03 will be posted on the Police Commission website. There will be an open 30 period to provide written feedback on the department general order. Respondents will be instructed to submit edits or recommendations to an email solely designated for this purpose.

### **Raheem**

Virtual town hall meetings and solicitation of written feedback will unintentionally exclude members of the community from the policy development process. As a result, the Commission proactively instructed the Community Police Review Agency (CPRA) to enter into a professional services contract with Raheem for the purpose of collecting, “community input related to the Oakland Police Department Use of Force Policy Revision.” The specific services under this agreement include; an analysis of resident experiences of and attitudes towards use of force by Oakland Police and Use of Force Study Report. These activities differ in scope and scale from previous efforts in that respondents will have had recent experience with having been stopped by, called, and or directly harmed by OPD. Raheem’s main source of data on Use of Force was requested directly from the City of Oakland and the Oakland Police Department, and includes detailed police stop and incident data.