



# AGENDA REPORT

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**TO:** Mayor Libby Schaaf, City Council President Rebecca Kaplan and the Honorable City Council **FROM:** Oakland Police Commission

**SUBJECT:** OPD Special Order 9205, Banning of the Carotid Restraint and All Forms of Asphyxia **DATE:** September 18, 2020

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## **RECOMMENDATION**

**The Oakland Police Commission Recommends That The City Council Adopt A Resolution Adopting Oakland Police Department Special Order 9205, Banning of the Carotid Restraint and All Forms of Asphyxia, As Recommended By The Oakland Police Commission.**

## **EXECUTIVE SUMMARY**

The Oakland Police Commission submits this report to the City Council regarding the Oakland Police Department (OPD) Special Order 9205, Banning of the Carotid Restraint and All Forms of Asphyxia on behalf of the Oakland Police Commission. Special Order (SO) 9205 serves as an immediate change to Department General Order (DGO) K-03 Use of Force until such time as the new revised DGO K-03 is adopted. Upon confirmation of SO 9205 the policy will henceforth be referred to as K-03.1 and enjoined with DGO K-03.

The Police Commission, pursuant to their charter power to review and approve all OPD policies regarding use of force, recommends a total ban on the use of the Carotid Restraint and all other forms of asphyxia, including banning officers from placing any part of an officer's knee on the back of a person being restrained. OPD agrees with nearly all the language in this Special Order, save for a portion of the language relating to officers placing their knee on the back of a person they are trying to detain. The Commission urges the City Council to adopt the Commission's version of the policy, including an outright ban on the use of knee to restrain a detained person.

## **REASON FOR URGENCY**

SO 9205 is an immediate change to DGO K-03 Use of Force until such time as the new revised DGO K-03 is adopted.

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**REASON FOR SUPPLEMENTAL OR REPLACEMENT (If Applicable)**

Not Applicable.

**BACKGROUND AND LEGISLATIVE HISTORY**

Ultimately, police officers may only use as much force against the community as the community permits. Thus, the public has the right to set rules for how police officers use force on behalf of, and against, the public.

Here in the City of Oakland, the City Charter provides a decision-making process for deciding how much force the community will allow police officers to use against the members of the Oakland community. That process allows the Police Commission to set those policies. If OPD disagrees with the Commission's decisions, they may ask the City Council to override the Police Commission. Here, the Police Commission has set a policy banning an array of uses of force that restrict breathing and blood flow to the brain. OPD has asked the City Council to override that decision by setting, instead, a more permissive policy than that authored by the Police Commission.

The specific policy here is referred to as Special Order 9205. (OPD has since proposed an alternative numbering, to which the Police Commission has no objection.) That order bans the carotid hold, which cuts off the flow of blood to the brain in order to make a restrained person lapse into unconsciousness. That order also prohibits officers from using positional asphyxia – that is, placing the body of a restrained person, often in concert with parts of the body of the police officer, on top of the restrained person such that they cannot breathe.

The Police Commission and OPD agree on nearly all of the language in Special Order 9205. The fact that the Commission and OPD have reached this agreement is a positive sign that the City of Oakland is on the right track in the continued reform of police practices.

That said, the Commission and OPD remain in disagreement on one issue, specifically, the language relating to officers placing a knee on a detained person in order to restrain them. The Commission favors a total and absolute ban on this practice, made infamous in the murder of George Floyd in Minneapolis earlier this year, and since banned entirely by the New York Police Department. While the Commission did not yet have opportunity to see OPD's staff report to Council at the time of this report, the Commission is informed that OPD favors a more permissive approach that would allow some use of an officer's knee on a restrained person.

On June 25, 2020, the Police Commission established an Ad Hoc Committee to create a revised version of Special Order 9205 to be submitted to the City Council. On July 9, 2020 the Police Commission voted to approve the Commission's version of SO 9205 for submission to City Council, which is before the Council with this Report.

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OPD and the Commission's ad-hoc committee have worked diligently on resolving differences. Another meeting was held with members of the ad-hoc committee and OPD Executive Staff, and further collaboration moved the two drafts closer. Unfortunately, OPD and the Commission could not resolve all outstanding differences before the Commission's regular meeting on July 9, 2020. At that meeting, the Commission voted to adopt a final version of the policy, different from OPD's proposal. Subsequent meetings with the ad-hoc have not resolved the issue.

### **ANALYSIS AND POLICY ALTERNATIVES – DIFFERENCES BETWEEN OPD'S VERSION AND THAT OF THE COMMISSION**

The one issue with regards to which OPD asks the Council to override the Police Commission is the use of an officer's knee to restrain a detained person.

As seen in the murder of George Floyd, an officer's knee can be a deadly weapon. Kneeling on a person's back or neck can kill the restrained person. Historically, officers in many jurisdictions have used their knee to keep a detained person on the ground. When coupled with placing the person face down, as was the case with Mr. Floyd, there is a substantial risk that the detained person will not be able to breathe. After consulting with subject matter experts on this issue, and attending a tactical demonstration provided by OPD, the Police Commission opted to prohibit officers from using applied pressure of their knee on a person's chest, back, stomach, or shoulders, to restrain a detained person, finding that such a tactic is inconsistent with the Oakland community's commitment to preserving life and not necessary to accomplish legitimate policing goals.

In this regard, the Oakland Police Commission seeks to make the City of Oakland a leader in police reform. One other city, New York City, has since adopted a ban matching the one the Oakland Police Commission has adopted. Anecdotally, it appears many other cities are considering the same in the wake of the murder of George Floyd. Confirming the policy the Oakland Police Commission has suggested would make the City of Oakland a leader in this regard.

While the Police Commission had not yet been provided a copy of the OPD suggested language in this regard at the time of this report, the Commission has been informed that OPD will ask the Council to soften the restriction on the use of an officer's knee on a detained person. The Commission has been in discussions with the Police Department as to the OPD perspective that officers either must, or inevitably will, hold a person down with a knee should that person's detention require taking them to the ground. The Commission's perspective is that that use of the knee in this way is inherently dangerous and unnecessary, and thus officers should be trained not to use that tactic, just as they are trained not to use other inherently dangerous and unnecessary tactics like blows to head with an impact weapon and the carotid hold.

### **FISCAL IMPACT**

There are no direct fiscal impacts associated with this report.

It is the Police Commission's expectation and hope that implementing the ban in their version of Special Order 9205 will reduce the chances that community members will die when officers use force upon them. While the primary goal in this regard is to save lives, this policy change may also reduce litigation and civil liability for the City of Oakland, and thus may have a positive but undetermined fiscal impact.

### **PUBLIC OUTREACH / INTEREST**

This policy is the product of outreach with diverse interest groups including members of the OPD, the Oakland Police Commission, and community interest groups who were given the opportunity to comment on the policy at the July 9, 2020 Police Commission meeting.

### **COORDINATION**

Preparation of this report was coordinated with the assistance of the City of Oakland's Police Commission and the Office of the City Attorney.

### **PAST PERFORMANCE, EVALUATION AND FOLLOW-UP (If Applicable)**

Not Applicable.

### **SUSTAINABLE OPPORTUNITIES**

**Economic:** There are no economic opportunities associated with this report.

**Environmental:** There are no environmental opportunities associated with this report.

**Race and Equity:** Historically, and today, people of color are more likely to experience police use of force. Ensuring that OPD's use of force policies embrace the sanctity of life by minimizing harm to those against whom we ask the police to use that force will help reduce the disproportionate harms that people of color, and especially black people, have suffered in the past.

**ACTION REQUESTED OF THE CITY COUNCIL**

The Oakland Police Commission recommends that the City Council approve the accompanying Resolution Regarding Oakland Police Department Special Order 9205, Banning of the Carotid Restraint and All Forms of Asphyxia, as presented by the Police Commission.

Respectfully submitted,



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John Alden  
Executive Director,  
Community Police Review Agency

Attachments (1):

**A – SO 9205 – Police Commission Proposed Version**

OFFICE OF CHIEF OF POLICE  
OAKLAND POLICE DEPARTMENT

## SPECIAL ORDER 9205

TO: Sworn Personnel

SUBJECT: Banning of the Carotid Restraint and All Forms of Asphyxia

DATE: 9 July 2020

TERMINATION: Upon Revision of DGO K-03, *Use of Force*

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The use of authorized force by police officers, acting as agents of the state, is fundamentally an exercise of governance with the consent of the people. Recent events have changed the nature of the relationship between the public and the government regarding police use of force, especially surrounding restraints of a person's neck and asphyxiation – the process of being deprived of oxygen or suffocated, potentially resulting in unconsciousness or death.

It is recognized that certain custodial encounters may require body-to-body contact between officers and a person. However, the Oakland Police Department does not authorize nor train officers to utilize “chokeholds,” which obstruct a person's ability to breathe. The Department has continued, however, to teach and authorize officers to utilize the carotid restraint hold, which has until recently been required training pursuant to California Peace Officer Standards and Training (POST).

OPD's use of force policies must reflect a reverence for life,<sup>1</sup> require de-escalation,<sup>2</sup> mandate a duty to intervene,<sup>3</sup> limit shooting at moving vehicles,<sup>4</sup> and require comprehensive force reporting.<sup>5</sup> OPD recognizes the public and the Police Commission's call for the immediate end of the use of hogtying, chokeholds, and any holds intended to cause obstruction to a person's airway.

OPD bans and otherwise immediately eliminates all holds or other maneuvers which are designed to, or may foreseeably result in, cutting off blood or oxygen to a person's head.

Special Order 9205 serves as an immediate change to DGO K-03 Use of Force until such time as the new revised DGO K-03 is adopted.

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<sup>1</sup> “The Oakland Police Department values the protection and sanctity of human life.” *DGO K-03 Use of Force*, I, A.

<sup>2</sup> “Members are required to de-escalate the force when member reasonably believes a lesser level or no further force is appropriate.” “To the extent possible and without ever compromising safety, members are required to use verbal commands to accomplish the police objective before resorting to physical force.” *Ibid* at I, C and III, A, respectively

<sup>3</sup> “Members shall intervene and prevent or stop the use of unreasonable force by other members.” *Ibid* I, C.

<sup>4</sup> “Whenever possible, members shall move out of the way of the vehicle, instead of discharging his or her firearm at the operator.” *Ibid* IV, E, 2, b.

<sup>5</sup> Reference DGO K-04, *Reporting and Investigating the Use of Force*, and associated Special Orders.

**POLICY**

Effective immediately, OPD eliminates the Carotid Restraint as an authorized force option for OPD officers. All references to the use of the Carotid Restraint shall be removed from DGO K-03, Use of Force. To be clear, OPD bans all holds or other maneuvers which are designed to, or may foreseeably result in cutting off blood or oxygen to a person's head. Hogtying is also specifically banned. Additionally, officers shall not sit on, kneel on, or stand on a person's chest, back, stomach, or shoulders, reducing the person's ability to breathe. Officers must position a person to allow for free breathing and not put the person face down; to be clear, a prone person shall be placed on their side or in a sitting, kneeling or standing position as soon as practical.

Positional asphyxia occurs when a person's body position prevents the person from breathing adequately. A person can be prevented from breathing adequately when pressure is placed on their neck, shoulders, back, or stomach. In order to ensure the safety and to minimize the risk of positional asphyxia, officers must learn to recognize, evaluate, and mitigate contributing factors and conditions. Officers should not believe that if a person is able to talk, that the person is also able to breathe; if a person says they cannot breathe, the person is likely in distress.

1. A person lying on their stomach in a face-down position may have difficulty of breathing. Officers should avoid physically forcing a person to a face-down position. Officers should position a person in a manner to allow for free breathing once the person has been controlled and placed under custodial restraint.
2. Any body-to-body contact between officers and a person or officers' placement of weight on a person at all must be transitory. However, officers shall not sit on, kneel on, or stand on a person's chest, back, stomach, or shoulders, reducing the person's ability to breathe. As soon as possible, officers' weight on a person shall be removed. Officers shall be aware of the amount and duration of any weight placed on a person. If officers hold a person down while restraining them, officers shall avoid placing weight on the person's neck or head which can fracture the hyoid bone or cervical spine.
3. Officers shall not "pile on" on top of a person. If additional restraint is needed, an additional officer or officers may restrain a person's limbs to restrict their movement.
4. When a person has their breathing restricted, the person may struggle more. What officers perceive as resistance may be an indication that the person is struggling to breathe. Whenever possible, officers must check if any resistance is related to a person's difficulty breathing. Officers shall recognize and respond to risks such as the person saying that they "can't breathe", gurgling or gasping sounds, panic, prolonged resistance, the lack of resistance, etc.
5. Once officers gain control of a person, officers must inquire about a person's well-being, including, but not limited to, that person's recent use of drugs, any cardiac condition, or any respiratory conditions or diseases. Officers shall obtain medical evaluation and treatment, if needed. Officers shall share any relevant information on a person's condition, medical condition, what has transpired during their interaction, or any information about drug or alcohol

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Special Order 9205

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use, which might be medically relevant, to other officers, personnel, or individuals administering medical aid. If there has been any restriction to a person's breathing, such information is medically relevant and shall be shared at the first practical opportunity.

6. At a scene, officers shall continuously monitor the condition of a person being restrained or placed in restraints.

7. Officers must be aware of environmental factors, including the nature and temperature of the surface to which they are restraining a person. For example, holding a person down on a hot surface, or in mud or water, can cause other injury or impair breathing.

By order of

Susan Manheimer  
Interim Chief of Police

Date Signed:

DRAFT



**DRAFT**

City Attorney

# OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C.M.S.

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**RESOLUTION ADOPTING OAKLAND POLICE DEPARTMENT  
SPECIAL ORDER 9205, BANNING OF THE CAROTID RESTRAINT AND  
ALL FORMS OF ASPHYXIA, AS RECOMMENDED BY THE OAKLAND  
POLICE COMMISSION**

**WHEREAS**, the Oakland Police Department (OPD) has a responsibility to serve all the people of Oakland, and to treat all members of the public with respect; and

**WHEREAS**, The Oakland Police Commission (Commission) was created by the voters of Oakland in 2016 to be the voice of the community in matters of police policy and practice; and

**WHEREAS**, both the Commission and the OPD recognize that the use of authorized force by police officers, acting as agents of the state, is fundamentally an exercise of governance with the consent of the people; and

**WHEREAS**, both the Commission and the OPD recognize that certain custodial encounters may require body-to-body contact between officers and a person; and

**WHEREAS**, OPD does not authorize nor train officers to utilize “chokeholds,” which obstruct a person’s ability to breathe; and

**WHEREAS**, OPD recognizes the public and the Police Commission’s call for the immediate end of the use of hogtying, chokeholds, and any holds intended to cause obstruction to a person’s airway; and

**WHEREAS**, OPD bans and otherwise immediately eliminates all holds or other maneuvers which are designed to, or may foreseeably result in, cutting off blood or oxygen to a person’s head, despite the fact that the State of California requires that officers be trained to apply some such holds; and

**WHEREAS**, Article VI, Section 604(b)(4) grants the Commission authority to make changes to certain policies, procedures, customs or General Orders which pertain to the Department; and

**WHEREAS**, Special Order 9205 serves as an immediate change to DGO K-03 Use of Force until such time as the new revised DGO K-03 is adopted; and

**WHEREAS**, on June 25, 2020, the Police Commission established an Ad Hoc Committee to create a revised version of Special Order 9025 to be submitted to the City Council; and

**WHEREAS**, on July 9, 2020 the Police Commission voted to approve the Commission's version of SO 9205 for submission to City Council; therefore be it

**RESOLVED:** That the City Council recognizes that OPD consistently needs to balance building community trust in conjunction with the need to address crime; and be it

**FURTHER RESOLVED:** That the Commission and the OPD recognize that building community trust requires transparency and good judgment in the application of law enforcement tools such as uses of force; and be it

**FURTHER RESOLVED:** That the City Council adopts the Commission's version of Special Order 9205, "Banning of the Carotid Restraint and All Forms of Asphyxia" provided below as **Attachment A**; and be it

**FURTHER RESOLVED:** That any further changes to the OPD Special Order 9205 must be adopted in accordance with City Charter Section 604 (b) of the City Charter, Powers and Duties of the Police Commission.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO  
AND PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_  
ASHA REED  
Acting City Clerk and Clerk of the Council  
of the City of Oakland, California

OFFICE OF CHIEF OF POLICE  
OAKLAND POLICE DEPARTMENT

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