



# AGENDA REPORT

**TO:** Edward D. Reiskin  
City Administrator

**FROM:** Susan E. Manheimer  
Chief of Police

**SUBJECT:** OPD Draft Special Order 9205

**DATE:** September 21, 2020

City Administrator Approval

Date:

Sep 25, 2020

## **RECOMMENDATION**

**Staff 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 Recommend By The Oakland Police Department.**

## **EXECUTIVE SUMMARY**

Following the tragic murder of George Floyd by members of the Minneapolis (MN) Police Department, the Oakland Police Department (OPD) recognized a need to prohibit the use of the carotid restraint hold and to implement policy which guarded against positional asphyxia during police encounters. The Department proposed Special Order 9205 and engaged an ad hoc committee of the Oakland Police Commission (“Commission”) in the drafting of the order.

While there has been progress towards a Special Order which is agreeable to all parties, the full Police Commission passed a version of Special Order 9205 on July 9, 2020 pursuant to their powers under City Charter Section 604(b)(4). Any such proposed changes to “policy, procedure, custom, or General Order of the Department” must be submitted to the City Council for approval or rejection pursuant to the Charter upon when a disagreement becomes evident.

The Police Department believes that further work should be done on the proposed Special Order, and recommends that the City Council reject the Special Order and direct the Police Commission to continue its work with the ad hoc committee to come to a unified draft with the Police Department.

## **BACKGROUND**

OPD has worked closely with the Police Commission on banning the use of the Carotid Restraint. OPD is in full support of banning the Carotid Restraint and brought the first draft policy before the Police Commission in July seeking the Commission's approval. OPD also recognized the need to ban all forms of Positional Asphyxia which restrict a person from free breathing.

OPD worked tirelessly with the Police Commission's ad hoc group to create policy which would ensure officers were not placing any person in a position that would inhibit someone from breathing freely. However, the Department's main concern is that the Police Commission's version, if read strictly, prohibits officers from having certain contact with the back of a person when that person is on the ground. This would make taking an actively resisting person into custody very difficult and might lead to unintended negative consequences including danger to officers or the immediate public.

Specifically, the Commission's policy states: "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." The corresponding sentence in the Department's policy version states: "Officers shall not sit, kneel, or stand on a person's chest, back, stomach, or shoulders, **once safely restrained**." This is a vital change since an officer is simply unable to choreograph a struggle with an actively resistant subject, such that a knee or other part of an officer's leg or hip would not at any point contact the back of an individual.

Controlling an actively resisting, struggling person whom an officer is attempting to arrest is one of the most difficult tasks of a police officer; this becomes even more difficult when the struggle goes "to the ground." OPD officers receive over one-hundred (100) hours of Defensive Tactics training in the Police Academy just for these circumstances; they receive additional Defensive Tactics training throughout their career at least every 18 months. However, almost all of the tactics used to control a person on the ground include having some transitory contact with the back and trunk area. Note that this is very different from having contact with the neck, throat, or head, and that is why most agencies are adopting that language. The fact that officers would require both of their hands to handcuff a prone individual particularly if struggling for a weapon, means that an officer would utilize a knee or thigh to control and individual while rendering them safe. Department training includes instruction on ensuring that the person is immediately put into the recovery position and medical attention is summoned (if necessary) as soon as the person is safely restrained.

While no one can anticipate the exact consequences of enacting policy which cannot be realistically followed, significant impacts will result. These include a large increase in policy violations and discipline, which likely would cause officers to choose higher levels of force to avoid situations they would not be able to successfully resolve through lower levels of force such as grappling with an individual to restrain them. Removing the ability to control a person's movement by controlling their back would cause officers to move to higher levels of force (e.g., Tasers, batons, or pepper spray) to take persons into custody; and increase the risk of injury to both the person being arrested and the officer. Another unfortunate consequence would be that officers unable to immediately restrain an armed individual increases the danger to both the

officer and the immediate public. That could result in the fact that officers simply may not be able to take persons who are suspected of committing crimes or are armed into custody. The Department's concern is that while well meaning, the Police Commission's version inadvertently creates an unfortunate and unachievable construct by directing that there be no contact of the knee with the back, making it virtually impossible to restrain and handcuff an actively resisting individual which requires both hands.

The Commission's version could create officer and department liability, which then opens up the possibility of these negative effects, while the Department's version accepts all of the restrictions to ensure that positional asphyxia does not occur while ensuring that the ability to safely take persons into custody is not compromised.

The Police Department believes that further work should be done on the proposed Special Order, and recommends that the City Council reject the Special Order and direct the Police Commission to continue its work with the ad hoc committee to come to a unified draft with the Police Department. The Department is confident that continued collaborative work on this important policy will yield a policy that both the Commission and the Department can support.

#### **FISCAL IMPACT**

There are no fiscal impacts associated with this report.

#### **PUBLIC OUTREACH / INTEREST**

This Special Order is of concern to the entire Oakland Community.

#### **COORDINATION**

The OPD continues to coordinate with the Commission to seek additional engagement, even as this report was being prepared.

#### **SUSTAINABLE OPPORTUNITIES**

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

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

***Social Equity:*** All Oakland residents and visitors benefit from clear policies and procedures that help OPD ensure procedurally just and operationally efficient police services.

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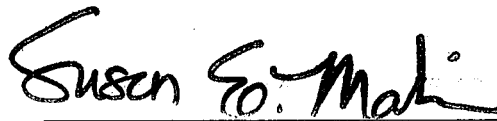
***Social Equity:*** All Oakland residents and visitors benefit from clear policies and procedures that help OPD ensure procedurally just and operationally efficient police services.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff 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 Recommend By The Oakland Police Department.

For questions regarding this report, please contact LeRonne Armstrong, Deputy Chief of Police, Bureau of Field Operations II, at (510) 777-8563.

Respectfully submitted,



Susan E. Manheimer  
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Oakland Police Department

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**Attachments (1):**

A: *Special Order 9205 – As Proposed by the Police Department*