

City of Eugene
Ad Hoc Committee on Police Policy
Topic: Independent Investigation and Prosecution
Meeting #7
Information Packet

Meeting Date: January 20, 2021
Meeting Time: 6:00 – 8:00 pm
Location: Zoom

AGENDA
AD HOC POLICE POLICY COMMITTEE
Wednesday, January 20, 2021
Zoom meeting*
6:00 p.m. – 8:00 p.m.

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| 6:00 – 6:05p.m. | 1. Welcome/Opening remarks: Welcome committee members, elected officials, attendees, and content experts; checks; names of people to present testimony at Feb. 17 meeting; revised work plan; meeting dates; numbering system for motions; Alai Reyes Santos has resigned
(Kevin Alltucker, staff) |
| 6:05 – 6:15 p.m. | 2. Revised Work Plan
(Kaz Zaidi, staff) |
| 6:15 – 6:50 p.m. | 3. Question and Answer session: Independent Investigation and Prosecution
(Mo Young, Facilitator; Lane County District Attorney Patty Perlow, Deputy Police Auditor Leia Pitcher, Sgt. Jason Barreth, EPD) |
| 6:50 – 7:00 p.m. | 4. Presentation from the Use of Force Subcommittee
(Marty Wilder, AHCPP member) |
| 7:00 – 7:45 p.m. | 5. Consider Recommendations/Motions from the Community Oversight Subcommittee
(Mo Young, Facilitator, Kaz Zaidi, staff) |
| 7:45 – 7:55 p.m. | 6. Approve members of Independent Investigation and Prosecution Subcommittee, and additional members for Hiring & Training Subcommittee
(Mo Young, Facilitator, Kaz Zaidi, staff) |
| 7:55 – 8:00 p.m. | 7. Next steps
(Mo Young, Facilitator) |
| 8:00 p.m. | 8. Adjourn |

*Due to Governor Kate Brown’s Stay Home, Save Lives Executive Order to combat the spread of Covid-19, this meeting will be held remotely using virtual meeting technology. Information about online or other options for access and participation will be available at <https://www.eugene-or.gov/3360/Webcasts-andMeeting-Material>

Agenda Item #1: Welcome/Opening remarks:

(Kevin Alltucker, staff)

- Welcome committee members, elected officials, attendees, and our content experts on Independent Investigation and Prosecution: Lane County District Attorney Patty Perlow, Deputy Police Auditor Leia Pitcher, and Sgt. Jason Barreth, EPD
- If you filled out a W9 form, you should have received the first of three checks. If you filled out a W9 form and have not yet received your first check, please let me know. If you have not yet filled out a W9 form and want to, please contact Kaz for assistance. Please know that if you want to be paid you must fill out a W9 form.
- Reminder: the Ad Hoc Committee approved a motion on Nov. 10 setting aside no less than 45 minutes during the Feb. 17 meeting to hear from citizen complainants about the process they undertook with the Police Auditor and Civilian Review Board. The motion included allowing video testimony in lieu of attending the meeting. If you have the names of citizen complainants who would be willing to provide testimony, either on Zoom during the Feb. 17 meeting, or provide a pre-recorded video, please submit their names to either Kevin or Kaz so that they can contact the people and make arrangements for their testimony
- Revised work plan: Kaz will be presenting a proposed work plan for the committee that incorporates a way to include recommendations for lower-priority topics (topics that the ad hoc committee will likely not have time to address) into the final report
- Future meeting dates for Ad Hoc Committee (all meeting times are 6:00 – 8:00 p.m.)
 - Feb. 2 (meeting #8)
 - Feb. 17 (meeting #9)
 - March 2 (meeting #10)
 - March 17 (meeting #11)
 - March 31 (meeting #12)
- You will notice a new numbering system for motions which is intended to assign a permanent number to each motion so that it can be tracked throughout the process of subcommittee and ad hoc committee process
- Alai Reys Santos has resigned from the Ad Hoc Committee

Agenda Item #2: Revised Work Plan

(Kaz Zaidi, staff)

No information is provided for this agenda item. The revised work plan will be proposed at the meeting.

Agenda Item #3: Question and Answer session: Independent Investigation and Prosecution

(Mo Young, Facilitator; Lane County District Attorney Patty Perlow, Deputy Police Auditor Leia Pitcher, Sgt. Jason Barreth, EPD)

The following pre-recorded presentations on Independent Investigation and Prosecution are available on Vimeo (online). To better prepare for the meeting, please try to view the presentations prior to the meeting.

[AHCPP Meeting 7 Complaint Intake and Investigation](#): (12 min) EPD Sgt. Jason Barreth

[AHCPP Meeting 7 Eugene Police Auditor on Independent Investigations and Prosecution](#): (22 min) Deputy Police Auditor Leia Pitcher

[AHCPP Meeting 7 Lane County District Attorney Independent Investigation and Prosecution](#): (16 min) Lane County District Attorney Patty Perlow

Agenda item #4: Presentation from the Use of Force Subcommittee

(Marty Wilder, AHCPP member, Use of Force Subcommittee member; Mo Young, Facilitator)

Marty will present the package of motions that the subcommittee would like the AHCPP to consider. The intent is to introduce the motions during the Jan. 20 meeting and then have the AHCPP consider the motions during the Feb. 2 meeting. It is possible that the AHCPP will choose to consider the package of motions during the Jan. 20 meeting, and if so, the motions (and background information for each) are included below. The Powerpoint slide presentation by Marty is included as an attachment to the email that contains this information packet.

Here is a list of the motions included in Marty’s Powerpoint presentation. These motions were proposed by Marty Wilder and were considered during the Use of Force Subcommittee meeting on January 13. The vote tally is included for your information.

(UF-100) Motion regarding Duty to Intercede: (Status: Approved by subcommittee)

- A. Modify the current policy to clarify this policy as a requirement. Change “clearly beyond” to “exceeds” (800.1.2). Change “prevent” to “prevent or disrupt” (800.1.2). Change “will also report” to “shall report under section 801 Use of Force Reporting” (800.1.2).
- B. 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
- C. Any officer who observes another officer using 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 and *stop* the use of force
- D. Officers shall not be subject to discipline or retaliation for intervening, or for reporting excessive force, or for failing to follow a directive that the officer reasonably believed to be excessive
- E. Officers who fail to intercede to prevent excessive force when the evidence deems the officer was in a position to do so will be subject to appropriate discipline

Yes = 7, No = 0 (Approved by subcommittee)

Background Information

What is the issue that the community is experiencing and which communities in Eugene experience this problem most strongly?

Excessive use of force can exceed that which policy allows. Creating more stringent policy reforms does not in and of itself correct excessive use of force. A culture within the police force can lend itself towards greater or lesser use of force, often that culture includes biases towards targeted populations. By establishing requirements to prevent, interrupt, stop and report excessive use of force, a police department can create a culture that places a stronger emphasis on peacekeeping and a lesser emphasis on show of force. This effects BIPOC, immigrant, houseless, disabled, LGBTQ, and persons with mental health or addiction conditions.

How do you think that the recommended change will achieve the desired result?

This recommendation builds upon the current policy to clarify when an officer is expected to intervene, how an officer is expected to intervene, and how to report incidents (see recommendation below on Use of Force Reporting). The non-retaliation clause should encourage lower ranking officers to intercede even with higher ranking officers. This may help to weed out officers whose values do not meet the standards of the culture we are wanting to create. The clause about failure to comply makes the policy more defensible during investigations of complaints.

(UF-101) Motion regarding De-escalation: (Status: Approved by subcommittee)

- A. All attempts shall be made to carry out law enforcement by non-violent means (Add to 820.3).
- B. Officers will apply use of force only after attempts at de-escalation have been exhausted or are deemed not possible (Add to 820.3).
- C. Officers who fail to employ de-escalation strategies as described in Section 820 when evidence determines that it was reasonably possible will be subject to appropriate discipline. (800.2, 820.3)
- D. What is the issue that the community is experiencing and which communities in Eugene experience this problem most strongly?
- E. Use of force is limited to cases where the person is resistant to arrest or poses a threat. The problem is that officers are in a position to instigate resistant or aggressive behavior, thereby escalating situations. The current policy (820.3) contains one line that says officers *should* de-escalate followed by a second line that says officers are *expected* to respond with force. Without stronger policy in place to prioritize de-escalation, officers may use their position to target certain populations by provoking them into punishable behavior. The policy also lacks defensibility, meaning there is not enough in the policy to charge an officer for neglecting to attempt to de-escalate a situation. This effects BIPOC, immigrant, houseless, disabled, LGBTQ, and persons with mental health or addiction conditions.

Yes = 7, No = 0 (Approved by subcommittee)

Background Information

What is the issue that the community is experiencing and which communities in Eugene experience this problem most strongly?

Use of force is limited to cases where the person is resistant to arrest or poses a threat. The problem is that officers are in a position to instigate resistant or aggressive behavior, thereby escalating situations. The current policy (820.3) contains one line that says officers *should* de-escalate followed by a second line that says officers are *expected* to respond with force. Without stronger policy in place to prioritize de-escalation, officers may use their position to target certain populations by provoking them into punishable behavior. The policy also lacks defensibility, meaning there is not enough in the policy to charge an officer for neglecting to attempt to de-escalate a situation. This effects BIPOC, immigrant, houseless, disabled, LGBTQ, and persons with mental health or addiction conditions.

How do you think that the recommended change will achieve the desired result?

This recommendation prioritizes de-escalation making it no longer simply an additional tactic that an officer may choose to employ, but instead the objective in every situation to attempt the least degree of violence possible. The recommendation gives supervisors and investigators better grounds to hold officers accountable for failure to apply de-escalation or for instigating or provoking engaged persons.

(UF-102) Motion regarding Unreasonable Force: (Status: Approved by subcommittee)

- A. Officers are prohibited from using force or threat of force to punish, retaliate, or unlawfully coerce
- B. 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
- C. An officer shall not use force solely because another officer is using force

Yes = 7, No = 0 (Approved by subcommittee)

Background Information

What is the issue that the community is experiencing and which communities in Eugene experience this problem most strongly?

There is an issue of infiltration of white supremacists in law enforcement. Unfortunately, Eugene has a history with white supremacists. One can see why a person who fosters hatred towards classes and characteristics of people would desire to acquire the power and resources of a police officer, as well as the qualified immunity. This is also true for any officer who approaches policing with an "us/them" mentality or who might harbor resentments, or desire displays of superiority and control. This issue most strongly affects the BIPOC community, but others as well.

How do you think that the recommended change will achieve the desired result?

This recommendation draws a line in the sand and delineates what will not be tolerated. It names the acts of racism, sexism, xenophobia, transphobia, and general abuse of power that people in the community suspect and fear may underlie use of force. While it should perhaps go without saying that these recommendations should be presumed to be unreasonable, putting them into policy both facilitates accountability and serves to dissuade persons who wish to abuse their position to such ends from joining the EPD in the first place.

(UF-103) Motion regarding Deadly Force: (Status: Approved by subcommittee)

- A. An officer shall not use deadly force to apprehend a person who is suspected of a minor or non-violent offense
- B. An officer shall not use deadly force to protect property
- C. An officer shall not use deadly force against a person who presents only a danger to themselves and does not pose an immediate threat of death or serious bodily injury to another person or officer
- D. An officer shall not use deadly force against a restrained person
- E. If possible, 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

Yes = 7, No = 0 (Approved by subcommittee)

Background Information

What is the issue that the community is experiencing and which communities in Eugene experience this problem most strongly?

We have recent police shooting incidents that affect Black, Latinx, and gender non-conforming communities. Often, after the fact, it can seem that the use of deadly force could have been avoided, was unnecessary, or was due in part to provoking behavior on the part of the police force to escalate the

situation. While it is understood that the reasonableness of force is based upon the totality of circumstances and not hindsight, it is also true that enacting police reform to prevent these cases from occurring in the first place would go further to make amends to the family members and community of those killed or injured by police. This problem is experienced by anyone confronted with deadly force, but appears to be more pronounced among BIPOC community members and the houseless populations.

How do you think that the recommended change will achieve the desired result?

These recommendations provide clearer guidelines for when not to use deadly force. At best, such recommendations may prevent an officer from choosing to use deadly force and possibly save lives. If such an incident does occur, these recommendations establish a clear case of misconduct, facilitating accountability.

(UF-105) Motion regarding Use of Force Reporting: (Status: Approved by subcommittee)

- A. EPD should track all shows of force including the verbal threat or display to use force options
- B. Definitions of reportable incidents in Section 801.1.1 should be expanded beyond discharge and use of said force options to include the drawing, exhibiting, and unholstering of firearms as well as the verbal threat to use or draw such firearms and impact weapons
- C. Add to the list of reportable incidents in Section 801.1.1 control holds, compliance techniques, takedowns, and physical control techniques including escorts

Yes = 7, No = 0 (Approved by subcommittee)

Background Information

What is the issue that the community is experiencing and which communities in Eugene experience this problem most strongly?

Officers are required to report what are considered reportable incidents (801.1.1) which include discharging firearms and active use of less lethal weapons. However, the display or verbal threat of a weapon is also a use of force and can have a chilling effect on persons to whom such a threat may be implied. Emphasis on the police possession of weapons, such as an officer placing their hand on a holstered firearm during an interaction, can be perceived as threatening and intimidating. Community members report feeling harassed or intimidated by heavy police patrol in their neighborhood combined with veiled demonstrations of power. This mostly affects Black, indigenous, and Latinx communities, but also LGBTQ youth, houseless people, and others who congregate in downtown at night.

How do you think that the recommended change will achieve the desired result?

If officers are required to report verbal threat to show or use force as well as any display of force options, they will be less likely to wantonly place emphasis on possession of weapons with the intention to intimidate or coerce. Tracking such data should assist the Department in identifying and addressing racial profiling and other systemic violations.

(UF-106) Motion regarding Annual Training: (Status: Approved by subcommittee)

- A. 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 policies involving Use of Force.

- B. 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 policies involving Use of Force.

Yes = 7, No = 0 (Approved by subcommittee)

Background Information

What is the issue that the community is experiencing and which communities in Eugene experience this problem most strongly?

If EPD agrees to incorporate reforms in terms of revisions to existing policies and procedures, officers must be made aware of these changes. This issue most directly affects members of the Eugene Police Department, but then the deployment of policy into action is what mostly affects the public. Everyone who engages with the police experiences this problem.

How do you think that the recommended change will achieve the desired result?

An annual reminder can help officers to keep the priorities of these policies in place and put them into action. Incorporating these policies into practical force and force option training both gives officers examples of practical applications and it also helps prevent officers from getting conflicting messages about how and when to apply force.

(UF-107) Motion regarding Vetting New Technology: (Status: Approved by subcommittee)

Require public input with a focus on BIPOC community members as well as other groups who are more likely to be disadvantageously affected by the new technology such as people with disabilities and mental health issues, immigrants especially those with limited English proficiency, houseless or impoverished community members. *Any new technology will be subject to a one-year pilot period to be reviewed by the Police Commission and community members.*

Yes = 7, No = 0 (Approved by subcommittee)

Background Information

What is the issue that the community is experiencing and which communities in Eugene experience this problem most strongly?

We are currently examining existing policy for multiple types of weaponry and technology that EPD has at its disposal, but new weapons and technology can emerge for which we have not given guidance.

How do you think that the recommended change will achieve the desired result?

Currently, public input is encouraged but not required. Emergent new technology should be vetted through the community.

(UF-109) Motion regarding Demilitarization: (Status: Approved by subcommittee)

- A. Discontinue purchases of field equipment, machinery and weapons designed for war

- B. Evaluate the equipment and weaponry currently owned by EPD and sell or destroy items that should not apply to policing civilian communities. This should include equipment and technology designed for military surveillance and espionage

Yes = 7, No = 0 (Approved by subcommittee)

Background Information

What is the issue that the community is experiencing and which communities in Eugene experience this problem most strongly?

Studies have shown that the more militarized the field equipment and weaponry are, the more officers perceive citizens in a confrontational mindset, leading to more violent interactions. Studies also show that police departments that demilitarize, discontinuing use of high-powered rifles, armored vehicles, and military uniforms, experience lower rates of assault directed at the police officers. Chief Skinner has denied participation in the Department of Defense 1033 program, but admits to purchasing new military grade equipment (BearCat) directly. Heavily armored presence can itself be excessive show of force.

How do you think that the recommended change will achieve the desired result?

Demilitarization not only relaxes the tensions and resistance that the community feels towards the police, it relaxes the adversarial mindset that officers feel towards the civilian population. This would also decrease the expense dedicated to the purchase, maintenance, training and use of such equipment, potentially freeing up more city dollars for use elsewhere.

(UF-110) Motion regarding Chemical Weapons: (Status: Approved by subcommittee)

- A. Require a verbal warning with reasonable time for compliance before displaying chemical weapons. Verbal warning must be clear and audible (use of loudspeaker, repeated if necessary). Time and egress routes must be sufficient for orders to disperse to be met. (803.3, 804.2 C)
- B. OC spray should never be used to wake or rouse a person. (803.3)
- C. If use of chemical weapons is anticipated, officers shall have medical personnel on site prior to their use and shall make provision for decontamination and medical screening to those persons affected by the chemical agent(s)

Yes = 7, No = 0 (Approved by subcommittee)

Background Information

What is the issue that the community is experiencing and which communities in Eugene experience this problem most strongly?

Recent protests against police brutality have resulted in an aggressive response from police, lending more strength to the cause to address police brutality. Riot control agents such as OC spray, pepper balls, and tear gas, are outlawed for use in warfare. Originally, the US chose to use chemicals for riot control against prisoners of war. It was later expanded for law enforcement use to control riots. The media and some recent testimony here in Eugene have reported excessive use of chemical agents against protesters. This affects BIPOC, immigrant, houseless, disabled, LGBTQ, and persons with mental health or addiction conditions, as well as anyone who wants to protest in solidarity with any of these groups.

How do you think that the recommended change will achieve the desired result?

No person practicing their First Amendment rights should have to fear an unexpected assault by chemical weapons. The requirement of verbal warnings and means of egress should prevent anyone from being subjected to chemicals without knowledge and forewarning.

Motions not advanced by Use of Force Subcommittee

The following motions were not advanced by the Use of Force Subcommittee, either by agreeing to table the motion for further discussion, or by running out of time to discuss.

(UF-112) Motion regarding Crowd Control: Submitted by Erika Lincango (Status: Tabled by subcommittee)

Crowd Control

What is the issue that the community is experiencing and which communities in Eugene experience this problem most strongly?

After several reported and documented encounter between the police and social justice demonstrators locally. We can agree that we all witnessed at times a display of excessive police response. This situations have made evident that police brutality exist in our community not only against indigenous, black and people fo color but agains any one who opposes to police brutality, like the 14 year old girl that we all saw in social media. Therefore, we want to be ensured of the freedom to practice our first & second Amendment rights without fear of becoming targeted or unfairly attacked by police. This effects BIPOC, immigrant, houseless, disabled, LGBTQ, and persons with mental health or addiction conditions, as well as anyone who wants to protest in solidarity with any of these groups.

What, specifically and clearly, is your recommended change (motion)?

Civil Disturbances Definition

The mere failure to obtain a permit, such as a parade permit or sound permit, is not a sufficient basis to declare an unlawful assembly. There must be criminal activity or a clear and present danger of imminent violence. (add to 317.I.A)

The fact that some of the demonstrators or organizing groups have engaged in violent or unlawful acts on prior occasions or demonstrations is not grounds for declaring an assembly unlawful. (add to 317.I.A)

Generally

Even when some members of a crowd engage in violence or destruction of property, other members of the crowd are not participating in those acts. Once some members of a crowd become violent, the situation often turns chaotic, and many individuals in the crowd who do not want to participate in the violent or destructive acts may be blocked from leaving the scene because the crowd is so large or because they are afraid they will move into a position of heightened danger. (add to 317.I.B)

If after a crowd disperses pursuant to a declaration of unlawful assembly and subsequently participants assemble at a different geographic location where the participants are engaged in non-violent and lawful First Amendment activity, such an assembly cannot be dispersed unless it has been determined that it is an unlawful assembly and the required official declaration has been adequately given. (add to 317.I.B)

Officers in non-violent crowd situations shall not display weapons before a dispersal order is given or other enforcement action is implemented. (add to 317.I.B)

The media shall be permitted to observe and shall be permitted close enough access to the arrestees to record their names. Even after a dispersal order has been given, clearly identified media shall be permitted to

carry out their professional duties in any area where arrests are being made unless their presence would unduly interfere with the enforcement action. (add to 317.I.B)

Specific Situations

Officers will try to facilitate demonstrations that may temporarily block traffic and/or otherwise use public streets subject to time, place, and manner of circumstances, by regulating and/or rerouting traffic as much as practical. (add to 317.I.C.1)

Command Options

In the event of a declared unlawful assembly, it is the general policy of EPD to use multiple simultaneous arrests to deal with a non-violent demonstration that fails to disperse and voluntarily submits to arrest as a form of political protest rather than dispersing the demonstrators by using weapons or force beyond that necessary to make the arrests. (add to 317.II.B.2)

Verbal abuse against officers shall not constitute a reason for an arrest or for any use of force against such individuals. (add to 317.II.B.2)

Prior to using force against people in a crowd, officers shall:

- (1) provide clear instructions and warnings in a manner that can be heard by persons in the crowd, such as through a bullhorn or speaker system when available;
- (2) state the consequences of refusing to comply with a mandatory directive, including that arrests will occur and force may be used unless persons comply;
- (3) specify adequate egress or escape routes, whenever possible, a minimum of two escape/egress routes shall be identified and announced; and
- (4) give a reasonable opportunity to comply. (add to 317.II.B.3)

Less-lethal ammunition:

- (1) may be used during civil disturbances only against specific individuals who are threatening or active assailants; and
- (2) shall not be used during a civil disturbance against groups of individuals. (add to 317.II.B.3)

OC spray:

- (1) may be used against specific individuals who are active resisters, threatening assailants or active assailants;
 - (2) shall not be used where bystanders would be unreasonably affected; and
 - (3) shall not be used against passive resisters, or indiscriminately against groups of people.
- (add to 317.II.B.3)

Specialty Impact Munitions (SIM):

- (1) shall not be used for crowd management, crowd control or crowd dispersal during demonstrations or crowd events;
 - (2) may never be used indiscriminately against a crowd or group of persons even if some members of the crowd or group are violent or disruptive.
- (add to 317.II.B.3)

Electronic Immobilizing Devices (EID's):

EID's such as tasers, stun guns, and stun shields shall not be used for crowd management, crowd control, or crowd dispersal during demonstrations or crowd events.
(add to 317.II.B.3)

Field Force

The number or name shall be clearly visible at all times. The letters or numerals on helmets, jackets, and vests shall be clearly legible at a distance sufficient to provide a measure of safety for both officers and demonstrators/observers and, in no case, shall be less than two inches in height on helmets. (add to 318.I.A.4)

How do you think that the recommended change will achieve the desired result?

As part of the community police role is to serve and protect every person in our community regardless of their ethnicity, gender, religious beliefs, age or abilities. Therefore, we need to know what is EPD's criteria that defines what makes a public demonstration unlawful.

This recommendation aims to provide parameters to clarify what makes a civil disturbance, both to officers and to protesters/demonstrators. Providing also a list of sanctions that will limit the kinds of force used against civilians.

(UF-104) Motion regarding Following Use of Deadly Force: (Status: Ran out of time, not considered by subcommittee)

- A. The officer will comply with drug testing as soon as possible after the incident, but before being relieved of duty. (800.4.3)
- B. Require officers who have used deadly force to attend counseling before return to work. Currently, officers are offered a minimum of two opportunities for mental health counseling within 6 months following the incident. The officer is only required to attend one session. (810.3.5(j))
- C. The 48 hour wait period before interviewing the officer is unfair. We recommend the City work with the State and Federal agencies to change this policy. (This is beyond the purview of this committee, but we would like to submit our recommendation nonetheless).
- D. Extend the period of administrative assignment, especially when there is an active investigation of misconduct and/or complaint filed against the officer. Currently, policy only requires 72 hours before an officer can be returned to duties that might place an officer in a situation in which he or she has to use deadly force. (810.3.5(g))

What is the issue that the community is experiencing and which communities in Eugene experience this problem most strongly?

From the community perspective, officers seem to have sanction to use deadly force with impunity. They are allowed to walk away from the scene, given 48 hours of administrative leave, have time to consult with legal representation paid for them, can review their body cam footage and have time to build their defense. By contrast, those on the receiving end of deadly force, (if they survive) or the families of those who do not survive, often do not have access to legal counsel, are not given time to recover and gather their thoughts before facing questioning, and are not compensated for the job loss, travel expenses, mortuary and other expenses incurred. The discrepancy can seem almost a celebration of sworn officers who use deadly force for all the care they are given. Officers are returned to duty as soon as 72 hours following the incident. This problem is experienced by anyone confronted with deadly force, but appears to be more pronounced among BIPOC community members and the houseless populations.

How do you think that the recommended change will achieve the desired result?

Use of deadly force should be seen as an extreme, something every officer hopes to never have to do. If the Department places a focus on accountability and thorough and immediate investigation, it sends a message to the officers that deadly force is a grave act that will be taken seriously every time. People shaken by police violence should at least know that they will not have to face that officer back on their beat while the investigation is underway.

(UF-108) Motion regarding Ceding Mental Health and Related Calls: (Status: Ran out of time, not considered by subcommittee)

- A. Create a task force to develop and initiate a 5-year plan to reassign all non-violent emergency response, not necessarily requiring an arrest, to alternative unarmed agencies as first responders. The response teams will be dispatched through a separate console that will not automatically default to EPD. These agencies can, in turn, call in EPD as needed, essentially making the police second responders. Officers responding to the scene should first defer to the alternate agency.
- B. CAHOOTS is one such agency, responding to mental health crisis, suicide response, intoxication, transportation to services, housing crisis, first aid, and other non-violent situations. The city should invest in increased salary and benefits for CAHOOTS staff and a massive expansion of the program, sufficient to enable it to absorb all such dispatch calls.
- C. Other agencies should be similarly funded to handle other kinds of non-violent, non-criminal emergency response. This can include mediation services to handle disputes, neighborhood safety patrols to handle loud parties, trained counselors to approach houseless youth, etc. The task force would develop a set of policies for dispatch, authority, and inter-agency engagement.

What is the issue that the community is experiencing and which communities in Eugene experience this problem most strongly?

The EPD is sent to deal with a wide variety of incidents, some of which could be better addressed by other agencies. In these situations, the very act of sending police officers to arrive on the scene can itself be an excessive use of force. This is especially true with well checks for persons with mental health issues, addiction, and can also apply to domestic situations requiring conflict resolution, mediation, or practical resources. The houseless population in Eugene requires a mutual aid response. Currently, the EPD does have a cooperative relationship with CAHOOTS. But many people in the community who could use CAHOOTS services do not call for fear of getting the police instead.

How do you think that the recommended change will achieve the desired result?

The police force is trained to be a show of force. It is an armed unit designed for enforcement. As such, and given the training police officers have to respond to any perceived threat with (potentially lethal) force, the EPD is not the right tool for the job when it comes to non-violent, non-criminal emergency response. Especially now that we have passed a measure to decriminalize drug offenses, it is time to revamp our community response. We need to put community care first by creating a separate dispatch specifically for mental health, social services and public resources. Instead of funneling more resources into the EPD with additional trainings in an attempt to make the EPD into a "one size fits all" first responder, we should focus EPD on the armed force it is trained to be and reduce the demand on the EPD to only those situations that truly require a show of force. A cursory look at past dispatch logs indicates that CAHOOTS, given the funding and resources it requires, could probably absorb at least 25% of EPD's current responses. Other agencies exist that could handle other non-violent incidents. With explicit demands from the BIPOC community, the CLDC, and other community organizations to disband, disarm, and/or defund the police, this transition of emergency response would be a step towards honoring those populations who have been harmed by police.

(UF-111) Motion regarding Reasonableness of Force: (Status: Ran out of time, not considered by subcommittee)

Change all places where current policy says "reasonably believes" to "reasonably perceives" as in the example below.

- a. PERMISSIBLE USE OF DEADLY FORCE An officer is justified in using deadly force against another person when and to the extent the officer reasonably perceives the deadly force is immediately necessary to:

- b. Protect them or others from what he or she reasonably perceives would be an imminent threat of death or serious physical injury.
 - c. To arrest or prevent the escape of a suspect when the officer has probable cause to believe that the suspect has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious physical injury or death, and the officer reasonably perceives that there is an imminent or potential risk of serious physical injury or death to others if the suspect is not immediately apprehended.
- (800.1.3, 800.2.1, 800.2.2, 800.4.1, there may be more)

What is the issue that the community is experiencing and which communities in Eugene experience this problem most strongly?

Officers are rarely held accountable for excessive use of force. All a police officer has to say is that they feared for their life. This is because reasonableness of force is based on the totality of circumstances that are reasonably *believed* to be true by a police officer at the time of an incident or action. Beliefs can be pre-existing or predetermined, whereas perception is based on observations and information gathered. An officer should not be justified in use of force based upon presumed or fabricated beliefs.

Threat assessment must be rooted in evident observations or determined facts. These observations should be evident on body worn video devices or presentable as determined fact. The policy as currently stated allows for officers to act on beliefs informed by implicit or explicit bias for or against certain populations, resulting in more forceful behavior towards certain populations. Officers should instead be required to determine the degree of threat and necessity of force based on observable behaviors, acts, language or information gained from reliable sources. This affects BIPOC, immigrant, houseless, disabled, LGBTQ, and persons with mental health or addiction conditions.

How do you think that the recommended change will achieve the desired result?

This is a subtle but important distinction. If an officer claims to believe there is imminent threat, that cannot be contested. But if an officer claims to have perceived imminent threat, one can ask what it was based on. Body cam footage can may support body movements or verbal exchanges upon which the perception was based. The recommendation is a step towards preventing an officer from justifying use of force based on a belief of imminent threat based on skin color or other implicit bias.

Agenda item #5: Consider Recommendations/Motions from the Community Oversight Subcommittee
(Mo Young, Facilitator)

The following motions were considered during the Community Oversight Subcommittee meeting on December 16, and have not yet been considered by the Ad Hoc Committee. The vote tally is included for your information.

(CO-95) Motion regarding the Civilian Review Board (CRB): Expiration Periods

The expiration period for a complaint after the incident shall be extended to one year for non-lethal cases and two years for cases involving lethal use of force. The CRB may also reach out to victim’s families to inform them about and guide them through the process.

Yes = 3, No = 1, Abstention = 1, (Approved by subcommittee)

(CO-96) Motion regarding the Civilian Review Board (CRB): Binding Decisions and Discipline Matrix

Once the CRB substantiates an allegation of police misconduct, the board’s finding of fact will be binding on the Chief of Police who will then determine discipline based on those facts and guided by a pre-negotiated disciplinary matrix. This matrix will have a range of disciplinary actions for each policy violation.

Yes = 4, No = 1, (Approved by subcommittee)

(CO-97) **Motion regarding the Civilian Review Board (CRB): Consider Entire Event**

The CRB shall be able to consider the entire event, not just the immediate events leading up an incident of possible misconduct, including specifically whether the officer(s) involved initiated or escalated the incident.

Yes = 3, No = 2, (Approved by subcommittee)

The following motions were not approved by the subcommittee, and they are included here for your information:

(CO-99) **Motion regarding the Civilian Review Board (CRB): CRB Jurisdiction and Final Adjudication Authority**

The CRB should adjudicate cases involving excessive use of force, abuse of authority, unlawful arrest, unlawful stop, unlawful searches, discourtesy or disrespectful behavior, use of offensive language, theft and discriminatory behavior. The Police Auditor's Office will continue to accept, store, and organize complaints from residents and assign those cases to the CRB to be investigated. The CRB's ruling on the facts in a case shall be the final adjudication of that case.

Yes = 2, No = 1, Abstention = 2, (**Not Approved by subcommittee**)

(CO-98) Current status: **Tabled** by CO Subcommittee

Motion regarding the Civilian Review Board (CRB): The CRB shall have the power to request and hear testimony from witnesses and participants at the time that they hear the case.

Author of the motion amended to table for further discussion

Yes = 5, N = 0, (**Approved to table the motion**)

Agenda item #6: Approve members of the Independent Investigation and Prosecution Subcommittee, and additional members for the Hiring and Training Subcommittee

(Mo Young, Facilitator, Kaz Zaidi, staff)

The Ad Hoc Committee has the opportunity to approve up to seven members for the Independent Investigation and Prosecution Subcommittee. There is at least one vacancy on the Hiring and Training Subcommittee.

Agenda item #7: Next Steps

(Mo Young, Facilitator)

No information is provided for this agenda item.

Additional Information for Committee Members

The following Decision Sheet from the January 5, 2021 Ad Hoc Committee meeting is provided for information.

City of Eugene
Ad Hoc Committee on Police Policy
Meeting # 6 on January 5, 2021
Decision Sheet

In Attendance

Emz Avalos, Daniel Borson, Betsy Davis, Maisie Davis, Ibrahim Coulibaly, Leah Edelman, Abdulrahman Eissa, Lindsey Foltz, Ib Hamide, Joel Iboa, Jason Mak, Justin Meyers, Brian Michaels, Silverio Mogart, Tauna Nelson, Guadalupe Quinn, Alai Reyes Santos, Richard Roseta, David Saiz, Sandra Shotridge, Midas Well, Marty Wilder

Decisions

(CO-100) Omnibus motion regarding the Civilian Review Board and Police Commission

Motion regarding the Civilian Review Board (CRB): A minimum of a quorum of members of the CRB shall be nominated by groups representing marginalized people.

Motion regarding the Civilian Review Board (CRB): No member of the CRB should be a current or former employee of the police department that the board oversees, and a majority of board members should not have a law enforcement background.

Motion regarding the Civilian Review Board (CRB): CRB and Police Commission members shall receive a stipend for their work.

Motion regarding Police Commission: If the Chief of Police rules against a policy recommendation of the Police Commission, the Commission shall have the right to appeal that decision to the City Council, by a majority vote, who shall decide on the policy in a public meeting. The City Council's decision shall be final.

Yes = 17, No = 0, Abstention = 2 (Approved)

(CO-101) Motion regarding the Civilian Review Board and Spoliation

If the Civilian Review Board becomes a fact-finding body, then if a body-worn camera recording is recklessly, intentionally or negligently destroyed or unavailable, officer testimony on the events contained in the recording should not be admissible in any Citizen Review Board (CRB) fact finding process.

Yes = 16, No = 2, Abstention = 1 (Approved)

(CO-102) Motion regarding the Civilian Review Board

If the motion #9 in the packet is approved, then the CRB shall have the power to request and obtain additional evidence (documents, medical records, surveillance footage, and other materials) relevant to a case before the CRB and to request and obtain statements from witnesses and participants in the case.

Text of motion #9 in the packet: Once the CRB substantiates an allegation of police misconduct, the board's finding of fact will be binding on the Chief of Police who will then determine discipline based on those facts and guided by a pre-negotiated disciplinary matrix. This matrix will have a range of disciplinary actions for each policy violation.

Yes = 12, No = 1, Abstention = 6 (Approved)

(CO-103) Motion regarding the Civilian Review Board rulings as final adjudication

The CRB should adjudicate cases involving excessive use of force, abuse of authority unlawful arrest, unlawful stop, unlawful searches, discourtesy or disrespectful behavior, use of offensive language, theft and discriminatory behavior. The CRB shall review all complaints filed by residents. The CRB's ruling on the facts of such cases shall be the final adjudication of that case.

Yes = 5, No = 5, Abstention = 9 (Not Approved)

Note: Italicized text indicates accepted amendment language

Community Oversight Motions Not Yet Considered by the Ad Hoc Committee

(CO-99) Current status: **Not Approved** by CO Subcommittee

Motion regarding the Civilian Review Board (CRB): The CRB should adjudicate cases involving excessive use of force, abuse of authority, unlawful arrest, unlawful stop, unlawful searches, discourtesy or disrespectful behavior, use of offensive language, theft and discriminatory behavior. The Police Auditor's Office will continue to accept, store, and organize complaints from residents and assign those cases to the CRB to be investigated. The CRB's ruling on the facts in a case shall be the final adjudication of that case.

Yes = 2, No = 1, Abstention = 2, **(Not Approved)**

(CO-98) Current status: **Tabled** by CO Subcommittee

Motion regarding the Civilian Review Board (CRB): The CRB shall have the power to request and hear testimony from witnesses and participants at the time that they hear the case.

Author of the motion amended to table for further discussion

Yes = 5, N = 0, **(Approved to table the motion)**

(CO-97) Current status: **Approved** by CO Subcommittee

Motion regarding the Civilian Review Board (CRB): The CRB shall be able to consider the entire event, not just the immediate events leading up an incident of possible misconduct, including specifically whether the officer(s) involved initiated or escalated the incident.

Yes = 3, No = 2, (Approved)

(CO-96) Current status: **Approved** by CO Subcommittee

Motion regarding the Civilian Review Board (CRB): Once the CRB substantiates an allegation of police misconduct, the board's finding of fact will be binding on the Chief of Police who will then determine discipline based on those facts and guided by a pre-negotiated disciplinary matrix. This matrix will have a range of disciplinary actions for each policy violation.

Yes = 4, No = 1, (Approved)

(CO-95) Current status: **Approved** by CO Subcommittee

Motion regarding the Civilian Review Board (CRB): The expiration period for a complaint after the incident shall be extended to one year for non-lethal cases and two years for cases involving lethal use of force. The CRB may also reach out to victim's families to inform them about and guide them through the process.

Yes = 3, No = 1, Abstention = 1, (Approved)