

Public Testimony #1

Council Members and Mayor,

Juneteenth of Freedom Day marks the date in which the last enslaved Americans were freed by General Gordon Granger from traitors to the Union. Yet, we do not see this extremely important day marked on community calendars, we do not have fireworks, hold barbeques, or celebrate with friends. This year of course is different, but were previous years? From Veterans Day, to Memorial Day, to Dr. Martin Luther King Day, and Indigenous People's Day flags are placed all across Ashland, but on Juneteenth...nothing. Fireworks dot the sky on July 4th, there is a run through town and a parade through the streets. But on June 19th the sky is empty, there are no runs and no parades. I ask this Council why should Juneteenth be treated any differently? Is Juneteenth not just as important as July 4th? Should it not be honored in the same way? Should we not have fireworks, a run through town, a parade through the streets, a community-wide dinner, and a speaker who can better educate our community so we can continuously improve on issues of race, diversity, equity, and equality. We can no longer segregate our celebrations, therefore we must put Juneteenth on equal ground as July 4th so that like the Sun that shines on Ashland in the early hours we too can rise to a brighter future.

Thank you.

Luke Williams

Public Testimony #2

Mayor and Council,

The inappropriate utilization of police to address social issues is glaring in Ashland. Ashland's municipal code reads like a Jim Crow era document with a laundry list of ordinances designed to target the poor.

The effort that the city has offered to address the current political climate falls short and ultimately become a tool of subterfuge to avoid discussion of other authentic issues in relation to policing and equity in Ashland.

I strongly support the council's effort to address race issues and use of force , however, without a transparent discussion of the intersectional issue of poverty and homelessness it is entirely disingenuous. The glaring issue in Ashland involves lack of authentic investment in homeless services while maintaining an overt policy of targeting the homeless with petty citations to trigger exclusion.

The resolution, although it mentions equity in its title, appears to go out of its way to avoid discussions of homelessness. Other than a minor reference to mental health and addiction, which is only a tangential element of homelessness, there is no mention of any attempt to change Ashland's bigoted policies toward the poor.

I believe that an authentic response would begin with dismantling the "Exclusion Zone". The existence of this law ultimately serves as a mandate to the police to act as tool to remove the poor. Citizens are targeted for violations that might not even rise to the level of a misdemeanor to trigger exclusion. This unconstitutional law violates our poorest citizens' basic right to free movement, equal protection under the law, and threatens them with double jeopardy. This Jim Crow law needs to be repealed!

Respectfully,
Eric Navickas

Public Testimony #3

Mayor and Council,

Regarding your study session today on police reform in Ashland, I am writing to encourage you to terminate the “Exclusion Zone” (AMC 10.120.010-040. <https://ashland.municipal.codes/AMC/10.120>). It disproportionately targets specific folks and restricts some of their basic rights in a way that is not humane, and possibly not constitutional.

I also think that we're long past due to redirect whatever part of the police budget it will take in order to generously fund the success of a CAHOOTS style community outreach team. I think we should plan it in initial connection with police dispatch and concurrently plan to educate the town in using it in a way that means it will soon be an independent entity with a budget independent of the police budget.

It's a no-brainer, and the sooner Ashland does it the better. It would be embarrassing to wait for other national municipalities to take the lead in doing so. Eugene is right next door and there are professionals in Ashland and Medford with direct experience of CAHOOTS who will attest to its efficacy and humaneness.

I also want explicit community control of the City budget to become our way forward, and ask that the Council look at ways to facilitate this.

How can the Council ensure that budget reports become transparent instruments that work hard to make it easier for the community at large to decide how we want the City budget to be spent?

Lastly, before the Council goes further with any proclamations about Ashland antiracism initiatives, I am asking that you come to a full stop and consult with local BIPOC leaders and the BIPOC community at large about what they decide regarding what best suits them.

I also ask that you not formalize any antiracism initiative without tying it to binding economic and budgetary commitments that will have strongly positive economic impacts on local BIPOC, as well as commitments that will positively address Covid19's disproportionately negative impacts on BIPOC.

Lastly, any local antiracism initiative should address defunding the Ashland police budget and redirecting it in ways that will work to improve the health, safety and economic and general wellbeing of BIPOC Ashlanders, and all of these commitments should be co-created with and fully vetted by BIPOC Ashlanders - both BIPOC leaders and BIPOC Ashlanders in general, including BIPOC families, BIPOC SOU students, BIPOC Ashland High School students, and school age BIPOC community members.

Sincerely,
Liza Maltsberger
Ashland

Public Testimony #4

To: The Ashland City Council

From: Emily Simon, Attorney at Law

Subject: Council Study Session regarding use of Force

Updates Date Submitted: July 6, 2020

Thank you for the opportunity to provide input regarding the Use of Force modifications made to the policy manual of the Ashland Police Department. Please review this written testimony regarding the Use of Force by the Ashland Police Department prior to the meeting tonight and make it part of the written record of the Council Study Session. I (and others) will be connected electronically for this meeting, and are very interested in this topic. We request every opportunity to provide input directly to the police chief and the council during a process that I hope will not be limited to a “one off” presentation. As Chief O’Meara has mentioned in his press release, the changes made today should be the start of an ongoing dialogue with the community, ending in a respectful town hall forum. It will be too easy to forget the events of the past few months if we do not act on these issues now and continue to address the issues that are causing millions of people to take to the streets, including right here on the streets of Ashland.

For the record, we do not believe that the Ashland Police Department breeds officers who are uncaring, brutal, vicious, vindictive, or racist. We are thankful for their service and recognize that most of the time they behave in a manner that is both humane and appropriate to the needs of this community. We are also grateful to Chief O’Meara for his work in attempting to eliminate systemic racism and for coming forward to address use of force abuses. However, even the Ashland Police Department is not perfect. Use of force by the Department has risen steadily since 2013 (see Ashland Police Department Annual Use of Force report May 19,2020). There have been notable and well publicized incidents of harassment of our unhoused citizens and racial profiling arrests and detainments.

Although we appreciate Chief O’Meara getting ahead of the curve and making modifications to the use of force policy, we have a number of suggestions to reform and improve the services that Police provide. New policies **and practices** must be considered in order to reduce the potential for forceful interactions between police and citizens. We hope that these suggestions, which we believe will help eliminate some of the current problems in our system, are seriously reviewed and considered by Chief O’Meara and the Ashland City Council.

1. While we very much appreciate the De-escalation clause in section 300.1, and the overall policy statements listed in 300.1, 300.2, and 300.3, we are very concerned that the practices described in section 300. 3.1,3.2, 3.3, & 3.4 (except for 300.3.4 banning of the “choke hold”) do not contain adequate objective standards for the use of force.

Section 300 3.2 sets out the factors that Officers may rely upon in determining if an officer may (or already has) used reasonable force. It is therefore essential that the

standards are clearly articulated for when the officer may actually use force, not just the factors that he or she may consider. The broad brush of the list of factors for justifying force undercuts the de-escalation clause in Section 300.1. For example, letters d “the effects of drugs” and/or e “subject’s mental state or capacity” should be the basis for a de-escalation and not the justification for the use of force. **We therefore request that these two broadbrush factors be omitted from the laundry list justifying reasonable force.** In 2019, 64% of the use of force cases involved a person under the influence of drugs or alcohol. If the officers were not allowed to use this circumstance as a basis for excessive force, but instead treated the situation differently, and not as a crime, it is our belief that the potential for violence and excessive force would diminish dramatically.

Similarly, letter p “prior contacts with the subject or awareness of any propensity for violence” should not be a factor in justifying the use of force as it is so broad that it includes factors unrelated to the immediate situation, i.e. a person’s reputation. **We request that this factor be deleted as it could easily lead to racial profiling, and or harassment of the unhoused, and result in increased use of force.**

2. The lack of objective factors in section 300 3.2, and indeed embedded in the entire policy, will not be cured by the removal of the offending paragraphs written above. The fundamental problem with the use of force policy, as proposed, is it will make officers less - not more – accountable for their actions because it allows members of law enforcement to use their reasonable judgment in responding to force without defining parameters for what the **community** feels is reasonable. Leaving the determination regarding the level of force up to the officer’s discretion, results in no objective standard within the rule for when force can be used. While this guidance may be helpful to the officer in the moment, it fails to provide a standard by which to objectively judge if, in the event force was used, it was in fact reasonable. The focus on the individual’s officer state of mind, without objectively reasonable factors will almost always come down to rubber stamping the police officer’s decision. Thus, the foreseeable effect is not increased police accountability; to the contrary, it is increased insulation from accountability.

The Medford Police Department’s previously promulgated use of force continuum is as follows:

Medford Police Department
Medford PD Policy Manual

Use of Force

300.3.4 LEVELS OF FORCE

- a. **LEVEL 1: PRESENCE** -- Display of force / body language / demeanor / identification of authority;
- b. **LEVEL 2: VERBAL COMMANDS** -- Questioning a person / attempting to persuade a person / giving a direct order to a person;
- c. **LEVEL 3: PHYSICAL CONTACT** -- Directional contact / escort position;
- d. **LEVEL 4: PHYSICAL CONTROL** -- Use of aerosol subject restraints / pressure points / joint take-down and come-along techniques / hair control holds / digital controls / temporary restraints / electric stun devices;
- e. **LEVEL 5: SERIOUS PHYSICAL CONTROL** -- Focused blows / impact weapons / mace (CN or CS gas); and
- f. **LEVEL 6: DEADLY FORCE** -- Firearms / any force capable of causing serious physical injury or death.

We propose a policy that we believe would allow for both the objective standards set out in the use of force continuum, and still allow for the flexibility that the currently proposed policy seeks:

- The policy should include what specific conduct will justify a level 3-6 use of force. (See for example Jackson County Sheriff's office use of force continuum which is attached hereto). The level of force would be presumed appropriate, If the suspect engaged in those specific behaviors, and the level of force used matched those behaviors. If the level of force used by an officer when contacting a suspect exceeds that which is called for by the use of force continuum, the officer would need to establish by clear and convincing evidence that the level of force was reasonable, pursuant to the modified factors in section 300.3.2. If the officer is unable to do so, then the force used by the officer would be considered inappropriate.

3. Modifications to Section 300 5.1, - Notification to supervisors

We believe that the reporting of excessive force needs to be expanded and that the numbers reflected in the use of force annual report are inaccurately understated, as it is up to the officer who used the physical force to report his or her conduct to the supervisor. Although we are very appreciative of new section 300 1.1 regarding the duty to intercede, both policies are absent of any language regarding if discipline can be imposed for failure to report excessive force, either by the officer who committed the excessive force or the officer who observed it. **We therefore propose that a use of force report ALWAYS be required in any and all circumstances in which force is used.**

3. Modifications to Section 300.10 – Annual Review

We think it is very important that the Annual Review contain more information regarding the types of cases where force was used. We can understand the hesitancy to include specific detail such as officer's names, and case numbers but are perplexed as to why the type of case in which force is used or its location is not included in the report. **We believe that the citizens' of Ashland have a right to know if the uses of force are in the major felonies that you listed in the report, or if in fact, they mostly occur within the context of ELEA enforcement actions, the violations that give rise to such an exclusion, and/or other violations or misdemeanors.** This would help the city council assess the extent to which excessive force is being used in the most serious of cases, or if it is being used in other types of cases, where there are perhaps alternatives to arrest, and/or different de-escalation tactics that could be used.

4. We believe that an additional section should be added to the policy regarding use of force reports. It is our strong belief that it is only through shining a light on individual officers' use of force that the community can discern if it is a "few bad apples" or if there is a systemic problem within the department regarding force being used in certain types of cases, or against certain persons, i.e. persons of color or sexual minorities. **Towards that end, we recommend that use of force reports should always be public record and not shielded during any review or disciplinary proceeding.**

Thank you in advance for reviewing this testimony. As indicated above, we would welcome the opportunity to meet with Chief O'Meara or any interested council members regarding these issues. I can be reached at emily@emilysimom.com. My phone number is also available upon request.

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The Use-of-Force Continuum

August 3, 2009

Most law enforcement agencies have policies that guide their use of force. These policies describe a escalating series of actions an officer may take to resolve a situation. This continuum generally has many levels, and officers are instructed to respond with a level of force appropriate to the situation at hand, acknowledging that the officer may move from one part of the continuum to another in a matter of seconds.

An example of a use-of-force continuum follows:

- **Officer Presence – No force is used. Considered the best way to resolve a situation.**
 - The mere presence of a law enforcement officer works to deter crime or diffuse a situation.
 - Officers' attitudes are professional and nonthreatening.
- **Verbalization – Force is not-physical.**
 - Officers issue calm, nonthreatening commands, such as "Let me see your identification and registration."
 - Officers may increase their volume and shorten commands in an attempt to gain compliance. Short commands might include "Stop," or "Don't move."
- **Empty-Hand Control – Officers use bodily force to gain control of a situation.**

- *Soft technique.* Officers use grabs, holds and joint locks to restrain an individual. Internet Explorer 11 is no longer supported. Some features of this site may not display correctly.
 - *Hard technique.* Officers use punches and kicks to restrain an individual.
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- **Less-Lethal Methods – Officers use less-lethal technologies to gain control of a situation.**
 - *Blunt impact.* Officers may use a baton or projectile to immobilize a combative person.
 - *Chemical.* Officers may use chemical sprays or projectiles embedded with chemicals to restrain an individual (e.g., pepper spray).
 - *Conducted Energy Devices (CEDs).* Officers may use CEDs to immobilize an individual. CEDs discharge a high-voltage, low-amperage jolt of electricity at a distance.
 - **Lethal Force – Officers use lethal weapons to gain control of a situation. Should only be used if a suspect poses a serious threat to the officer or another individual.**
 - Officers use deadly weapons such as firearms to stop an individual's actions.

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