

## XXIV. USE OF FORCE

### I. Purpose

The purpose of this directive is to establish guidelines concerning the authorization, implementation, investigation and documentation of the use of force by officers of the Amherst Police Department.

### II. Policy

It shall be the policy of the Amherst Police Department that officers will use only that force necessary to protect life and effect lawful objectives.

### III. Procedure

#### A. GENERAL

1. For the purposes of this directive *use of force* will encompass both deadly and non-deadly force.
  - a. Officers will utilize force in accordance with Amherst Police Department, and DCJS approved training and as deemed reasonably necessary to accomplish lawful police objectives.
  - b. Deployment of police canines and tire deflation devices will be considered use of force incidents.
2. For the purposes of this directive, the following definitions will apply:
  - a. *Deadly force* -- force intended to, or likely to, cause death or serious physical injury.
  - b. *Non-deadly force* -- force *not* intended to, or likely to, cause death or serious physical injury.
  - c. *Reasonable belief* -- when facts or circumstances the officer knows, or should know, are such to cause an ordinary and prudent person to act or think in a similar way under similar circumstances.
  - d. *Serious physical injury* -- a bodily injury that:
    - 1) creates a substantial risk of death, *or*

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- 2) causes serious, permanent disfigurement, *or*
- 3) results in long-term loss or impairment of any bodily member or organ.
- e. *Physical Force* -- bodily force exceeding the normal force required to take a person into custody:
  - 1) any combination of strength, leverage, take-downs, control or come-along holds used to gain control of an uncooperative person.
  - 2) the use of hands, fists, feet, knees, etc. in striking a person.
3. An officer may use deadly force *only* when the officer reasonably believes that the action is:
  - a. in defense of human life, including the officer's life, *or*
  - b. in defense of any person in imminent danger of serious physical injury, *or*
  - c. in the apprehension of a fleeing felon, when:
    - 1) the officer reasonably believes that the suspect's freedom represents a significant immediate threat of serious physical injury or death to the officer or to other persons, *and*
    - 2) the officer has probable cause to believe that a felony has been committed and the person to be arrested has committed it, *and*
    - 3) the officer has identified himself as a police officer, and given notice of his intention to arrest (time and circumstances permitting), *and*
    - 4) all other reasonable means of apprehension have been exhausted before deadly force is used.
  - d. a direct command of a police supervisor with knowledge potentially unknown to the officer, typically in the event of a critical incident.
4. Regarding use of non-deadly force, an officer may employ any level of force reasonably necessary in order to:
  - a. defend the officer or another person, *or*
  - b. subdue a person resisting arrest, *or*

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- c. prevent escape from custody.
5. An officer will notify his immediate supervisor as soon as practical after an incident involving the use of force.
6. Should medical attention be required by any person involved:
  - a. The assigned officer will be responsible for notifying Amherst Communications that medical aid is needed.
  - b. Amherst Communications will dispatch emergency medical personnel to treat the injured.

### **B. USE OF CHEMICAL SPRAY**

1. Chemical spray (OC Spray, or other issued equipment) may be used as a means of:
  - a. physical restraint or control
  - b. defense of any person.
2. Once a person is restrained and under control, the use of chemical spray is no longer justified.
3. In cases where chemical spray does not prove effective, officers should utilize other use of force options as necessary for restraint or control.
4. Chemical spray will not be used for the following:
  - a. as a threat to make a person comply with an officer's verbal order:
    - 1) in a non-arrest situation, or
    - 2) when no physical threat or violence appears imminent
  - b. to elicit information from a person
  - c. as retaliation for verbal or physical abuse.
  - d. on females known by the officer to be pregnant.

5. A person who has been sprayed with a chemical spray:
  - a. will be allowed to flush the affected area with water as soon as practical after the incident, and
  - b. will be informed by the officer involved that medical attention is available, at his own expense, if he so desires.

### **C. USE OF TASER®**

1. May be used as a means of:
  - a. physical restraint or control
  - b. defense of any person.
2. Once a person is restrained and under control, the use of the Taser® is no longer justified.
3. In cases where the Taser® does not prove effective, officers should utilize other use of force options as necessary for restraint or control.
4. The Taser® will not be used for the following:
  - a. as a threat to make a person comply with an officer's verbal order:
    - 1) in a non-arrest situation, or
    - 2) when no physical threat or violence appears imminent
  - b. to elicit information from a person
  - c. as retaliation for verbal or physical abuse.
  - d. on females known by the officer to be pregnant.
5. When the Taser® is utilized on a person:
  - a. Officers who have been trained in the removal of probes by a certified Taser® instructor will be authorized to remove the probes from non-sensitive areas of the body (described as any area other than the head, neck, female breast, or the groin of either sex).

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- 1) If the probes are located in a sensitive area (described as the head, neck, female breast, or the groin of either sex), the affected person will be transported to the Lynchburg General Hospital Emergency Department. Appropriate medical staff will then remove the probes.
  - 2) The affected person will be informed by the officer that additional medical attention is available, at the person's own expense, if he desires to receive such attention.
  - 3) The officer will photograph the affected area after removal of the probes and if practical, before removal of the probes.
- b. The officer will place the removed probes in a biohazard/sharps container and place them into the evidence system.
  - c. The spent Taser® cartridge, probes and AFID chads will be collected and maintained as evidence for a minimum period of four years from the date of deployment.

### **D. USE OF PHYSICAL FORCE**

1. Officers will use only such force as is reasonably necessary to effect lawful objectives.
2. Physical force may be used as a means of:
  - a. physical restraint or control
  - b. subduing a person resisting arrest
  - c. defense of any person
  - d. moving, removing or arresting any person who is obstructing a lawful police action in such a manner that the police action cannot be accomplished.
3. Once a person is restrained and under control, the use of physical force will be restricted to that force necessary to retain control.
4. Individuals that may be using alcohol/drugs or have become physically exhausted and have an increased need for oxygen will not be left lying face down while handcuffed, due to the possibility of asphyxiation.
5. Physical force will not be used for the following:
  - a. to elicit information from a person

- b. as retaliation for physical or verbal abuse.

**E. USE OF POLICE BATON**

1. The issued baton is authorized as a means of:
  - a. physical restraint or control
  - b. defense of any person.
2. All officers will have the department issued police baton accessible while on regular duty assignment.
  - a. Uniformed officers may have the baton on their person while on duty.
  - b. All officers will be required to have the baton accessible at the Police Department or within their assigned vehicle.
  - c. Uniformed officers involved in approved off-duty employment will have the baton on their person.
3. Officers should avoid striking any person in or about the head with the baton, except as deemed necessary in a situation where use of deadly force is justified.
4. The baton will not be used for the following:
  - a. the intentional striking of any person who is under control by an officer
  - b. as retaliation for physical or verbal abuse.
  - c. to elicit information from any person

**F. USE OF FIREARMS**

1. For the purposes of this directive, the word *firearm* shall refer to any handgun, or shoulder-fired weapon issued by the department, authorized for concealed carry by the department, or used by an officer for any law enforcement purpose. The word firearm does not refer to any authorized Electronic Control Device such as the Taser®
2. Officers will be authorized to draw and/or display firearms when in fear for their own safety or the safety of other persons (e.g. building searches, confronting persons believed to be armed or dangerous, etc.).
3. Officers will be authorized to discharge a firearm for the following purposes:

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- a. as outlined in Section III.A.4
  - b. to kill a seriously injured animal, when:
    - 1) no other disposition is practical, and
    - 2) the officer deems it appropriate to relieve the animal from further suffering (authorization should be obtained from a supervisor if time permits)
  - c. to kill an animal that poses a danger to the officer or to the public
  - d. department training and qualification
  - e. department approved test firing.
4. Officers are *prohibited* from discharging a firearm for the purpose of a warning shot.
5. Discharging a firearm at or from a moving vehicle is authorized *only* when:
- a. any occupant of the suspect vehicle is using, or threatening to use, deadly force by a means other than the vehicle, *or*
  - b. a vehicle is being operated in a manner indicating *deliberate intent* to strike an officer or another person, *and*
  - c. all other reasonable means of defense have been exhausted or are not available (including moving out of the path of the vehicle), *and*
  - d. the safety of innocent persons will not be unduly jeopardized by the officer's action.
6. Officers faced with the possible necessity of discharging a firearm should remain cognizant of the following:
- a. the direction in which the firearm is to be discharged
  - b. that the target threat is in plain view and that the target threat is identified
  - c. the danger inherent in discharging a firearm while running or moving, due to the possibility of unintended persons or property being struck by projectiles.

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7. Reporting discharge of firearms:
  - a. All officers will verbally report to their supervisor the following:
    - 1) any discharge of a firearm constituting use of deadly force against another person (on or off duty)
    - 2) any accidental discharge of a department issued or a department authorized firearm (on or off duty)
    - 3) on-duty discharge of any firearm for any purpose other than department-sanctioned training and as outlined in Sec. 3b(2).
  - b. Such verbal report shall be made as soon as incident circumstances permit.
  - c. Officers will complete an exhaustively detailed *IBR Incident Report and Use of Force Report* to document any discharge of a firearm (whether deliberate or accidental) that constitutes use of deadly force against another person.
  - d. Officers will complete a *Memorandum* to document any accidental discharge of a department issued or department authorized firearm that does not constitute use of deadly force against another person.
  - e. Officers will complete an *IBR Incident Report* to document discharge of a firearm related to the killing of a wild or a domesticated animal.

### **G. USE OF OTHER WEAPONS**

1. Only those officers who have been trained in the proper use of such weapons will be authorized to use them.
2. Chemical agents, such as CS gas and chemical smoke (whether dispersed by canister or fogger) may be used by an officer whether or not the officer effects an arrest for purposes of:
  - a. crowd control
  - b. concealment
  - c. the evacuation of a barricaded subject.
3. Flash/sound devices may be used by an officer, whether or not the officer effects an arrest, for creating a diversion which is intended to conceal a specific tactical maneuver from the suspect.



4. Specialty Impact Munitions may be used by an officer, whether or not the officer effects an arrest, in order to distract or disarm persons so that they may be taken into custody.
5. An officer's use of any item not specifically mentioned within this directive as a weapon will be for defensive purposes only.

### **H. USE OF POLICE CANINES**

1. Use of police canines will be in accordance with guidelines set forth in directives established at the time that a Canine program is established.
2. Police canines may be used as a means of:
  - a. physical restraint and control
  - b. apprehending or subduing a person resisting arrest
  - c. defense of any person
  - d. crowd control
  - e. moving, removing or arresting any person who is obstructing a lawful police action in such a manner that the police action cannot be accomplished.
3. Police canines used by the police department will be trained to utilize a reasonable level of force in apprehending and retaining control of persons.
4. Officers will be mindful that any use of police canines in which the canine is not under the handler's physical or voice control may be considered a use of potentially deadly force.
5. Police canines will *not* be used for the following:
  - a. as a threat to make a person comply with an officer's verbal order when *no physical violence is imminent*
  - b. to elicit information from a person
  - c. as retaliation for physical or verbal abuse.

**I. USE OF TIRE DEFLATION DEVICES**

1. Use of tire deflation devices will be in accordance with established vehicle pursuit policies
2. Tire deflation devices will be used in a pursuit situation when the pursuing officer or supervisor has reason to believe that the continued movement of the fleeing vehicle will place the driver and/or others in imminent danger of serious bodily harm or death.

**J. USE OF FORCE INCIDENT REPORTING**

1. Employee duty to report:
  - a. Involvement in a use of force incident will not preclude or override an employee's responsibility as a Town Police Department employee to accurately, fully and promptly report work-related activities and observations.
  - b. Employees will verbally report incident details:
    - 1) to other employees, representatives of other agencies or members of the public as and when necessary to:
      - a) safeguard human life, aid in suspect apprehension, or otherwise further an ongoing investigation; and
      - b) fully cooperate and assist in reporting on an incident deemed likely to give rise to a claim against the Town of Amherst
    - 2) upon direct order of any Amherst Police Department supervisory staff member.
  - c. Employees will complete all procedurally-required written administrative reports, statements, memoranda, etc on supervisory direction as soon as practical after incident occurrence.
  - d. An employee who deliberately refuses to provide verbal and/or written incident information when ordered to do so:
    - 1) will be subject to disciplinary action, up to and including termination of employment, for insubordination
    - 2) may have Town insurance coverage summarily limited or terminated.

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- e. The in charge supervisor will assign another employee to complete any required IBR or other incident report that the involved employee is physically unable to complete in a timely manner.
  - f. The in charge supervisor will complete any required administrative report that the involved employee is physically unable to complete in a timely manner.
  - g. In cases where such reports were completed for an incapacitated employee, that employee will review the reports for accuracy as soon as practical thereafter, and will correct any errors noted through filing a supplement to the original report.
2. Officers will complete a *Use of Force Form* to provide internal administrative documentation of incidents involving:
- a. use of chemical spray
  - b. use of Taser®
  - c. use of physical force in any situation involving:
    - 1) visible injury or complaint of injury to a suspect or arrestee
    - 2) visible injury or complaint of injury to an involved officer
    - 3) damage to non-department owned property resulting from use of physical force to apprehend, restrain or control a suspect or arrestee
      - a) All officers having any form of physical contact with a suspect or arrestee under the circumstances specified above will complete a *Use of Force Form* to document their actions.
      - b) Use of force to enter a structure or vehicle will be documented by means of an IBR incident report rather than a *Use of Force Form*.
  - d. use of police baton
  - e. certain discharges of firearms
  - f. use of other weapons
  - g. use of police canines in which the canine contacts a suspect
  - h. use of tire deflation devices

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- i. any use of force that either results in, or is alleged to have resulted in, death or serious physical injury to a person.
3. Officers will complete a *Use of Force Form* as a factual account of the type and level of force utilized by APD officers in any use of force situation as specified above: **officers will not include information derived from either personal opinion or speculation** in the *Use of Force Form*.
4. Officers will complete an IBR to document any observed use of force by non-APD personnel in the following situations:
  - a. other law enforcement agencies assisting APD officers
  - b. APD officers assisting other law enforcement agencies
  - c. assisting or being assisted by private sector employees (Security Agencies, Loss Prevention, etc.)
  - d. citizens assisting officers.
5. A copy of the *Use of Force Form* will be forwarded to the Town Attorney. The *Use of Force Form*, extension pages and/or attached *Memoranda* be considered as *Attorney Work Product* documentation, as this information is used to assist the Town Attorney in evaluating any related claims against the Town.
6. *Attorney Work Product* documents will be handled with the utmost confidentiality, and will:
  - a. *not* be copied without prior authorization from the Chief of Police
  - b. *not* be forwarded through the report review process
  - d. *not* be discussed with or delivered to anyone other than those persons named in this directive, without prior authorization by the Chief of Police.
7. Supplementary and follow-up information to a *Use of Force Form* will be:
  - a. completed in *Memorandum* format
  - b. attached to the *Use of Force Form*.
8. IBR incident reports and supplement reports related to the use of force will *not* be considered as *Attorney Work Product* documentation.

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- a. IBR and supplement reports should *not* include *detailed* information concerning an officer's use of force.
- b. For purposes of courtroom testimony, IBR and supplement reports *should* include detailed, factual information describing suspect actions that led to an officer's use of force.
- c. IBR and supplement reports will be submitted.
- d. IBR and supplement reports will be filed by control number according to normal procedure.
- e. Copies of IBR and supplement reports will be attached to the *Use of Force Form* as supplemental information.

### **K. USE OF FORCE INCIDENT INVESTIGATION**

1. Supervisory investigation of use of force incidents will be conducted.
2. The sergeant investigating a *Use of Force* will:
  - a. verify the information related on the *Use of Force Form*
  - b. factually complete the *Supervisor Review* section of the *Use of Force Form* with a summary of the facts of the incident
  - c. sign, date and submit the completed *Use of Force Form* within 72 hours of the use of force incident.
1. The investigating sergeant will:
  - a) review the *Use of Force Form* and any related investigatory materials for completeness and policy compliance for the act reported
  - b. ensure that the investigatory documentation accurately reflects the action(s) taken by the suspect(s) and involved officer(s)
  - c) sign and date the form on approval

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### **J. USE OF FORCE RESULTING IN DEATH, SERIOUS INJURY, OR SIGNIFICANT PROPERTY DAMAGE**

1. At any time that an officer's use of force (on or off duty) results in, or is alleged to have resulted in, the death of any person, the serious physical injury of any person, significant damage to non-APD property, or other circumstances or effects deemed likely to foster significant public interest or concern, that officer will be responsible for:
  - a. immediately notifying the Chief of Police
  - b. securing the incident scene and safeguarding persons present until relieved after the arrival of assisting officers
  - c. preserving, as practical, any firearm or other weapon used from loss or tampering.
2. If the use of force incident occurs in another jurisdiction, the employee shall immediately notify the local agency having law enforcement jurisdiction prior to making APD supervisory notification.
3. The involved officer will relinquish to a supervisory officer, once the incident scene is secured:
  - a. any discharged firearm, the firearm holster (in cases of accidental discharge), and all ammunition in the officer's possession
  - b. any weapon used by the officer.
4. An officer who has relinquished a weapon utilized in a use of force incident will be issued a replacement weapon as soon as practical.
  - a. Any officer issued a replacement firearm will be qualified with the replacement firearm::
    - 1) as soon as practical, and
    - 2) prior to the officer's return to duty.
6. Pending conclusion of use of force investigation(s), any employee whose actions or use of force resulted in death or serious physical injury will be relieved from the line of duty through either:

- a. temporary reassignment, or
- b. administrative leave with pay.

### **L. MANDATORY COUNSELING**

1. An employee who is directly involved in a use of force incident resulting in death or serious physical injury to a person will report for counseling to a mental health professional selected by the department.
  - a. Such counseling is intended to assist in the prevention of any adverse emotional effect resulting from the officer's experience.
  - b. Such counseling is made *mandatory* to ensure that the officer receives some form of timely assistance.
2. The number of mandatory sessions attended by an officer will be decided by the Chief of Police, in conjunction with the recommendation of the assigned mental health professional.
  - a. Mandatory session(s) will be scheduled during the officer's duty time, if practical; otherwise the department will pay overtime or grant compensatory leave earned.
  - b. Payment for all mandatory sessions will be made by the department.
3. The Chief of Police will be responsible for:
  - a. selecting a mental health professional qualified to meet the perceived need.
  - b. scheduling a timely 1<sup>st</sup> appointment with the approved mental health professional
  - c. notifying the officer in writing of the scheduled appointment and the mental health professional selected.
4. Any non-mandatory sessions arranged by an officer will be the financial responsibility of that officer.

### **M. TRAINING**

1. All officers will receive bi-annual training in this Use of Force Policy and shall complete a written test on this policy.

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