

TOWN OF CHEEKTOWAGA POLICE DEPARTMENT

Effective: 18 March 14	Subject: USE OF FORCE
Rescinded:	

GENERAL ORDER A-12-1

I. Purpose:

The purpose of this policy is to provide police officers with guidelines on the use of force. It pertains to all officers of the Cheektowaga Police Department regardless of duty status or geographical area of employment.

II. Liability:

This directive is for departmental use only and does not apply in any criminal or civil proceeding. The department policy should not be construed as a creation of a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this directive will only form the basis for departmental administrative sanctions. Violations of law regarding the use of force as defined in Article 35 of the New York State Penal Law will form the basis for civil and criminal sanctions.

III. Policy:

This department recognizes the value of human life including the lives of police officers. The apprehension of criminal offenders and protection of property are of lesser value than the protection of life. Police officers vested with the lawful authority to use force in order to protect the public welfare must carefully consider all factors. Therefore, it is the policy of this department that police officers shall use only that force that is reasonably necessary to bring an incident under control, while protecting the lives of the officer or another person.

IV. Definitions:

- A. "Deadly Physical Force" means physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury.
- B. "Serious Physical Injury" means physical injury which creates a substantial risk of death, or which causes death or serious and protracted impairment of health or protracted loss or impairment of the function of any bodily organ.
- C. "Physical Force" is any use of force other than that defined as deadly physical force.

V. Parameters - Use of Deadly Physical Force

1. Police officers may use deadly physical force upon another person to defend themselves or others from what is reasonably believed to be the use or imminent use of deadly force by such person.
2. Police officers, in the course of making or attempting to make an arrest, or of preventing or attempting to prevent the escape from custody, of a person whom they reasonably believed to have committed an offense, may use deadly physical force in making an arrest or in preventing an escape only when they reasonably believe that the offense committed or attempted by such person was:
 - A. A felony involving the use or attempted use or threatened imminent use of physical force against a person; or
 - B. Kidnapping, arson, escape in the first degree, or burglary in the first degree; or
 - C. A felony and that, in the course of resisting arrest therefore or attempting to escape from custody, such person is armed with a firearm or deadly weapon.
3. New York State Penal Law Article 35 - Defense of Justification shall guide all police officers of the Town of Cheektowaga Police Department in performing the reasonable exercise of their official powers, duties or functions.
 - A. Whenever possible, police officers shall identify themselves and state their intent before using deadly physical force.
 - B. A police officer may also discharge a firearm under the following circumstances:
 1. During training, sporting events and ballistic examinations.
 2. To destroy an animal which represent a threat to public safety or as a humanitarian measure when an animal has been seriously injured.
 - C. The following restrictions shall apply concerning the use of weapons:
 1. Police officers shall not draw their firearm except for training and maintenance unless circumstances provide reasonable cause to believe use of their firearm is in accordance with this policy.
 2. Warning shots are strictly prohibited.
 3. Police Officers shall not fire their firearm at or from a moving vehicle except as a measure of self-defense or defense of a third person.
 4. Police Officers shall consider the threat of an innocent person being injured when using a firearm.

VI. Parameters - Use of Physical Force

1. Police Officers shall only use a level of force necessary to affect an arrest and adequately control the resistance of a suspect.
2. Police officers may use physical force to protect themselves or another from physical harm.
3. Police Officers may use physical force to restrain or subdue a resistant individual in order to bring an unlawful situation safely and effectively under control.

VII. Authorized Weapons and Ammunition

A. Department issued handgun

1. Uniformed Officers: Department issued Glock, Model 22, .40 caliber semi-automatic pistol with department issued ammunition (except in an extreme emergency).
2. Plain Clothes Officers assigned to the Investigative Division: Department issued Glock, Model 22 or 23, .40 caliber Semi-automatic pistol with department issued ammunition (except in an extreme emergency).
3. All holsters will be worn as prescribed by General Order O-3-2. Other holsters can be used with permission of the officer's immediate supervisor when necessary to complete a special assignment.
4. Police officers must be qualified, as determined by the Tactical Training Sergeant to carry a department issued firearm. Qualification shall include training regarding the legal, moral and ethical aspects of firearms use; safety in handling; and proficiency in the use of same.
5. All police officers will be instructed annually on the department policy regarding use of force as described in Article 35 of the New York State Penal Law.
6. Police officers must be armed with an approved weapon while operating a marked, department vehicle.
7. Police officers may carry their department issued weapon off duty. When doing so they are required to use department issued ammunition.

B. Privately Owned firearms - Off Duty

1. All privately owned handguns must be registered with the Training Lieutenant.
2. Police officers are not mandated to carry a firearm while off-duty.

C. Firearms maintenance

1. Police officers shall not alter or modify a department issued firearm or ammunition in any way without approval of the Tactical Training Sergeant.
2. Police officers will immediately report the loss or theft of any firearm in their possession to the Chief of Police.
3. Police officers must keep their firearms clean and in workable condition.
4. Police officers are responsible for the safe handling of their firearms and must properly secure their firearms when not under direct control.

D. Additional firearms

1. An additional firearm may be carried concealed while on duty provided;
 - The caliber cannot be smaller than a 9 millimeter.
 - The firearm was certified as being in good working order by an armor or gunsmith possessing written verifiable credentials to certify said firearm. Written certification must be updated annually and be on record for the calendar year prior to carrying the weapon on duty.
 - Authorization of said firearm pertains to its use with factory ammunition only.

2. Police Officers must pass a firearms qualification course to the department set standard as administered by the Tactical Training Sergeant to carry an additional firearm while on duty.

E. Shotguns

1. Shotguns will be kept unloaded and locked in the rack designated within the department.
2. Shotguns will not be left in the trunk cases from one shift to another. They will be returned to the building rack after completion of a tour of duty.
3. Shotguns will be carried in the trunk case. The slide will be closed and the magazine loaded to full capacity; the safety will be on.
4. Rounds will be chambered in a shotgun only while the barrel is outside the police vehicle. The shotgun will be made safe as stated above before being placed back in the vehicle.
5. It is the responsibility of the officer using the shotgun to wipe the exterior as well as the interior of the barrel at the completion of a tour of duty, especially during inclement weather.
6. Each Patrol vehicle will contain 10 rounds of 00 buck shot and 10 rounds of rifled slugs, 12 gauge shotgun ammunition. The shotgun ammunition will be carried in the trunk cases. Each Officer is responsible for verifying the ammunition in their assigned vehicle each shift, discrepancies shall be reported to an immediate supervisor. Personnel assigned to the VGN Unit, of the Investigative Division, are assigned one shotgun, Department issued ammunition and they are responsible for its usage and care. Officers using said ammunition will follow set Department rules for reporting and then will notify the Tactical Training Sergeant or Department Range Officer for replacement. Any Officer that discovers that they have lost any or all of the said equipment will notify their shift supervisor and then notify the Tactical Training Sergeant or Department Range Officer for replacement.
7. Department issued 00 Buck shot and rifled slugs, 12 gauge ammunition are the only authorized shotgun ammunition for use in Department owned shotguns, unless given prior authorization by the Tactical Training Sergeant or his designee.
8. Police officers must be qualified by the Tactical Training Sergeant to use a department issued shotgun.

F. Bushmaster AR15 Patrol Rifle

1. AR15's will be kept unloaded and locked in the rack designated in the Police Building.
2. AR15 's will not be left in the vehicle trunk cases from one shift to another. They will be returned to the building racks after completion of a tour of duty.
3. AR15's will be carried in the vehicle trunk cases. The slide will be closed and the loaded magazine will be inserted into the weapon, safety will be "On", but there will be no round in the weapon's chamber. This will be considered a "safe " condition for the weapon and ready for transport.
4. The AR15 will be put into the above "safe" condition while in the Range room using the "Snail" bullet trap in the designated loading area, per the officer's previous training.
5. Rounds will be chambered in the AR15 only while the barrel is outside the police vehicle. The Officer is responsible for returning the AR15 to the "safe" condition before returning it to the police vehicle. It is the Officer's responsibility to handle the AR15 safely

following set and trained weapons handling standards while returning the weapon to the "safe" condition.

6. It is the responsibility of the officer using the AR15 to wipe down the exterior of the weapon, at the end of a tour of duty, if the weapon has been subjected to inclement weather.
7. Ammunition for the AR15 will be kept along with the weapon inside the designated rack within department headquarters. Only authorized ammunition will be utilized/carried in the department AR15, unless given prior authorization for use by the Tactical Training Sergeant or his designee. Officers using said ammunition will follow set rules for reporting and then notify the Tactical
8. Training Sergeant or Department Range Officer for replacement. Any Officer that discovers that any or all AR15 equipment, is missing, malfunctioning, or suspected to be malfunctioning will notify their shift supervisor and then the Tactical Training Sergeant or Range Officer for replacement. AR15 equipment can include, but is not limited to, the weapon, magazine, ammunition, light, sling, etc.
9. Police Officers must be qualified by the Tactical Training Sergeant to use a department issued AR15.

G. Other authorized weapons

1. Only the following are approved for use by this department:
 - A. Police Baton
 - B. Taser X 26E
 - C. Department Issued Oleoresin Capsicum
 - D. Specialty Impact Munitions (only authorized personnel)
2. A police officer is not permitted to carry or use authorized weapons unless qualified in their use as per department standard.
3. If an exigent circumstance exists that poses an imminent threat to the safety of the officers or the public requiring the immediate use of an improvised weapon of opportunity, the officer may use the weapon. In such circumstances, the use of any improvised device or method must be objectively reasonable and utilized only to the degree reasonably necessary to accomplish a legitimate law enforcement purpose.

H. Special Weapons

The SWAT team is authorized by the Chief of Police to use any weapons so designated by the Tactical Unit Commander.

Under special circumstances other weapons can be carried upon permission of the officer's immediate supervisor when necessary to complete a special assignment.

VIII. Reporting and Investigation

- A. A police officer shall immediately notify the duty supervisor and prepare a police report with full details in any of the following circumstances:
 1. When a weapon is discharged by an officer outside of training, sporting events or ballistic examinations.
 2. When a use of force results in death or injury.
 3. When any weapon is used upon a person.

4. When any force is required to overcome resistance.
- B. The Watch Commander is responsible for the preparation of the written report if the police officer involved is unable to prepare the police report.
- C. The Watch Commander shall cause the COP, Captain of Detectives, and Captain of Patrol to be notified whenever serious physical injury or death is involved in a deadly physical force incident.
- D. The department shall conduct both an administrative and criminal investigation of any deadly physical force incident, which results in death or serious physical injury when ordered by the Chief of Police.
- E. The Watch Commander or Sergeant will fill out a response to resistance form when any force is required to overcome resistance. Completed forms will be reviewed by the Shift Lieutenant and Captain of Patrol.

IX. Investigative Procedure

- A. Whenever a police officer uses any weapon in the performance of duty resulting in death or serious physical injury, the following shall be accomplished:
 1. Determine the physical condition of any injured person and request necessary emergency medical aid.
 2. Secure the scene.
 3. Notify Dispatch of the incident and location.
- B. Unless injured or hazardous conditions exist, the officer shall remain at the scene until the arrival of the duty supervisor.
- C. The patrol supervisor, unless directly involved, is responsible for the protection of the scene until relieved by investigators. An uninvolved supervisor will obtain a public safety statement which will include the following questions.
 1. Are you injured?
 2. If you know of anyone who was injured, what is his or her location?
 3. In what direction did you fire your weapon?
 4. If any suspects are at large, what are their descriptions?
 5. What was their direction of travel?
 6. How long ago did they flee?
 7. For what crimes are they wanted?
 8. With what weapons are they armed?
 9. Does any evidence need to be preserved?
 10. Where is it located?
 11. Did you observe any witnesses?
 12. Where are they?

Questions that have nothing to do with public safety should not be asked at the scene. A supervisor can likely obtain further evidence from video recordings, witness statements, and Dispatch audio recordings.
- D. The officer will protect his weapon for examination and submit said weapon to the appropriate investigator.
- E. The detectives assigned to the case will conduct a thorough investigation and prepare a detailed report in every deadly physical force incident, which involves serious physical injury or death.
- F. An investigation will be conducted when ordered by the Chief of Police (subordinate to any criminal investigation) to:

1. Determine whether the incident was within policy and/or accidental.
 2. Evaluate training considerations regarding the use of firearms and tactics involved in the incident.
- G. The Chief of Police will notify the Town Supervisor of the results of the investigation.

X. Officer Trauma

- A. Members of the Department should give support and strength to officers involved and keep criticisms, questions and second guessing to themselves.
- B. The duty supervisor will be responsible for supporting the officer involved and briefing him, when appropriate, on the progress of the investigation.
- C. Promptly remove the officer from the scene to allow for recovery time and psychological break in events.
- D. Exchange the involved officer's weapon at headquarters, if possible. A replacement weapon should be provided as soon as possible.
- E. The officer may request an attorney and/or union representation at any time during the investigation.
- F. Reasonable recovery time prior to detailed questioning will be afforded the officer.
- G. Depositions should be taken from all witnesses as soon as possible.
- H. The Department will make a professional counselor available to the officer and family as soon as possible.
- I. News media releases including the names of officers are to be made only with the approval of the Chief of Police or his designee.

XI. Administrative Leave

Any police officer directly involved in an incident involving the use of deadly physical force maybe placed on Administrative leave directly upon completion of his preliminary report of the incident. This leave shall be without loss of pay or benefits, pending the results of the investigation. The assignment to administrative leave is at the discretion of the Chief of Police and will not be interpreted to imply or indicate that the officer had acted improperly.

While on administrative leave, the officer will remain available for official departmental interviews and statements regarding the incident and will be subject to recall to duty at any time.

<u>Amended Date:</u>	<u>Chief of Police:</u>
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