

CITY OF MIDDLETOWN POLICE DEPARTMENT

GENERAL ORDER # AGO-022-11		SUBJECT USE OF PHYSICAL FORCE & DEADLY PHYSICAL FORCE		EFFECTIVE DATE 04/08/11	
RESCINDS	AMENDS AGO-022-05	CROSS REFERENCE ACC – 20.1	REVIEWED 7/4/17	PAGE 1 of 7	

Purpose:

The purpose of this General Order is to provide members of the City of Middletown Police Department with guidelines for the use of deadly and non-deadly physical force.

Background:

The City of Middletown Police Department recognizes and respects the value and integrity of each human life. The Department also recognizes and accepts the profound responsibility that our lawful authority to use physical force and deadly physical force carries with it.

Definitions:

Physical Injury, Serious Physical Injury, and Deadly Physical Force – These terms shall all have the same meaning in this General Order as they do in the New York State Penal Law.

Physical Force – A level of force less than deadly physical force.

Reasonable Belief - The facts or circumstances that the officer knows or should know, which would cause an ordinary and prudent person to act or think in a similar way under similar circumstances.

Policy:

- A) All use of physical force and deadly physical force will comply with all Federal and State laws and this General Order.
- B) This General Order will govern the use of physical force and deadly physical force by whatever means including, but not limited to, firearms, other weapons, or empty hand tactics (see attached circular Use of Force Continuum).
 - 1) Any use of a weapon shall comply with this General Order as well as any other General Order governing the use of such weapon.
- C) This Order applies to all use of physical force and deadly physical force by all sworn members of the City of Middletown Police Department while on duty. It also applies to all off-duty uses of physical force and deadly physical force in the following circumstances:

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- 1) When the officer is acting pursuant to his/her authority as a City of Middletown Police Officer; or
 - 2) When the officer is using a weapon, which is being carried pursuant to his/her police office status; or
 - 3) When the officer is using any Department-issued weapon, ammunition, or other equipment.
- D) In using physical force or deadly physical force officers shall avoid creating an **unreasonable** risk of injury to bystanders or persons other than the intended subject of the force.
- E) This General Order is for Departmental use only and does not apply in any criminal or civil proceeding. It shall not create and it shall not be construed as creating or implying a higher legal standard of duty, care, or safety in an evidentiary sense with respect to any claims. Nothing in this General Order is intended to create nor does create an enforceable legal right or private cause of action.

Procedures:

- A) Personnel will use only the physical force or deadly physical force necessary to accomplish the lawful objectives set forth below.
- 1) Self-Defense or Defense of Another Person:
 - (a) An officer may use physical force or deadly physical force when and to the extent he/she reasonably believes it to be necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force or deadly physical force.
 - 2) To Effect an Arrest or Prevent an Escape:
 - (a) An officer, may use physical force or deadly physical force when and to the extent he/she reasonably believes it to be necessary to affect a lawful arrest, or to lawfully prevent a person’s escape from custody.
 - 3) Prevention of Suicide:
 - (a) An officer acting under a reasonable belief that another person is about to attempt suicide or to inflict physical injury upon himself may use physical force (excluding deadly physical force) upon such person only to the extent that he reasonably believes it necessary to prevent such result.

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4) Protection of Property and Premises:

(a) An officer may use physical force (excluding deadly physical force) upon another person when and to the extent that he reasonably believes it to be necessary to protect property.

5) An officer may use physical force or deadly physical force when and to the extent he/she reasonably believes it to be necessary under circumstances not defined above but consistent with Federal and State law, and with the Mission Statement of this Department (**AGO-001 - Mission Statement & Core Values**).

B) Use of Deadly Physical Force:

1) It is the responsibility of each officer to be thoroughly familiar with New York State and Federal laws pertaining to the use of deadly physical force.

2) This Department authorizes the use of deadly physical force only when such use is:

- (a) Reasonable; and
- (b) Necessary; and
- (c) Authorized by Article 35 of the New York State Penal Law; and
- (d) Not contrary to any New York State or Federal Laws; and
- (e) Not used in a reckless manner.

3) Since all possible combinations of circumstances cannot be envisioned, notwithstanding any provisions of these rules and procedures, a police officer may use deadly force as an emergency measure to avoid the imminent unlawful use of deadly force which is about to occur by reason of a situation occasioned or developed through no fault of the officer; and, which is of such gravity that, according to ordinary standards of intelligence and morality, the desirability of avoiding such injury clearly out-weighs the desirability of avoiding the conduct sought to be prevented by these rules and procedures.

C) Use of Firearms:

1) Warning Shots:

- (a) Warning shots are not permitted.

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- 2) Moving Vehicles:
 - (a) Shots fired at moving vehicles shall be in accordance with the provisions of this General Order.
 - (b) Officers firing at a moving vehicle shall consider the danger created by an uncontrolled vehicle.

- 3) Drawing or Exhibiting Firearms:
 - (a) An officer will not draw or exhibit his/her firearm unless there is reason to believe that circumstances exist, which may justify the use of deadly physical force under this General Order (e.g., conducting building searches, felony vehicle stops, confronting a person who may be armed or dangerous, dealing with an injured or dangerous animal, etc.).

- 4) Intentional Discharge of Firearm:
 - (a) An officer will not intentionally discharge a firearm unless:
 - i) The officer reasonably believes that circumstances exist which justify the use of deadly physical force under this General Order; or
 - ii) The officer reasonably believes that circumstances exist justifying the use of a firearm against an injured or dangerous animal under this General Order; or
 - iii) The discharge is part of Department-authorized training.
 - (b) All intentional discharges of a firearm will be reported in a “Firearms Incident Report” and investigated as a deadly physical force incident.
 - i) This does not apply to training activities or those occasions when the firearms discharge was for the purpose of destroying an injured or dangerous animal.

- 5) Accidental Discharge of Firearm:
 - (a) Officers will exercise due care to handle and store firearms properly and safely and to prevent an accidental discharge.
 - (b) Any officer involved in an accidental discharge of a firearm, whether on-duty or off-duty, will report it to the on-duty Shift Supervisor immediately.
 - i) The Shift Supervisor shall then notify a Bureau Commander and/or the Chief of Police to advise them of the incident.

- 6) Destruction of Animals:
 - (a) An officer may use his firearm to destroy an animal under the following circumstances:
 - i) The officer reasonably believes that the animal is so badly injured that it is appropriate to destroy the animal for humanitarian reasons; or

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- ii) The officer reasonably believes that the animal is presenting a danger or threat of injury to the officer, another person or a domesticated animal.
- (b) In using firearms to destroy animals, officers will adhere to the following procedures:
 - i) In the event an officer believes it is or may be appropriate to destroy an animal the officer will first contact an on-duty supervisor and notify him or her unless not feasible.
 - ii) Officers shall exercise due care to ensure that no person is endangered or injured by the discharge of the firearm.
 - iii) In the case of an injured animal permission from the owner should be obtained if possible. If the owner is present and declines permission the officer will require the owner to remove the animal.
 - iv) An officer destroying an animal shall complete a “Firearms Discharge for the Destruction of Animals Report” to document the circumstances.

D) Neck Restraints:

- 1) Carotid Control Holds, Choke Holds or other neck restraints, designed to restrict oxygen and/or blood flow, are prohibited unless this General Order authorizes deadly physical force.

E) General Considerations:

- 1) Verbal Warnings:
 - (a) If feasible, officers will identify themselves and issue a verbal warning before using deadly physical force.
 - (b) Verbal warnings need not be issued when the officer reasonably believes that doing so would increase the danger to the officer or another person.
- 2) Equipment and Techniques:
 - (a) In using physical force or deadly physical force an officer will generally use Department-issued equipment and Department-approved techniques. However, in cases in which the officer reasonably believes it is necessary to protect himself or another person, the officer may utilize any readily available weapon, instrument, or technique provided the level and nature of such force is legally justifiable.

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F) Reporting Requirements:

- 1) Refer to **AGO-023 (Reporting & Reviewing the Discharge of Firearms)** for the reporting requirements for incidents involving the discharge of firearms.
- 2) Refer to **AGO-024 (Reporting & Reviewing Uses of Force)** for the reporting requirements for incidents involving the use of force.

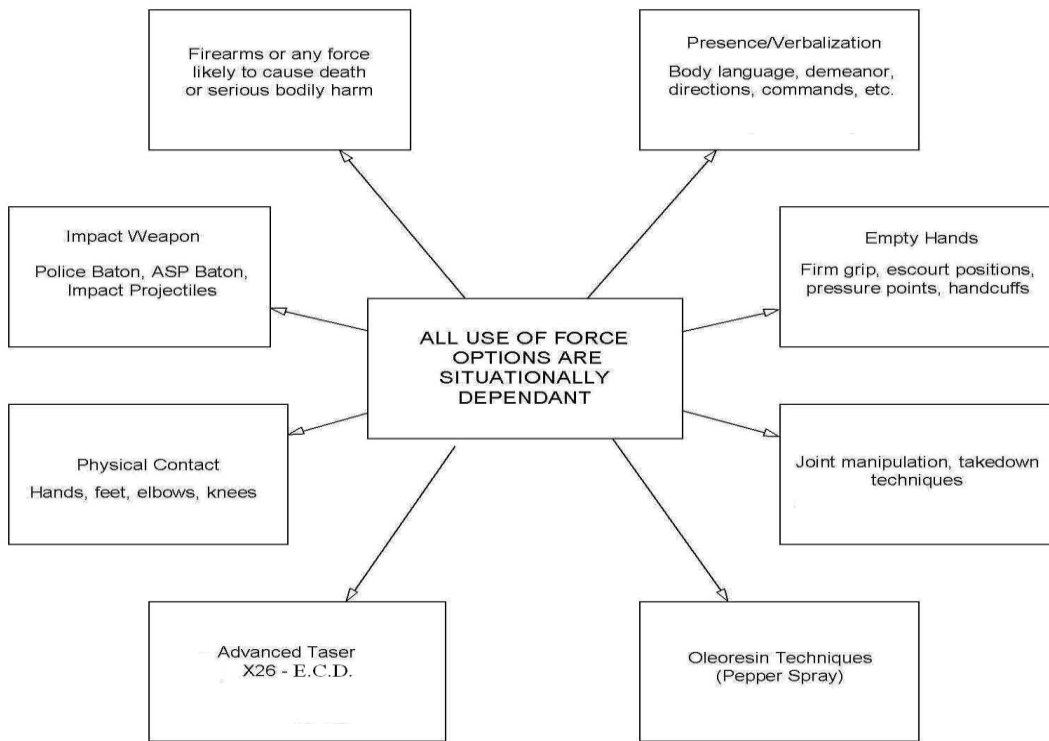
G) Training:

- 1) All officers shall receive annual training regarding the use of physical force and the use of deadly physical force.

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City of Middletown Police Department
Use of Force Continuum



AN OFFICER MAY USE ANY TECHNIQUE OR TECHNIQUES, IN ANY ORDER,
PROVIDED THE FORCE USED IS IN COMPLIANCE WITH AGO-022

Distribution:

This General Order shall be distributed to all sworn members:

This General Order shall be effective April 8, 2011 by order of:


 Ramon Bethencourt
 Chief of Police