

Section 10: Use of Deadly Physical Force

I. PURPOSE:

This order establishes the limits within which the use of deadly force, particularly the use of firearms, by members of the Ocean Beach Police Department is permitted, and outlines certain situations in which the use of firearms, or other means of deadly physical force, is not permitted. These rules have been developed, not to restrict officers from properly performing their duty, but rather to make it incumbent upon them to use good judgment before using deadly force including shooting incidents, and consequently protect life and property.

II. POLICY:

The value of human life in our society is immeasurable. Police officers have been delegated the substantial responsibility to protect life and property and to apprehend criminal offenders. Thus, there is probably no more serious act that the law enforcement officer can engage in than the use of deadly force. The occasions for such use are, literally, life and death situations, which are invariably confused and complex, affording precious little time for mediation or reflection. It is imperative then, that the officer, through training and the absorption of these rules, be able to respond quickly, confident that he or she is acting within the limits of the Department Rules and Procedures. This enables the officer to act, without hesitation, to protect himself or another, and it also serves to protect the public from unlawful and unreasonable use of force.

III. DEFINITIONS:

1. Deadly Force - For the purposes of this order “deadly force” is defined as physical force, which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury.
2. Serious Physical Injury - Means physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.
3. Reasonable Cause to Believe - Reasonable cause to believe that person has committed an offense exists when evidence or information which appears reliable, discloses facts or circumstances which are collectively of such weight and persuasiveness as to convince a person of ordinary intelligence, judgment and experience that it is reasonably likely that such offense was committed and that such person committed it. Except as otherwise provided in Article 70 of the Criminal Procedure Law, such apparently reliable evidence may include or consist of hearsay.

IV. REFERENCES:

1. New York State Penal Law, Article 10, Section 10.00, Article 35, Sections 35.10 to 35.30. Section 121.13-(a)
2. New York State Criminal Procedure Law, Article 690, Section 690.50
3. NYS Civil Rights Law Section 28.
4. NYS Executive Law Section 837-t, 837-v, 840(4)(d)(3)
5. NYC Mental Hygiene Law Section 9.41
6. NYS Municipal Police Training Council (MPTC)
7. NYS Division of Criminal Justice (DCJS)

V. RULES AND REGULATIONS: USE OF DEADLY PHYSICAL FORCE:

1. Deadly physical force may be used by an officer to protect themselves or another person from what the officer reasonably believes is an imminent threat of serious physical injury or death.
2. Deadly physical force may be used to stop a fleeing suspect where:
 - a) The officer has probable cause to believe the suspect has committed a felony involving the infliction or threat of serious physical injury or death; and,
 - b) The officer reasonable believes that the suspect poses an imminent threat of serious physical injury to the officer or others.
 - c) Where feasible, some warning should be given prior to the use of deadly physical force.
3. Chokeholds and Obstruction of Breathing or Blood Circulation:
 - a) Any application of pressure to the throat, windpipe, neck, or blocking the mouth or nose of a person in a manner that may hinder breathing, reduce intake of air or obstruct blood circulation, is prohibited unless the officer or another is in imminent danger of death or serious physical injury and all other measures to reasonably repel the attack have been exhausted.
4. Vicious/Injured Animal:

- a) To put to death an animal which presents an immediate serious physical threat to the officer or a third party, or an animal that is so seriously injured that humanness demands the immediate cessation of its further suffering. All reasonable alternatives to the use of the firearm must be exhausted before shooting the animal, and all applicable Department procedures must be followed.
5. Firearm Practice:
- a) Firearm practice, for target practice at an approved range, or by members of the Firearms Training Sections (SCPD) to test weapons as required.
6. Specific Prohibitions:
- a) Moving Vehicles:
 - i. Discharging a firearm at or from a moving vehicle is ***prohibited***, except as the ultimate measure of self-defense of another when the officer reasonably believes the occupants are using deadly physical force against the officer or another, by means other than the vehicle.
 - b) Warning Shots:
 - i. NO WARNING SHOTS SHALL BE FIRED
 - c) Firing Shots for Alarm:
 - i. Firearms shall not be discharged to summon assistance, except where the officer's safety or that of another is endangered, and there is no reasonable alternative. Extreme care must be exercised in such situations to prevent injury to other persons.
 - d) Drawing and Displaying Firearms:
 - i. An officer shall unholster or display a firearm only if authorized by these procedures, directed by competent authority, or there is reason to believe such may be necessary for the safety of the officer or others.
 - ii. To reduce the potential for accidental discharge, an unholstered or displayed firearm will not be cocked.
 - iii. "Dry firing" or snapping the action of an unloaded firearm is prohibited in view or presence of the public, or in or on any Departmental premises, except by or under the direction of a firearms instructor or armorer, or when necessary to clean and lubricate a weapon.

NOTE: Submission of the Use of Force Report is required whenever an officer brandishes, uses or discharges a firearm at or in the direction of another person.

VI. DUTY TO INTERVENE:

1. Any officer present and observing another officer using force that he/she reasonable believes to be clearly beyond that which is objectively reasonable under the circumstances shall intercede to prevent the use of unreasonable force, if and when the officer has a realistic opportunity to prevent harm.
2. An officer who observes another officer use force that exceeds the degree of force as described in subdivision 1 of this section should promptly report these observations to a supervisor.

VII. PROCEDURES:

1. Deadly Force Emergency Measures:
 - a) 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 outweighs the desirability of avoiding the conduct sought to be prevented by these Rules and Procedures.
2. Legal Disclaimer:
 - a) This directive regarding the use of force and firearms is for Departmental administrative use only and, to the extent that it constrains conduct otherwise permissible under law, shall not apply in any criminal or civil proceeding. The Ocean Beach Police Department Rules regarding the use of deadly physical force should not be construed as creating a higher standard of safety or care, in an evidentiary sense, with respect to third party claims. Violations of these Rules and Procedures will only be used as the basis for Departmental administrative sanctions. Violations of law will form the basis for civil and criminal sanctions in recognized judicial settings.
3. Sanctions:
 - a) In all cases where an officer's action is determined to be a violation of these rules but not a violation of law, this distinction shall be made clear in all public discussion of such incidents and in any disciplinary action may result. An officer found to have acted in violation of this order shall be subject to internal discipline

ranging from reprimand up to and including dismissal, in addition to any criminal sanctions which may be imposed in the courts.

4. Reporting Procedures:

- a) Reporting requirements for the use of force, including the use of deadly physical force, are contained within Chapter 2, Section 9 of these Rules and Procedures.

5. Reassignment of Member Pending Review:

- a) On the occasion when a member's use of force results in the death of another person, that member will be assigned to an administration post within the command at the discretion of the Chief of Police.

VIII. TRAINING:

1. Officer will receive periodic training on this policy and demonstrate their knowledge and understanding. Training topics will include but not be limited to, use of force, conflict prevention, conflict resolution and negotiation, and de-escalation techniques and strategies.
2. All training records will be maintained and up to date by the training Sergeant.

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