

MEDINA POLICE DEPARTMENT GENERAL ORDER

ORDER NO: 2017-030

SUBJECT: Use of Force/
Deadly Physical Force

EFFECTIVE DATE: 14 Nov. 2017 **RESCINDS ORDER NO:** 98-10-07

DISTRIBUTION: All Department Personnel

- I. **PURPOSE:** The purpose of this Order is to establish policies and procedures for the use of physical force and deadly physical force.

- II. **POLICY**
 - A. The Medina 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.

 - B. All use of physical force and deadly physical force will be consistent with applicable legal principles and this Order.

 - C. All use of physical force or deadly physical force will be to protect the officer or another person or to effectuate a valid and lawful public safety or law enforcement purpose.

 - D. This Order will govern the use of deadly physical force by whatever means including, but not limited to, firearms or other weapons. Any use of force that is readily capable of causing serious physical injury or death must meet the justification standards for deadly physical force.

 - E. This Order applies to all use of physical force and deadly physical force by all employees of the Medina Police Department while on duty. It also applies to all off-duty uses of physical force and deadly physical force in which the officer is acting pursuant to his or her authority as an Medina Police Officer or using any Department-issued weapon, ammunition, or other equipment.

 - F. How to handle situations in which Deadly Physical Force has been used, to include any discharge of firearms, is outlined in Department Policy "Handling Deadly Physical Force Incidents". This policy elaborates further on reporting, supervisory responsibility, and investigations.

 - G. In using physical force or deadly physical force officers should avoid creating an unreasonable risk to bystanders or persons other than the intended subject of the

force. However, nothing in this Order should be construed to restrict or limit an officer's legal right to self-defense or to defend another person.

- H. Personnel authorized to carry Department-issued firearms or less-than-lethal weapons will be issued copies of all General Orders pertaining to those weapons. Training for specific weapons will be conducted as directed by the General Order(s) associated with the specific weapon(s).
- I. This 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 Order is intended to create nor does create an enforceable legal right or private cause of action.

III. DEFINITIONS

- A. Deadly Physical Force – means any physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury. (New York State Penal Law Article 10, Section 11)
- B. Physical Force - means a level of force less than deadly physical force.
- C. Reasonable Belief - The facts or circumstances the officer knows or should know, are such as to cause an ordinary and prudent person to act or think in a similar way under similar circumstances.
- D. Perceived Subject Action – The subject's actions as perceived objectively by the reasonable officer, and which causes the Officer to react with one or more of the tactical response options.
- E. Perceived Circumstances – Are the reasonable Officer's perspective of the severity of any crime, the existence of any and all safety threats to the officer or others, and the degree of compliance and/or non-compliance from the subject at the time of the encounter.

IV. PROCEDURES

- A. Use of Physical Force: Personnel will use only the 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 when and to the extent he 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.
 - 2. To Effect an Arrest or Prevent an Escape

- A. An officer, in the course of effecting an arrest, or of preventing or attempting to prevent the escape from custody, of a person whom he reasonably believes to have committed an offense, may use physical force when and to the extent he reasonably believes it to be necessary to effect the arrest, or to prevent the escape from custody, or to defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force.

3. Prevention of Suicide

- A. An officer acting under a reasonable belief that another person is about to commit suicide or to inflict serious physical injury upon himself may use **physical force**, not constituting deadly physical force upon such person only to the extent that he reasonably believes it necessary to prevent such result.

*This section does not refer to acts of “Suicide by Cop”, which would be covered under the Deadly Physical Force section on defense of self or another person.

4. Protection of Property and Premises

- A. An officer may use physical force, other than deadly physical force, upon another person when and to the extent that he reasonably believes it to be necessary to prevent what he reasonably believes to be the commission or attempted commission of a larceny, criminal mischief, or a crime involving damage to premises, or criminal trespass.

B. Use of Deadly Physical Force:

1. Self-Defense or Defense of Another Person

- A. An officer may use deadly physical force only when the officer has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person.

Note: Officers faced with an imminent threat of death or serious physical injury in the course of their police duties are not required to retreat or withdraw to avoid the necessity of using deadly physical force. See NYPL §35.15-2(a)(ii).

*The proper use of tactics such as proper spacing, contact and cover, and creating time and distance is strongly encouraged to provide additional opportunities for Officers to evaluate the situation.

2. To Effect an Arrest or Prevent an Escape

- A. This provision governs use of deadly physical force for the purpose of effecting or attempting to effect an arrest or of preventing or attempting to prevent an escape from custody. This provision is sometimes referred to as the “fleeing felons” provision.
- B. An officer may use deadly physical force to affect the arrest or prevent the escape from custody only under the following circumstances:

1. the officer reasonably believes the subject has committed a felony or has attempted to commit a felony, involving the infliction or threatened infliction of death or serious physical injury; **AND**
2. the officer reasonably believes that deadly physical force is necessary to effect the arrest of the subject or to prevent his escape from custody; **AND**
3. the officer reasonably believes that deadly physical force is necessary to defend the officer or another person from what the officer reasonably believes to be the use or imminent use of deadly physical force; **AND**
4. if feasible, the officer has issued a verbal warning.

Note: *“The fact that a police officer or peace officers justified in using deadly physical force [for the purpose of effecting or attempting to effect an arrest or of preventing or attempting to prevent an escape from custody] does not constitute justification for reckless conduct by such police officer or peace officer amounting to an offense against or with respect to innocent persons whom he is not seeking to arrest or retain in custody.” See NYS Penal Law, §35.30 (2):*

- C. Types of Resistance: When considering use of force, Officers should take into account the following type of resistance that the subject is demonstrating. Be aware, that a subject’s resistance level may change at any time, and as such, the Officer’s Use of Force must change accordingly.
1. Passive Resistance: Going Limp, Dead Weight, Ignoring, Sit-in type protest, non-compliance to Officer’s lawful verbal direction
 2. Verbal Resistance: Yelling, Swearing, Vocal challenges, Vocal non-compliance
 3. Defensive or Escape Resistance: Muscle tension, Pulling away, Avoids control, Fleeing, Generally not done in an attempt to harm others.
 4. Offensive or Assaultive Resistance: Pushing, Punching, Kicking, Clenching fists, non lethal weapons, active resistance.
 5. Lethal Resistance: Actions that may result in death or serious bodily injury.

*These Officers perception of the subject’s actions should be noted on the departmental Subject Management Report, taking into consideration that more than one may apply and should be noted.

D. Police Tactics for Officer's Response Options

1. Officer Presence: Uniform appearance, relative positioning, interview stance
2. Verbal Commands: Dialogue, de-escalation, contact and cover
3. Open-Hand Compliance Techniques: restraints, come-alongs, takedowns, Pressure points, and joint locks.
4. Intermediate Techniques: OC Spray, Electronic Control Device, Knee, Elbow and Fist Strikes/Hard hand techniques
5. Impact Techniques: K-9. Baton, less lethal shotgun, tools of immediate means or opportunity*; below the clavicle.
*Tools of immediate means or opportunity: In the event that an Officer is faced with a situation where there is a substantial risk of physical injury to themselves, or another, and access to approved tools and weapons is not available or tactically feasible, he or she may resort to tools of immediate means. These tools of immediate means or opportunity are still guided by the rules and regulations of this policy, and the objective reasonableness standard outlined below.
6. Pointing a Firearm: Raising a firearm in the direction of an individual is considered a Tactic for Officer's Response, as such, an IR and Subject Management Form should be completed.
7. Deadly Physical Force: Firearms, Baton strike/Less Lethal Shotgun above clavicle, striking pedestrian with patrol vehicle, and neck holds/restraints.

E. Progression of Force:

1. The Officer's response options within each of the levels identified in section IV. D. are not necessarily listed in the order of use and/or need. The Officer may de-escalate, stabilize or escalate his/her response based upon his/her perceived circumstances, and the perception of the subject's degree of compliance or non-compliance.
2. Of the tactics listed in section IV. D., Officers will only use those tactics in which they are trained in. The Department recognizes that there are other methods and tactics that can be used at each of the levels of authority. If an Officer is considering a tactic that is not specifically listed, it must be objectively reasonable as it relates to the Officer's perceived circumstances and subject's actions and must not be in violation of this policy.
 - a. Objective Reasonableness: In determining the necessity for force and the appropriate level of force, Officers and Supervision shall evaluate each situation in light of the circumstances known at that time, taking into account the totality of the circumstances, including, but not limited to:

1. The severity of the crime
2. Whether the suspect poses an immediate threat to the officer or others
3. The level of resistance by the suspect

F. Legal Considerations

Departmental Policy provides guidance for Officer's actions, however, Officers should make themselves familiar with NYS Penal Law §35.00, as well as State and Supreme Court rulings as it applies to both the Use of Force, and Deadly Physical Force.

G. Medical Aid

In all cases where force is used on a subject, and the subject is either in custody; no longer a threat; or it is safe and reasonable to do so, all Officers are duty bound to render first aid. If needed, Officers will request EMS, or transport the individual to a medical facility. This practice is in accordance with the Departmental policy; "Handling of Prisoners"

H. Moving Vehicles

1. An officer will not discharge a firearm **at** a moving vehicle unless:
 - a. the officer reasonably believes the moving vehicle is being used as an instrument of deadly physical force against the officer or another person (e.g., the operator of the vehicle is striking or attempting to strike the officer or another person with the vehicle); or
 - b. the officer reasonably believes that an occupant of the vehicle is using or threatening the imminent use of deadly physical force against the officer or another person (e.g., shooting from the vehicle).
2. An officer **WILL NOT** discharge a firearm at a **fleeing vehicle** that does not constitute an imminent danger of death or serious physical injury to the officer or another person, or at any occupant of such a vehicle. An officer will not discharge a firearm at a vehicle solely to prevent the escape of the vehicle or any of its occupants.
3. An officer will not discharge a firearm **from** a moving vehicle unless the officer reasonably believes such action to be necessary to protect himself or another person from death or serious physical injury.
4. In deciding whether to discharge a firearm at or from a moving vehicle officers will take into consideration the risk of such action to other persons.

H. Warning Shots

The use of Warning Shots is prohibited.

By Order Of:

Chad Kenward
Chief of Police

