



*Town of Marlborough Police Department*

## **GENERAL ORDER**

**SUBJECT: Deadly Physical Force**

**Order Number: 3.24**

DATE ISSUED: 09/10/10 BY ORDER OF POLICE CHIEF: COCOZZA

DATE EFFECTIVE: 09/10/10 REPLACES ORDER #(S): APR

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### **DEADLY PHYSICAL FORCE**

**(Firearms)**

**PURPOSE:** This order establishes the limitations for use of deadly force, particularly the use of firearms, by members of the Town of Marlborough Police Department. These rules have been developed to assist officers in the performance of their duty and compel the exercise of good judgment before electing the use of deadly physical force. They thus are intended to reduce the likelihood of inappropriate use of deadly force in shooting incidents, and consequently protect life and property.

### **I. POLICY**

The value of human life in our society is immeasurable. Officers have been delegated the substantial responsibility to protect life and property and to apprehend criminal offenders. There is probably no more serious act that a 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 that the officer, through training and the absorption of these rules, be able to respond quickly, confident that he/she is acting within the limits of the police department rules. This enables the officer to act without hesitation and to protect himself/herself and others. It also serves to protect the public from unlawful and unreasonable use of force.

### **II. DEFINITIONS**

A. Deadly Force - For the purpose of this order "deadly force" is defined as physical force that, 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 that creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss of impairment of the function of any bodily organ.

C. Reasonable Cause to Believe - Reasonable cause to believe that a 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.

**D. Objectively Reasonable** – An objective standard used to judge an officer’s actions. Under this standard, a particular application of force must be judged through the perspective of a reasonable officer facing the same set of circumstances, without the benefit of 20/20 hindsight, and be based on the totality of the facts that are known to that officer at the time that the force was used.

### **III. PROCEDURE**

#### **USE OF DEADLY PHYSICAL FORCE**

A. 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

B. Deadly physical force may be used to stop a fleeing suspect where:

1. 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,

2. The officer reasonably believes that the suspect poses an imminent threat of serious physical injury to the officer or to others.

3. Where feasible, some warning should be given prior to the use of deadly physical force.

C. Chokeholds and Obstruction of Breathing or Blood Circulation

1. 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 deadly physical force is authorized.

### **VIII. PROHIBITED USES OF FORCE**

A. Force shall not be used by an officer for the following reasons:

1. To extract an item from the anus or vagina of a subject without a warrant, except where exigent circumstances are present.

2. To coerce a confession from a subject in custody.

3. To obtain blood, saliva, urine, or other bodily fluid or cells, from an individual for the purposes of scientific testing in lieu of a court order where required.

4. Against persons who are handcuffed or restrained unless it is used to prevent injury, escape, or otherwise overcome active or passive resistance posed by the subject.

#### **A. Use of Firearms**

An officer may discharge a firearm **ONLY** in the following situations:

1. When reasonable and necessary to defend an officer or another from what the officer reasonably believes to be the use, or imminent use, of deadly force.
2. 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 ill or injured that humaneness demands the immediate cessation of its further suffering. All reasonable alternatives to the use of firearms must be exhausted however, before shooting the animal, and all applicable police department procedures must be followed.

#### **B. Considerations and Prohibitions**

##### **1. Moving Vehicles**

No member shall discharge a firearm at or from a moving vehicle, except as the ultimate measure of self defense or defense of another when the officer reasonably believes the occupants are using deadly force against the officer, or another.

##### **2. Warning Shots**

No "warning shots" shall be fired.

##### **3. Firing Shots for Alarm**

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.

##### **4. Deadly Force Emergency Measure**

Since all possible combinations of circumstances cannot be envisioned, notwithstanding any provisions of these Rules and Procedures, an 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 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. However, all actions taken shall remain within the limits of NYSPL Article 35.

C. Investigations and reports shall be conducted in the manner outlined in the general order entitled, "Discharging Firearms."

D. On the occasion when a member's use of force results in the death or serious physical injury of another person, that member will be assigned to an administrative post pending administrative review by the Chief of Police. The future assignment of the member shall be determined in that review which will be conducted in the manner outlined in the general order entitled, "Discharging Firearms."