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| TOWN OF COEYMANS POLICE Law Enforcement Manual: Operations | |
| Effective Date: May 17, 2021 | Article: **36** |
| Special Instructions: Rescinds Previous November 2020 | Subject: **USE OF FORCE POLICY** |
| Reference: Penal Law Articles 10 & 35, Executive Law §837-t | |
| Approving Authority: Douglas R. Keyer, Jr., Chief of Police | Total Pages: **5** |

36.1 PURPOSE AND SCOPE

This policy provides guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every officer of this Department is expected to use these guidelines to make such decisions in a professional, impartial, and reasonable manner.

36.2 POLICY

The federal and state standards by which use of force is measured are founded in the basic premise of objective reasonableness.

It is the policy of the Coeymans Police Department that the amount of force that is used by its officers shall be the amount of force that is objectively reasonable and necessary under the totality of the circumstances for the officers involved to effect an arrest, prevent an escape, or in defense of themselves or others. The standard of objective reasonableness, established by the United States Supreme Court in *Graham v. Connor* (490 U.S. 386 (1989)) is used in this policy and is intended to provide officers with guidelines for the use of force, including deadly physical force.

As the Supreme Court has recognized, this reasonableness inquiry embodies "allowance for the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain, and rapidly evolving - about the amount of force that is necessary in a particular situation" (*Graham*, 490 U.S. at 396-97).

This policy is written in recognition of the value of all human life and dignity without prejudice against anyone. Vesting officers with the authority to use reasonable force to protect the public welfare requires a careful balancing of all interests.

36.3 DEFINITIONS

*Chokehold* – a tight grip around a person’s neck, used to restrain them by restricting their breathing.

*Deadly physical force* - Physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury (Penal Law §10 (11)).

*Display a chemical agent* – To point a chemical agent at a person(s).

*Deploy/use a chemical agent* - The operation of the chemical agent against a person(s) in a manner capable of causing physical injury, as defined in Penal Law Article 10.

*Brandishes an electronic control weapon* – To point an electronic control weapon at a person(s).

*Deploys/uses an electronic control weapon* - The operation of an electronic control weapon against a person in a manner capable of causing physical injury as defined in Penal Law Article 10.

*Brandishes an impact weapon* – To point an impact weapon at a person(s).

*Deploys/uses an impact weapon* - The operation of an impact weapon against a person(s) in a manner capable of causing physical injury as defined in Penal Law Article 10.

*Brandishes a firearm –* To point a firearm at a person(s).

*Discharges/uses a firearm* - The operation of a firearm against a person in a manner capable of causing physical injury as defined in Penal Law Article 10.

*Display a chemical agent* - To point a chemical agent at a person(s).

*Conducted Energy Weapon (CEW)* - The device referenced in the Executive Law §837-t as an “electronic control weapon (ECW).”

*Neck restraint* – a non-deadly force option which involves the act of compressing both sides of a person’s neck, without applying direct pressure to the trachea or airway (front of neck).

*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.

*Physical injury* - Impairment of physical condition or substantial pain (Penal Law §10 (9)).

*Serious physical injury –* 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.

*Serious bodily injury* - Bodily injury that creates or causes (Executive Law §837-t(1)(f)):

• A substantial risk of death; or

• Unconsciousness; or

• Serious and protracted disfigurement; or

• Protracted loss or impairment of the function of any bodily member, organ, or mental faculty.

36.4 USE OF FORCE

In general terms, force is authorized to be used when reasonably believed to be necessary to effect a lawful arrest or detention, prevent the escape of a person from custody, or in defense of one's self or another (NY Penal Law § 35.15(1); Penal Law § 35.30(1)).

Under the 4th Amendment, a police officer may use only such force that is "objectively reasonable" under the totality of the circumstances. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene. (*Graham*, 490 U.S. at 396 (1989)).

36.5 DETERMINING THE OBJECTIVE REASONABLENESS OF FORCE

When used, force should be only that which is reasonable and necessary given the totality of the circumstances perceived by the officer at the time of the event.

Factors that may be used in determining the reasonableness of force include but are not limited to:

• The severity of the crime or circumstance (*Graham*, 490 U.S. at 396).

• The level and immediacy of threat or resistance posed by the suspect (*Graham*, 490 U.S. at 396).

• The potential for injury to citizens, officers, and suspects (*Scott v. Harris*, 550 U.S. 372 (2007)).

• The risk or attempt of the suspect to escape (*Graham*, 490 U.S. at 396).

• The knowledge, training, and experience of the officer. Note: Analysis of cases under the 4th

Amendment requires the focus to be on the perspective of a reasonable officer on the scene which includes the training and experience of the officer (*Graham*, 490 U.S. 386; *Terry v. Ohio*, 392 U.S. 1 (1968)).

• Officer/subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects (*Sharrar v. Felsing*, 128 F. 3d 810 (3rd Cir. 1997)).

• Other environmental conditions or exigent circumstances. Note - courts have repeatedly declined to provide an exhaustive listing of factors (*Chew v. Gates*, 27 F. 3d 1432, 1475 n.5 9th Cir. (1994)).

36.6 DUTY TO INTERVENE

Any officer present and observing another officer using force that he/she reasonably 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.

An officer who observes another officer use force that exceeds the degree of force as described above should promptly report these observations to a supervisor.

36.7 USE OF DEADLY PHYSICAL FORCE

Deadly physical force may be used by an officer to protect him/herself or another person from what the officer reasonably believes is an imminent threat of serious physical injury or death (Penal Law § 35.30(1)(c)).

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

• 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,

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

• Where feasible, some warning should be given prior to the use of deadly physical force (Penal Law § 35.30(1)).

Use of any chokeholds which may hinder or reduce the intake of air should only be employed when deadly physical force is justified.

• Any application of pressure to the throat, windpipe, neck, or blocking the nose or mouth 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.

36.8 PROHIBITED USES OF FORCE

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

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

• To coerce a confession from a subject in custody.

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

• 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.

36.9 REPORTING AND REVIEWING USE OF FORCE INCIDENTS

Officers involved in use of force incidents must provide attention to the medical and mental health needs of a person in their custody and obtain assistance and treatment of such needs, which are reasonable and provided in good faith under the circumstances (Civil Rights Law 28).

* This includes appropriate and timely medical attention for a person injured as a result of a use of force incident.
* The immediate mental health needs of a person shall be based upon the reasonable cause to believe the person, who appears to be mentally ill, is conducting themselves in a manner which is likely to result in serious harm to themselves or others (MHL 9.41).

Officers involved in use of force incidents as described below shall notify their supervisor as soon as practicable and shall complete all required reports.

• Use of force that results in a physical injury, serious physical injury, serious bodily injury, or death.

• Use of force incidents that a reasonable person would believe is likely to cause a physical injury, serious physical injury, serious bodily injury, or death.

• Incidents that result from a complaint of pain from the suspect except complaints of minor discomfort from compliant handcuffing.

• Incidents where a chemical agent was displayed or deployed/used.

• Incidents where an impact weapon or conducted energy weapon (CEW) was deployed/used/brandished.

• Incidents where a firearm was discharged/used/brandished against a person.

• Incidents where a restraint that applies pressure to the throat or windpipe of a person in a manner that is intended to hinder breathing or reduce intake of air was used.

Reported uses of force incidents will be reviewed by appropriate supervisors who shall make required notifications.

36.10 PROCEDURES FOR INVESTIGATING USE OF FORCE INCIDENTS

Where practicable, a supervisor should respond to the scene to begin any required investigation. A supervisor that is made aware of a use of force incident shall ensure the completion of all appropriate documentation, which includes all officers engaging in a reportable use of force and, to the extent practical, ensuring that a record of all officers present has been created.

When appropriate, photographs should be taken which sufficiently document any injuries or lack thereof to officers, violators, or suspects.

The Chief will receive use of force reports and ensure that any required investigation is completed.

Failure to adhere to use of force guidelines will be addressed pursuant to existing disciplinary procedures and in accordance with applicable collective bargaining agreements.

36.11 TRAINING

All Officers should receive training and demonstrate their understanding on the proper application of force.

Training topics include use of force, conflict prevention, conflict resolution and negotiation, and de-escalation techniques and strategies. This includes, but is not limited to, interacting with persons presenting an agitated condition as well as duty to intervene and prohibited conduct.