

Huntington Bay Police Department

Policy

Effective Date

1-1-21

Number

I. 2-5

Subject

Use of Force

I. PURPOSE

Law enforcement officers around the country and here in New York State are authorized to use reasonable and legitimate force in specific circumstances. Federal constitutional and state statutory standards dictate when and how much force can be used. This policy is founded in these standards but is not intended to be an exhaustive recitation of state and/or federal legal framework governing use of force.

The purpose of this policy is to provide police officers with guidelines pertaining to the use of force which encompasses applied physical force, physical force involving less-than-lethal weapons and equipment as well as deadly physical force. This order establishes the limits within which the use of deadly force, particularly the use of firearms, by members of the Huntington Bay Police Department is permitted and outlines certain situations in which the use of firearms, or other means of deadly 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.

II. POLICY

The Huntington bay Police Department recognizes and respects the value and special importance of each human life. Providing police officers with the lawful authority to use force to protect the public welfare requires a careful balancing of all human interests. Therefore, it is the policy of this department that its members shall use the least amount of force necessary to effect cooperation and control of a situation which requires police intervention, and then only when all other reasonable alternatives have been exhausted or are not available. Members of the Police Department shall use non-lethal weapons and equipment only to effect lawful objectives. As in any use of force incident, verbal direction and the opportunity to comply should be given to the subject to minimize the need for the continuation or escalation of force.

The federal and state standards by which use of force is measured are both founded in the basic premise of objective reasonableness. The amount of force that is used by the officers shall be the amount of force that is objectively reasonable under the circumstances for the officer 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*, 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.”

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 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 complex, affording precious little time for mediation or reflection. It is imperative then, that the officer, through training and absorption of these rules, be able to respond quickly, confident that he or she is acting within the limits of Departmental rules. 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

- A. Deadly Force** - Any use of physical force which under the circumstances in which it is used is readily capable of causing death or serious physical injury.
- B. Physical Injury** - Impairment of physical condition or substantial pain.
- C. 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.
- D. Non-Deadly Force** - Any use of force other than that which is considered deadly force.
- E. 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.
- F. 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.

IV. USE OF FORCE

- A.** 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.
- B.** Under the 4th Amendment, a police officer may use only such force as is "objectively reasonable" under the circumstances. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene.
- C.** All reported use of force incidents will be reviewed by the appropriate departmental authority to determine whether departmental rules, policy or procedures were violated, the relevant policy was clearly understandable and effective to cover the situation, and department training is currently adequate.
- D.** All findings of policy violations or training inadequacies shall be reported to the Chief of Police for resolution and/or discipline.
- E.** All use of force incident reports shall be retained as required by law.
- F.** There will be a regular review of use-of-force incidents by the Chief of Police to ascertain training and policy needs.

V. DETERMINING THE OBJECTIVE REASONABLENESS OF FORCE

- A.** When used, force should be only that which is objectively reasonable given the circumstances perceived by the officer at the time of the event.
- B.** Factors that may be used in determining the reasonableness of force include, but are not limited to:
 - 1.** The severity of the crime or circumstance(s)
 - 2.** The level and immediacy of threat or resistance posed by the suspect
 - 3.** The potential for injury to citizens, officers, and suspects
 - 4.** The risk or attempt of the suspect to escape
 - 5.** The knowledge, training, and experience of the officer
 - 6.** Officer/subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects
 - 7.** Other environmental conditions or exigent circumstances

VI. DUTY TO INTERVENE

- A.** 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.

- B. An officer who observes another officer use force that exceeds the degree of force as described in subdivision A of this section should promptly report these observations to the Chief of Police.

VII. 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 person(s) who are handcuffed or restrained unless it is used to prevent injury, escape, or otherwise overcome active or passive resistance posed by the subject.

IX. PROCEDURES

- A. Parameters for Use of Deadly Force
 - 1. Police officers shall not use deadly force except as provided by law. Police Officers are authorized to use deadly force in order to:
 - a. Protect the police officer or others from what is reasonably believed to be a threat of imminent death or serious physical injury; or,
 - b. Prevent the escape of an armed dangerous fleeing felon whom the officer has reasonable cause to believe will pose a significant imminent threat to human

life should escape occur and such deadly force is authorized by Article 35 of the New York State Penal law.

Note: If it becomes necessary for a police officer to utilize their firearm, they shall identify themselves and state their intent, where practicable.

B. A police officer may also discharge a weapon under the following circumstances

1. During range practice or competitive sporting events.
2. To destroy an animal that represents a threat to public safety, or as a humanitarian measure where the animal is seriously injured. Notwithstanding the foregoing, all reasonable alternatives to the use of the firearm shall be exhausted before shooting an animal and all reasonable precautions shall be exercised to avoid danger to the officer or others from an errant shot or ricochet.

C. Police officers shall adhere to the following restrictions when their weapon is exhibited

1. Except for maintenance or during training, police officers shall not draw or exhibit their firearm unless circumstances create reasonable cause to believe that it may be necessary to use the weapon in conformance with this policy.
2. Warning shots shall not be fired.
3. Discharging a firearm at or from a moving vehicle is prohibited unless the officer or another is in imminent danger of death or serious physical injury and there is no danger to innocent bystanders from an errant shot or ricochet.

D. Parameters for Use of Non-Deadly Force

1. Where deadly force is not authorized, officers shall use only that level of force on the force continuum that is reasonably necessary to de-escalate the incident and bring it under control and is consistent with Article 35 of NYS Penal Law.
2. Police officers are authorized to use department-approved non-deadly force techniques and issued equipment for resolution of incidents as follows
 - a) To protect themselves or another from imminent physical harm
 - b) To lawfully restrain or subdue a resistant individual.
 - c) To bring an unlawful situation safely and effectively under control.

E. Non-Lethal Weapons and Equipment shall be used only as prescribed in Departmental training. These items, or other authorized equipment, shall never be converted or used in such a way as to represent the use of deadly force unless the officer reasonably believes such is necessary to repel imminent use of deadly force against the officer or another. Members of the Service are required to obtain training in the proper use of non-lethal weapons and equipment as specified by the Department. All members of the Service using these non-lethal weapons and equipment must successfully complete an initial training course prior to issuance, and receive periodic training thereafter as specified by the Department.

1. The use of Pepper Mace/O.C. is controlled by the sections of the Penal Law that control the use of other issued weapons and the use of physical force. Pepper Mace/O.C. is not used on a subject unless the member of the Department reasonably believes that the use of Pepper Mace/O.C. is necessary to effect an arrest, or for self-defense, or the defense of a third party against unlawful physical force.
 - a) All members of the department are required to have Pepper Mace/O.C. – non-lethal weapon (Pepper Mace is a trademark for a non-lethal aerosol subject restraint containing oleoresin capsicum) and a department-approved holster. All members of the service, except when not in uniform, are required to carry the issued Pepper Mace/O.C. weapon when on duty. When a Pepper Mace/O.C. weapon is exhausted or inoperative, it is the member's responsibility to replace it.
 - b) When Pepper Mace/O.C. is used, the member of the Department involved will ensure the subject is transported to the nearest medical facility for examination and treatment as soon as possible. The medical facility will decontaminate the subject according to proper medical treatment prior to processing by the arresting officer.
 - c) When a Pepper Mace/O.C. weapon is discharged against another to effect an arrest, for self-defense, or in the defense of a third party against unlawful physical force, the Officer-in-Charge must be notified as soon as possible. The Chief of Police will investigate the circumstances and take any other measures deemed appropriate at the time. The member using the Pepper Mace/O.C. will complete a "Use of Force Report". In the event that the Pepper Mace/O.C. weapon is discharged for the control of an animal, no "Use of Force Report" shall be filed. However, the incident will be documented in an Incident Report.
 - d) If Pepper Mace/O.C. is lost or stolen, the member shall notify the Chief of Police as soon as possible.

2. The use of the Taser or Conducted Energy Devices (CED) is controlled by the same sections of the Penal Law that control the use of physical force. The Taser is not to be used on a person unless the member of the Service reasonably believes that the use of the Taser is necessary to effect an arrest, for self-defense, or the defense of a third party against unlawful physical force.
 - a) Unless a person presents an immediate threat of injury to himself/herself or to others, the Taser shall not be used if the person is:
 - 1) obviously pregnant
 - 2) apparently under 16 years of age
 - 3) apparently over 65 years of age
 - 4) running away to escape
 - 5) in an elevated position above ground level from which the person might fall and injury is likely, unless safety precautions have been taken (example: airbag deployment).
 - 6) operating a vehicle or machinery
 - 7) in a flammable environment

- 8)** in water unless additional personnel are available for possible rescue
 - 9)** obviously frail or infirmed
 - 10)** handcuffed, unless they are exhibiting active aggression, and/or to prevent individuals from harming themselves or others.
- b)** The Taser will not be used as a come-along device.
- c)** The Taser shall not be carried on marine patrol unless specifically authorized by the Chief of Police.
- d)** Under all circumstances if possible, when deploying the Taser members of the Service should attempt to avoid the sensitive areas of the body; the head, throat, frontal chest/breast area or known pre-existing condition areas. Taser use causes Neuromuscular Incapacitation (NMI) and beyond its intended purpose may exacerbate medical conditions in persons taking certain medications and/or drugs or who have other cardiac conditions and/or implanted electronic medical devices such as pacemakers and defibrillators.
- e)** After a Taser has been deployed on a person, the member of the Service involved shall ensure the subject is transported to the nearest medical facility for a clinical evaluation and removal of the Taser darts.
- f)** When a Taser device is used against a subject, the Chief of Police must be notified as soon as possible. The Chief of Police will investigate the circumstances and take any other measures deemed appropriate at the time. The member using the Taser will complete a "Use of Force Report".
- g)** When a Taser device is used in the Drive-Stun (dry-stun, dry tasing, contact tasing, drive tasing) mode, the member of the Department involved shall ensure the subject is transported, to the nearest medical facility for a clinical evaluation.
- h)** The scheduled, on duty officer will carry a department-issued Taser on his person in a department-approved holster. Only department-issued Tasers shall be utilized by department personnel. Additional on-duty personnel will carry department-issued Tasers if available. When signing on duty, a member utilizing a Taser will perform a spark test.
- i)** When not in use, Tasers shall be secured in a manner approved by the Chief of Police.
- j)** In the event a Taser is fired accidentally and the darts are deployed, the Chief of Police will be notified and the Taser will be taken out of service until inspected. If anyone is struck or injured, an incident report will be completed.
- k)** Each Taser will have its data downloaded by the department Firearms Instructor after the completion of department training or after any other instance in which the Taser is fired.
- l)** Any Taser that indicates that the unit has dropped to 19% of its battery life shall be returned for replacement.

3. The use of the Baton is controlled by the same sections of the Penal Law that control the use of physical force. The Baton is not to be used on a subject unless the member of the Service reasonably believes that the use of the Baton is necessary to affect an arrest, for self-defense, or the defense of a third party against unlawful physical force. Members serving as duty patrol officers who have been trained by a certified instructor shall carry a department-approved expandable baton on their person when on duty in a department-approved holster.
 - a) If it is necessary to strike a subject with a Baton, the officer shall immediately determine if the subject requires medical attention. If the subject suffered a physical injury and/or complains of injury or pain, the member shall ensure the subject is transported to the nearest medical facility for a clinical evaluation.
 - b) When a subject is struck with a Baton, the Chief of Police must be notified as soon as possible. The Chief of Police will investigate the circumstances and take any other measures deemed appropriate at the time. The member using the baton will complete a Use of Force Report.
 - c) Unless deadly physical force is justified, avoid strikes to the head and spine. Baton strikes should be directed at the subject's arms and legs which present the greatest threat to a police officer. Verbal direction and the opportunity to comply should be given to the subject to minimize the need for repeated strikes.
 - d) Only department-authorized batons shall be used. Members using batons must have completed department-approved training.
4. The Spit Sock Hood controls spitting while allowing an officer to observe the subject's face. The medical filtration fabric helps limit exposure to a variety of viruses, bacteria and infectious diseases. Fitting loosely over the head of the subject, the Spit Sock Hood, used in place of other protection methods that may cause unintentional harm, is safer and reduces the risk of injury to the subject.
 - a) Whenever the Spit Sock Hood is used on a subject, officers are required to complete a Subject Resistance Report and notify the Chief of Police as soon as possible.

X. REPORTING & REVIEWING THE USE OF FORCE

- A. Whenever an officer uses any non-lethal weapon(s), he/she shall file a written report as soon as possible after the incident, explaining the circumstances involved. The Chief of Police shall determine if the use of force was in conformance with this procedure. If appropriate, corrective action shall be taken by the Police Chief.
- B. Use of physical strength and skill which results in injury of any degree to any person, will be documented in a written report setting forth the circumstances justifying the use of force, the type and degree of force used, and the results of such use, including a full description of all apparent injuries.

C. Members involved in use of force incidents as described below shall notify their supervisor as soon as practicable and shall complete a departmental use of force report.

1. Use of force that results in a physical injury.
2. Use of force incident(s) that a reasonable person would believe is likely to cause an injury.
3. Incidents that result in a complaint of pain from the suspect except complaints of minor discomfort from compliant handcuffing.
4. Incidents where a conducted energy device (CED) was intentionally discharged or accidentally discharged after being displayed.
5. Incidents where a firearm was discharged at a subject.
6. Officers should document any requests for necessary medical or mental health treatment as well as efforts of police to arrange for such treatment.

D. A police or peace officer or other law enforcement entity who has custody of a person 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.

1. This includes appropriate and timely medical attention being provided to a party injured as a result of a use of force incident.
2. The immediate mental health needs of a person shall be based upon the reasonable cause to believe that a person, who appears to be mentally ill, is conducting themselves in a manner which is likely to result in a serious harm to themselves or others.

XI. THE DEPARTMENT INVESTIGATIVE PROCESSES

A. Every incident of firearms discharge by a department member except for target practice, hunting, ballistics examinations, and incidents involving the destruction of an animal will be investigated.

1. The involved officer shall:
 1. Immediately notify the Chief of Police
 2. Request an additional unit (if necessary, from an outside agency) to respond to the scene
 3. Secure the scene
 4. Conduct a preliminary field investigation.
 5. Submit a detailed written report of the results of the investigation to the Chief of Police
2. The Chief of Police will coordinate a thorough investigation of every shooting by a police officer in which deadly force is used, or attempted, or accidentally used. The investigation shall include the following minimum procedural standards
 1. Proceed to the scene immediately upon notification

2. Secure the scene
 3. Examine the weapon(s) of all officers present at the time shot(s) were fired including secondary weapons and any weapons in police vehicles
 4. Seize the weapon(s) which may have been fired
 5. Seize the samples of unspent ammunition
 6. Separate, secure and interview all on-scene witnesses
 7. Request Suffolk County Police Crime Scene Section to photograph and diagram the crime scene
 8. Secure all physical evidence
 9. Have a proper medical authority present
 10. Secure projectiles from the victim's body
 11. Secure telecommunications tapes
 12. Obtain hospital, autopsy, lab and photographic reports
 13. Before interviewing or obtaining written statements of the involved officer(s) the investigator shall advise the officer of his rights in a criminal investigation.
3. The Chief of Police shall coordinate an administrative investigation of every incident of firearms discharge by a department member except when such was for firearms training, hunting, ballistics examination, and incidents involving the destruction of an animal.
 4. The Chief of Police will coordinate the investigation to determine whether the incident was accidental, within departmental policy or outside departmental policy, as well as to evaluate training considerations regarding drawing, exhibiting and firing of weapon including tactics prior to and following the discharge.
 5. In the case of a firearm discharge involving injury or death, the officer involved shall be placed on (1) administrative duty, or (2) administrative leave, without loss of pay or benefits, pending the results of the investigation. The assignment to administrative leave/duty shall not be interpreted to imply or indicate that the officer has acted improperly.
 6. The Chief of Police or delegated investigator shall conduct the administrative investigation within the guidelines established in the collective bargaining agreement between the PBA and the Village of Huntington Bay.

XII. POLICE ACTION THAT RESULTS IN INJURY OR DEATH

A. Involved Officer

1. Whenever a member discharges his weapon either accidentally or in the official capacity of his/her duties, he/she shall immediately:
 - a) Whenever a suspect is shot, the officer shall disarm and handcuff the suspect as soon as safely possible.

- b) Determine the physical condition of any injured person and render first aid when appropriate.
- c) Notify the police radio communicator of the incident and location and request necessary emergency medical aid.
- d) The officer will remain at the scene (unless himself/herself injured) until the arrival of the Chief of Police or the appropriate investigator(s). However, if the circumstances are such that the continued presence of the officer at the scene might cause a more hazardous situation to develop (for example a violent crowd), the ranking member at the scene shall have the discretion to instruct the officer to respond to another, more appropriate location.
- e) The officer will protect his weapon for examination and submit said weapon to the appropriate officer upon direction by a supervisor.
- f) The officer shall prepare a written detailed report of the incident.
- g) The officer should not discuss the case with anyone except supervisory and investigative personnel; the officer's privately retained attorney the Village Attorney; the assigned District Attorney, psychologist, and spouse.
- h) The officer shall be available at all times for administrative interviews and statements regarding the case and shall remain subject to recall to duty at any reasonable time.

B. Chief of Police

2. Whenever a member of the Department discharges his/her weapon, either accidentally or in the official capacity of his/her duties, the Chief of Police shall:
 - a) Where a police officer's use of force causes death, the officer shall be placed on administrative leave after completing all internal investigative requirement, and until it is determined by a mental health professional that the police officer is ready to return to duty.
 - b) The department shall conduct both an administrative and criminal investigation of the incident.
 - c) Administrative Review of Critical Incidents:
 - d) All reported uses of force will be reviewed by the appropriate departmental authority to determine whether departmental rules, policy or procedures were violated, the relevant policy was clearly understandable and effective to cover the situation, and department training is currently adequate.
 - e) All findings of policy violations or training inadequacies shall be reported to the Chief of Police for resolution and/or discipline.
 - f) All use-of-force incident reports shall be retained as required by law.

Note: New York State Executive Law 70-b, creates the Office of Special Investigations within the Office of the Attorney General, as of April 1, 2021. The New York State Legislature passed legislation to codify and replace Executive Order 147, which currently requires the Office of the Attorney General to investigate and, if appropriate, prosecute cases in which a police officer caused the death of an unarmed civilian. The new legislation expands the jurisdiction to also include the deaths of armed civilians caused by a police officer and any death caused by a corrections officer, whether the officers are on or off duty. The law gives the

Office jurisdiction over these cases from the time of the civilian's encounter with the officer, and therefore the county District Attorney will no longer be the initial point of contact. As a result, it is important that the Office work closely with all involved law enforcement agencies from the moment of the occurrence.

XIII. TRAINING AND QUALIFICATIONS

- A.** All officers should receive training and demonstrate their understanding on the proper application of force.

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

- C.** This policy is not intended to be a substitute for proper training in the use of force. Comprehensive training is the key to the real-world application of the concepts discussed within this policy

- D. Deadly Weapons**
 - 1. While on-and-off duty, police officers shall carry only weapons and ammunition authorized by and registered with the department.
 - 2. Authorized weapons are those with which the police officer has qualified and received departmental training regarding proper and safe usage, and which are registered with the comply departmental specifications.
 - 3. The Huntington Bay Police Department shall schedule regular training and qualification sessions for service weapons, and back-up and specialized weapons.
 - 4. Firearms qualification will be graded on a pass/fail basis.
 - 5. Police officers who fail to receive a passing score with their duty weapon(s) in accordance with department testing procedures shall be relieved of their police powers and immediately reassigned to non-enforcement duties.
 - 6. A police officer shall not be permitted to carry any weapon with which he has not been able to qualify during the most recent qualification period.
 - 7. A police officer who has taken extended leave or suffered an illness or injury that could affect his firearms ability will be required to re-qualify before returning to enforcement duties.

- E. Non-Deadly Force Weapons and Methods**
 - 1. A police officer is not permitted to use a weapon unless qualified in its proficient use as determined by training procedures.
 - 2. The following non-deadly weapons are authorized: tasers, batons and pepper spray which shall be used in accordance with departmental training. These weapons shall not be converted in such a way to constitute deadly force against the officer or another.

3. Carotid Holds and Chokeholds and similar compressions of the neck represent the use of deadly physical force and shall never be used unless the officer or another is in imminent danger of death or serious physical injury.

XIV. SAFE HANDLING OF FIREARMS

- A. Except for general maintenance, storage or authorized training, officers shall not draw or exhibit their firearms unless circumstances create reasonable cause to believe that it may be necessary to lawfully use the weapon in conformance with other sections of this policy.
 1. All officers shall be alert to the danger of the presence of firearms in the vicinity of arrested/and or mentally unstable persons and will safeguard their weapons from such people.
 2. All officers shall be alert to the potential danger of firearms in the hands of untrained shooters, youngsters and other members of the public, and will safeguard their weapons against loss or theft.
 3. All officers shall strictly comply with safety procedures specified for use in the police station, in police vehicles, at firing ranges, and wherever else they may apply.
 4. Safety violations and/or violations of rules or procedures established by the Huntington Bay Police Department shall be immediately corrected or brought to the attention of the Chief of Police whenever they occur or exist in the presence of any officer.
 5. Officers are directed to safeguard their weapon(s) whenever it is possessed off-duty in any home, public place, or other place, where its availability to unauthorized persons may present a danger. *It is recommended that officers store such weapons unloaded and locked in their home.*
- C. All on-duty officers shall be armed with a Department approved primary firearm intended for official use by any police officer, which must meet the following requirements:
 1. The firearm must be a Department approved .40 caliber Glock 23 Pistol.
 2. The firearm must be inspected, fired, and certified safe by the Department Firearms Instructor.
 3. The firearm must be registered with the Department by make, model and serial number.
 4. The Chief of Police may authorize other caliber weapons and/or ammunition in specific cases. Such authorization must be in written form.
 5. The officer must meet "certification" requirements with each approved weapon.
 6. Only authorized holsters will be permitted for on-duty use.
 7. Officers shall not carry on their persons, while on-duty, or in patrol vehicles, at any time, any weapon not previously approved by the Police Chief.

- D. A secondary weapon is a firearm carried by an on-duty police officer, in addition to the Department issued/approved primary weapon. Secondary weapons may be carried with written approval of the Police Chief specifying make, model, caliber, serial number, approved ammunition, barrel length and mode of carrying the weapon.
- E. Officers are authorized, but not required, to carry an approved firearm, loaded with approved ammunition, while off-duty. Off-duty officers operating marked vehicles of the Department shall be armed with an approved weapon, loaded with approved ammunition.

Note: Approval of weapons to be carried off-duty with approved ammunition for use by a member acting in the capacity of a police officer, must be obtained in writing from the Police Chief. Such weapons must be inspected, fired, and certified safe by the Department Firearms Instructor. Such weapons must be registered with the Department by make, model, caliber, serial number, approved ammunition and barrel length. Use of unapproved weapons and/or ammunition by an off-duty police officer seeking to carry out official police action is prohibited. Nothing in this section shall be construed to prevent defense of life by an off-duty officer.

XV. RULES AND REGULATIONS

- A. Non-lethal weapons and equipment, when used, shall be the minimum force necessary for a given situation and shall be reasonable in degree to the extent that it is necessary to effect cooperation and control of the situation.
 - 1. No member of the Department shall exceed the limits of his/her authority under Article 35 of the New York State Penal Law known as the Defense of Justification.
- B. Only issued or approved non-lethal weapons and equipment shall be used when applying physical force, except in emergency situations when it may be necessary to use any instrument at the disposal of the officer(s) involved.
- C. Whenever a person(s) are engaged in passive resistance demonstrations, "Pain Compliance" come along holds shall not be used unless specific authorization has been given to use such holds by the Chief of Police. This limitation applies only to passive resistance demonstrations and is not a restriction upon an officer's authority to use come along holds and non-lethal weapons and equipment when the officer is any way endangered, the subject of an attack or is confronted by someone actively resisting arrest as opposed to passive non-cooperation.
- D. Whenever an officer uses any non-lethal weapon he/she shall file a "Use of Force Report" as soon as possible after the incident, explaining the circumstances involved. The report shall be forwarded to the Chief of Police who shall investigate to determine if

the use of force was in conformance with this procedure and document findings. If appropriate, corrective action shall be taken by the Chief of Police.

E. Specific Prohibitions

1. Discharging a firearm at or from a moving vehicle is prohibited, 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, by means other than the vehicle.
2. No "warning shots" shall be fired.
3. 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. 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.
5. To reduce the potential for accidental discharge, an unholstered or displayed firearm will not be cocked.
6. "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.

XVI. ADDITIONAL INFORMATION

A. Deadly Force Emergency Measure

1. 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.

B. Legal Disclaimer

1. 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 Huntington Bay Police Department rules regarding the use of deadly 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 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.

C. Sanctions

1. 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 any disciplinary action which 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.

D. Reporting Procedures – The Officer-in-Charge is to be notified immediately upon the use of deadly physical force by a member on or off duty.

1. The Chief of Police is to be notified immediately for all firearms discharges on or off duty by a member of the department. A member of the department does not have to notify the Chief of Police if the firearm is discharged while off duty for lawful recreation or lawful hunting, or while on duty during departmental firearms training. Members of the department are prohibited from unlawfully, carelessly or recklessly discharging firearms on or off duty.
2. A written report prepared according to departmental procedures will be required in the following situations:
 - a) When a firearm is discharged outside of the firing range.
 - b) When a use of force results in death or injury.
 - c) When a non-lethal weapon is used on a person.
3. The department shall conduct both an administrative and criminal investigation of the incident.

XVII. REFERENCES

- A. New York State Penal Law, Article 10, Section 10.00, Article 35, Sections 35.10 to 35.30
- B. New York State Criminal Procedure Law, Article 690, Section 690.50

Note: These policies procedures and directives are for use in the Huntington Bay Police Department and in its department hearings and should not apply in any criminal or civil proceeding. The department policies should not be construed as a creation of higher legal standard of safety or care in an evidentiary sense with respect to third-party claims. Violations of these policies, procedures and directives will only form the basis for departmental administrative sanctions.

Reference: Accreditation Standards 20.1, 20.5, 20.6, 21.1