

## 201. USE OF FORCE



### RICHFIELD POLICE DEPARTMENT POLICY

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Authority: Chief Jay Henthorne

*NOTE: This policy is for internal use only and does not enlarge an employee's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this policy, if proven, can only form the basis of a complaint by this Department, and then only in a non-judicial administrative setting.*

### I. PURPOSE

This Policy provides officers with guidelines on the use of deadly and non-deadly force. It also outlines the training policy of this Department in the area of "Use of Force."

### II. POLICY

This Department recognizes and respects the value and preservation of each human life. In vesting police officers with the lawful authority to use force to protect the public welfare, a careful balancing of all human interests is required. Therefore, it is the policy of the Department that police officers use the minimum force that is reasonably necessary to effectively bring an incident under control, while protecting the life of the officer and/or others.

The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Officers involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties. Officers must have an understanding of, and true appreciation for, their authority and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties. The Department recognizes and respects the value of all human life and dignity without prejudice to anyone, and is committed to resolving conflicts through the use of communication skills, crisis intervention and de-escalation tactics, when feasible. Officers may only use that force which is objectively reasonable, and only in furtherance of a legitimate, lawful objective. "Objective reasonableness" is a test based on the totality of the circumstances. *Graham v. Connor*, 490 U.S. 386 (1989). Officers will only apply force in a manner consistent with Federal guidelines, state statute, department policy, and training. As used in this policy, non-deadly force means the use of any weapon or instrument, or any physical action taken by an officer which is not likely to cause death.

Vesting officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation and a careful balancing of all interests.

This Department complies with Minnesota State Statute 626.8452, "Deadly Force and Firearms Use; Policies and Instruction Required." Annual training will be provided to officers in compliance with this statute.

### III. DEFINITIONS

The following definitions apply for the purpose expressed in this Policy:

**DEADLY FORCE:** Force reasonably anticipated and intended to create a substantial likelihood of causing death or very serious injury. Deadly Force is defined in Minn. Stat. 609.066 Subd. 1., "For the purposes of this section, "deadly force" means force which the actor uses with the purpose of causing, or which the actor should reasonably know creates a substantial risk of causing, death or great bodily harm. The intentional discharge of a firearm, other than a firearm loaded with less lethal munitions and used by a peace officer within the scope of official duties, in the direction of another person, or at a vehicle in which another person is believed to be, constitutes deadly force. "Less lethal

munitions” means projectiles which are designed to stun, temporary incapacitate, or cause temporary discomfort to a person. “Peace officer” has the meaning given in section Minn. Stat. 626.84, Subd. 1.”

**USE OF DEADLY FORCE:** Defined in Minn. Stat. 609.066 Subd. 2., as: “Notwithstanding the provisions on Minn. Stat. 609.06 or 609.065, the use of deadly force by a peace officer in the line of duty is justified only when necessary;

- 1) To protect the peace officer or another from apparent death or great bodily harm;
- 2) To effect the arrest or capture, or prevent the escape, of a person whom the peace officer knows or has reasonable grounds to believe has committed or attempted to commit a felony involving the use of threatened use of deadly force; or
- 3) To effect the arrest or capture, or prevent the escape, of a person whom the officer knows or has reasonable grounds to believe has committed or attempted to commit a felony if the officer reasonably believes that the person will cause death or great bodily harm if the person’s apprehension is delayed.”

**GREAT BODILY HARM:** Great bodily harm means bodily injury which creates a high probability of death, or which causes serious, permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.

**FORCE:** The application of any physical technique, tactics, instrument or weapons used by an officer to compel a subject’s compliance. It is not a use of force when a person allows him/herself to be searched, and/or handcuffed.

**NON-DEADLY FORCE:** The use of any weapon or instrument, or any physical action taken by an officer which is not likely to cause death.

**LESS LETHAL FORCE:** Force applied through the use of extended range kinetic energy impact devices that have less potential for causing death or serious physical injury than deadly force.

**OBJECTIVELY REASONABLE:** This term means that, in determining the necessity for and appropriate level of force, officers shall evaluate each situation in light of the known circumstances, including but not limited to, the seriousness of the crime, the level of threat or resistance presented by the subject, and the danger to the community.

#### IV. PROCEDURE

Only weapons specifically approved in Department policies may be carried or used. Equipment, deadly or non-deadly, that is not specifically approved for use are prohibited.

##### USE OF FORCE

Under the Fourth Amendment of the United States Constitution a police officer may only use such force as is “objectively reasonable” under all of the circumstances. The standard that occurs will use to examine whether a use of force is constitutional was first set forth in Graham v. Connor, 490 U.S. 386 (1989) and expanded by subsequent cases. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with 20/20 vision of hindsight.

Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose.

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident.

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by the Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

#### **AUTHORIZED USE OF FORCE (MINN. STAT. 609.06 SUBD. 1)**

Reasonable force may be used upon or toward the person of another without the other's consent when the following circumstances exist or the actor reasonably believes them to exist:

- 1) When used by a public officer or one assisting a public officer under the public officer's direction:
  - (a) In effecting a lawful arrest; or
  - (b) In the execution of legal process; or
  - (c) In enforcing an order of the court; or
  - (d) In executing any other duty imposed upon the public officer by law;
- 2) In preventing the escape, or to retake following the escape, of a person lawfully held on a charge or conviction of a crime.
- 3) In restraining a person with mental illness or a person with a developmental disability from self-injury or injury to another.
- 4) In self-defense or defense of another.

#### **USE OF FORCE DURING ARREST**

**Minimum Restraint Allowed for Arrest & Warrant Shown Upon Request: Minn. Stat. 629.32 reads:**

A peace officer making an arrest may not subject the person arrested to any more restraint than is necessary for the arrest and detention. The peace officer shall inform the defendant that the officer is acting under a warrant, and shall show the defendant the warrant if requested to do so. An arrest by a peace officer acting under a warrant is lawful even though the officer does not have the warrant in hand at the time of the arrest, but if the person so requests the warrant must be shown to that person as soon as possible and practicable. A peace officer may lawfully arrest a person when advised by any other peace officer in the state that a warrant has been issued for that person.

**When Force May Be Used to Make Arrest: Minn. Stat. 629.33 reads:**

If a peace officer has informed a defendant that the officer intends to arrest the defendant, and if the defendant then flees or forcibly resists arrest, the officer may use all necessary and lawful means to make the arrest but may not use deadly force unless authorized to do so under section 609.066. After giving notice of the authority and purpose of entry, a peace officer may break open an inner or outer door or window of a dwelling house to execute a warrant if:

- 1) The officer is refused admittance;
- 2) Entry is necessary for the officer's own liberation; or
- 3) Entry is necessary for liberating another person who is being detained in the dwelling house after entering to make an arrest.

#### **FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE:**

When determining whether to apply and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit. These factors include, but not limited to:

- (a) Immediacy and severity of the threat to officers or others.

- (b) The conduct of the individual being confronted, as reasonably received by the officer at the time.
- (c) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (d) The effects of drugs or alcohol.
- (e) Subject's mental state or capacity.
- (f) Proximity of weapons or dangerous improvised devices.
- (g) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (h) The availability of other options and their possible effectiveness.
- (i) Seriousness of the suspected offense or reason for contact with the individual.
- (j) Training and experience of the officer.
- (k) Potential for injury to officers, suspects and others.
- (l) Whether the person appears to be resisting, attempting to evade arrest by flight or is attacking the officer.
- (m) The risk and reasonably foreseeable consequences of escape.
- (n) The apparent need for immediate control of the subject or a prompt resolution of the situation.
- (o) Whether the conduct of the individual being confronted no longer reasonably appears to pose imminent threat to the officer or others.
- (p) Prior contacts with the subject or awareness of any propensity for violence.
- (q) Any other exigent circumstances.

**Necessary:** Officers will use physical force only when no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to affect a lawful purpose.

**Proportional:** To be proportional, the level of force applied must reflect the totality of circumstances surrounding the situation, including the nature and immediacy of any threats posed to officers and others. Officers must rely on training, experience, and assessment of the situation to decide an appropriate level of force to be applied. Reasonable and sound judgment will dictate the force option to be employed. Proportional force does not require officers to use the same type or amount of force as the subject. The more immediate the threat and the more likely that the threat will result in death or serious physical injury, the greater the level of force that may be proportional, objectively reasonable, and necessary to counter it.

#### **PARAMETERS FOR USE OF NON-DEADLY FORCE**

- 1) Where deadly force is not authorized, officers should assess the incident in order to determine which non-deadly technique or weapon will best de-escalate the incident and bring it under control in a safe manner. Police officers are authorized to use Department-approved non-deadly force techniques and issued equipment and training for the resolution of incidents, as follows:
  - a) To protect themselves or another from physical harm;
  - b) To restrain or subdue a resistant individual;
  - c) To bring an unlawful situation safely and effectively under control.
- 2) When in uniform, police personnel should carry a Department authorized intermediate force weapon such as an approved baton, or chemical irritant and a Department issued Electronic Control Device unless assigned to duties that are primarily administrative in nature.
- 3) Flashlights or other objects carried by officers should not be used as a substitute for an authorized non-deadly weapon.
- 4) Strikes to the head, due to the potential threat of serious injury, shall be limited in their scope, and applied only when objectively reasonable and necessary in response to subjects displaying assaultive behavior against an officer.
- 5) Officers should be aware that non-deadly force can become lethal either because of lack of proper training or by using techniques that are not authorized by the Department.
- 6) Various unarmed control techniques may be effective in controlling a physically or actively resisting individual. Officers may only apply those techniques for which they have successfully

completed Department approved training. Officers utilizing any unarmed control technique should consider:

- a) The degree to which the application of the techniques are applied given the level of resistance.
- b) Whether the person can comply with the direction or orders of the officer.
- c) Whether the person has been given sufficient opportunity to comply.

The application of any unarmed control technique shall be discontinued once the officer determines that compliance has been achieved.

### **DEADLY FORCE**

Use of deadly force is justified in the following circumstances:

- (a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes would be an imminent threat of death or serious bodily injury.
- (b) An officer may use deadly force to stop a fleeing subject when the officer has probable cause to believe that the person has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the officer reasonably believes that there is an imminent risk of serious bodily injury or death to any other person if the subject is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.

Imminent does not mean immediate or instantaneous. An imminent danger may exist even if the suspect is not at that very moment pointing a weapon at someone. For example, an imminent danger may exist if an officer reasonably believes any of the following:

1. The person has a weapon or is attempting to access one and it is reasonable to believe the person intends to use it against the officer or another.
2. The person is capable of causing serious bodily injury or death without a weapon and it is reasonable to believe the person intends to do so.

### **DE-ESCALATION/CONFLICT MANAGEMENT**

Whenever safe and feasible, officers will attempt to utilize de-escalation tactics and conflict management techniques in a manner consistent with department training.

Officers will use de-escalation techniques to prevent or reduce the need for force when it is safe and feasible to do so based on the totality of the circumstances. This includes continually assessing the situation and modifying the use of force as circumstances change and in ways that are consistent with officer safety.

Examples of De-escalation could include, but are not limited to:

- Placing barriers between an uncooperative subject and an officer
- Containing a threat
- Moving from a position that exposes officers to potential threats to a safer position
- Decreasing the exposure to potential threat by using: Back-up, distance/time, cover/concealment
- Communication from a safe position intended to gain the subject's compliance, using dialogue
- Any other tactics and approaches that attempt to achieve law enforcement objectives.

An officer's awareness of these possibilities, when time and circumstances reasonably permit, should then be balanced against the facts of the incident facing the officer when deciding which tactical options are the most appropriate to bring the situation to a safe resolution.

Mitigating the immediacy of threat gives officers time to utilize extra resources and increases time available to call more officers or resources. The number of officers on scene may increase the available force options and may increase the ability to reduce the overall force used. When feasible, officers should approach an individual whom they anticipate may be taken into custody back-up present or immediately available.

Consider whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors including, but not limited to:

- Medical conditions
- Mental impairment
- Developmental disability
- Physical limitation
- Language barrier
- Influence of drug or alcohol use
- Behavioral crisis

### **PROHIBITIONS**

The use of excessive force, unwarranted physical force, or unprofessional conduct by a Department member is prohibited and will not be tolerated.

Department members are prohibited from using force based on bias against a person's race, ethnicity, nationality, religion, disability, gender, gender identity, sexual orientation, or any other protected characteristic. Force used as punishment or retaliation is prohibited.

### **REPORTING USES OF FORCE**

Any physical application of force by a member of this Department **shall** be documented promptly, completely and accurately in an appropriate report. The officer **shall** explain and articulate the factors perceived and why he/she believed the use of force was justified and reasonable under the circumstances. The officer's justification of force used will be reviewed to determine whether the level of force used was in compliance with department standards and policy. Failure to adequately document the facts, circumstances, and inferences when reporting force may lead to the conclusion that the force used was in violation of policy.

A written report and a *Special Incident Review* will be required according to Department procedures, see *Special Incident Review Policy #138*.

- 1) Any use of force, threatened, deadly and non-deadly (exception handcuffing a compliant person(s);
- 2) Vehicle pursuits;
- 3) Use of canine for crowd control;
- 4) Officer assaulted;
- 5) SSU call-out;
- 6) Discharge of a firearm other than during training;
- 7) Use of a vehicle as deadly force;
- 8) Use of a roadblock;
- 9) Detention Area Incident;
- 10) Bias crime.

### **NOTIFICATION TO SUPERVISORS**

A supervisor will be immediately summoned to the scene and will comply with investigative procedures as required in any of the following circumstances:

- (a) The application caused a visible injury.
- (b) The application would lead a reasonable officer to conclude that the individual may have experienced more than a momentary discomfort.

- (c) The individual subjected to the force complained of injury or continuing pain.
- (d) The individual indicates intent to pursue litigation.
- (e) Any application of a Taser device or control device.
- (f) Any application of a restraint device other than handcuffs, shackles or belly chains.
- (g) The individual subjected to the force was rendered unconscious.
- (h) An individual was struck in the head or kicked.
- (i) An individual alleges any of the above occurred.
- (j) When an officer discharges a firearm outside the firing range.
- (k) When use of force results, or is alleged to have resulted, in death or injury.
- (l) When any deadly, less lethal, or non-deadly force weapon is used on a person.
- (m) When force is used beyond routine escort procedures to control a resisting combative subject.
- (n) When and Department action results in non-employee injury or death.

### **SUPERVISORY RESPONSIBILITY**

When a supervisor responds to an incident in which there has been a reported application of force, the supervisor is expected to:

- (a) Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- (b) Ensure that any injured parties are examined and treated.
- (c) Once any initial medical assessment has been completed or first-aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.
- (d) Identify any witnesses not already included in related reports.
- (e) Review and approve all related reports.
- (f) If there is an indication of potential civil litigation, the supervisor should notify the section Lieutenant.
- (g) Evaluate the circumstances surrounding the incident. If there is a question of policy non-compliance, further investigation may be appropriate.

In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

### **DEPARTMENT RESPONSE**

The abuse of police authority of the use of excessive force violates the constitutionally protected civil rights accorded to all citizens and constitutes the most serious breach of Departmental procedure. The willful violation of any individual's constitutionally protected rights by an employee of this Department **shall** subject the employee to severe disciplinary action, and may result in termination.

### **DUTY TO INTERCEDE**

Any law enforcement officer of the Department who is witness to or has knowledge of a situation in which an individual's constitutionally protected rights were willfully violated by an employee of the Department or any other law enforcement agency **shall** advise a member of the command staff of the situation as soon as possible.

Any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force. An officer who observes another employee use force that exceeds the degree of force permitted by law **shall** promptly report these observations to a supervisor and document their account in a memorandum.

Failure to comply with this rule will, for the purposes of administrative discipline, constitute aiding and abetting the original violator.

### **DEADLY FORCE INCIDENT**

When an officer's use of force causes death, the officer **shall** be placed on administrative leave after completing all internal investigative requirements, and **shall** remain on paid administrative leave until it is determined by the Chief that the officer is ready to return to duty.

The Department **shall** conduct both an administrative and criminal investigation of the incident.

### **ADMINISTRATIVE REVIEW OF CRITICAL INCIDENTS**

All reported uses of force should be reviewed by the command staff to determine whether:

- 1) Department rules, policy or procedures were violated;
- 2) The relevant policy was clearly understandable and effective to cover the situation;
- 3) Department training is currently adequate.

All findings of policy violations or training inadequacies **shall** be reported to the appropriate unit for resolution and/or discipline. There will be a regular review of use of force incidents by the appropriate Departmental authority to ascertain training and policy needs.

All use of force incident reports **shall** be retained as required by state law. An annual summary report of use of force incidents will be published and made available to the public.

### **TRAINING AND QUALIFICATIONS**

An officer should not use a weapon, deadly or non-deadly, unless qualified in its proficient use as determined by training.

### **INITIAL INSTRUCTION ON DEADLY FORCE AND FIREARMS USE**

All newly appointed police officers will be provided instruction on the use of force, deadly force, and the use of firearms prior to issuance of a firearm or authorization to carry a firearm in the course of employment.

The instruction is based on the Policy #201 "Use of Force," the Policy #204 "Use of Force: Firearms" and related instructional material required by the POST Board for peace officer licensure.

Newly appointed officers will be required to pass a Department examination on the above cited policies and Instructional Material. In addition, they will be trained and qualified with Department firearms before being authorized to carry them in the course of employment.

### **CONTINUED INSTRUCTION ON DEADLY FORCE AND FIREARMS USE**

All police officers will be provided with annual recurrent training in the use of force, deadly force, and the use of firearms. This training is based on regular firearms training/qualification (qualification periods may vary, but will never be less than once every six months), and the policies and Instructional Material cited in the previous section. Part of the training will consist of successfully passing a Department examination based upon firearms training and applicable policies. The examination may be given either in writing or by use of the Department's computer based training program.

### **USE OF FORCE TRAINING – RECORD KEEPING**

The training coordinator is responsible for the maintenance of written records of the Department's compliance with the requirements of annual training in accordance with Minnesota State Statute 626.8452, Subd. 4.

### **MEDICAL CONSIDERATIONS**

Once the scene is safe and as soon as practical whenever an individual is injured, or complains of injury, or requests medical attention, officers will: request medical assistance by fire personnel, paramedics, hospital staff or medical staff at the jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be

witnesses by another officer and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible.

The on-scene supervisor, or if not available, the primary handling officer shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force. This notification shall include a description of the force used and any other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration.)

Prior to booking or release, medical assistance shall be obtained for any person who exhibits signs of physical distress, who has sustained visible injury, expresses a complaint of injury or continuing pain, or who was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until he/she can be medically assessed.

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain (sometimes called "excited delirium"), or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Officers who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage away if appropriate.

By Order Of:



Chief of Police