

### **1.3.1 USE OF FORCE NECESSARY TO ACCOMPLISH LAWFUL OBJECTIVES**

Recognizing the sanctity of human life, and the necessity to preserve and protect the well-being of others, and us, police officers must insure that the use of force or lethal force occurs only when all other reasonable alternatives have been exhausted or deemed to be inadequate. Occasionally, in the performance of their duties, police officers may be required to use force or lethal force to effectively perform their responsibilities. Officers must be familiar with the authority and limitations, which governs the use of force and lethal force, and understand that instruments or processes, which constitute force or lethal force, may vary dependent upon the circumstances of each case. An instrument may be lethal or non-lethal, depending on its design or use.

Officers may use reasonable force when force is used only when necessary to accomplish lawful objectives and then only when all other reasonable means to accomplish the objective have been exhausted, or are deemed to be inadequate. Force used must be based on reasonable and articulable facts or beliefs, taking into consideration the totality of the circumstances. This includes officer-subject factors, special circumstances, levels of resistance, number of officers and/or offenders present, and the availability of other options. Lethal force may be used by officers only when they reasonably believe that the action is in defense of human life, including the officer's own life, or in the defense of any person in immediate danger of serious physical injury, and all other means have been reasonably exhausted. Lethal force may not be used to prevent the escape or flight of an offender whenever such offender presents no immediate danger to the officer or any other person.

#### **Use of Force Continuum**

The Use of Force Continuum is described in more detail in the Department's Use of Force training that is part of the Department's annual weapons training and certification.

#### **Drawing or Exhibiting Firearms**

Unnecessarily drawing or exhibiting a firearm limits an officer's alternatives in controlling a situation, may create unnecessary anxiety on the part of citizens, and may result in unwarranted and accidental discharge of the firearm. Officers should not draw or exhibit a firearm unless the circumstances surrounding the incident create a reasonable belief that it may be necessary to use the firearm to prevent serious physical harm or death to the officer or another. When an officer does draw or exhibit a firearm while handling an incident this is to be documented in the police narrative report for that incident. There is no requirement to file a use of force report for simply drawing or exhibiting a firearm.

#### **Display of Less-lethal Weapons**

Officers may display individually issued weapons, such as the collapsible baton or OC Spray whenever an officer feels that such display will have the effect of diminishing aggressive actions in any situation. Such display should also be coupled with verbal direction and/or a warning that if the aggressor does not cease the behavior, the officer will use the weapon. Officers should be aware that the display of a less-lethal weapon might have an agitating effect on an offender's aggressive behavior, which may require that the officer actually use the weapon. Officers should not display weapons as a "scare" tactic, but as a method of displaying that the

offender has to make a choice between decreasing his aggressive behavior and risking having the weapon used against him.

### **1.3.2 USE OF LETHAL FORCE**

Lethal force may be used by officers only when they reasonably believe that the action is in defense of human life, including the officer's own life, or in the defense of any person in **immediate danger** of serious physical injury, and all other means have been reasonably exhausted.

- **Reasonable Belief:** When facts or circumstances that 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.
- **Serious Physical Injury:** A bodily injury that creates a substantial risk of death, causes serious, permanent disfigurement, or results in long-term loss or impairment of the function of any bodily member or organ.

The use of lethal force when apprehending a "fleeing felon" must meet the same conditions as stated above.

### **1.3.3 WARNING SHOTS**

Officers are prohibited from discharging firearms for the purpose of firing "warning shots."

#### **Verbal Warning**

When officers are about to invoke lethal force, they will, when possible or practicable, issue a verbal warning to the suspect. In this warning officers will identify themselves as police officers and instruct the suspect to cease or stop whatever action the suspect is doing that has caused the officer to consider the use of lethal force.

#### **Shoot to Stop**

Officers will fire their weapons not to kill, but rather to stop and incapacitate an assailant from the actions that led to the determination that the offender presented a lethal force threat to the officer or another. For maximum stopping effectiveness and minimal danger to innocent bystanders, officers should shoot at "center mass" whenever possible.

#### **Shooting at or From Moving Vehicles**

Officers will not discharge a firearm at or from a moving vehicle except when all other reasonable means have been exhausted and it is necessary for the defense of the officer's life or the life of another person; or the officer has reasonable cause to believe that the suspect poses a significant and immediate threat of death or serious physical harm to the officer or others unless actions are taken to immediately stop the subject. Officers need to consider the risk created by a moving vehicle in which the driver might be incapacitated should they fire at it. Such risks

include loss of control over the moving vehicle and the likelihood of a crash. Officers should not expect that firing at the vehicle would render it immobile, even if it sustains potentially disabling damage.

### **Risk to Innocent Bystanders**

When officers are about to discharge their firearms, they will be cognizant of their field of fire and will not unnecessarily create a substantial risk of harm to innocent persons. When it appears likely, or when a prudent or reasonable person, would believe that an innocent person might be injured, officers will not discharge their firearms. One exception to this would be circumstances in which the suspect's actions create greater risk of harm to innocent persons than the risks posed by an officer firing his/her weapon.

### **Use of Firearms to Destroy Animals**

Officers may use a firearm to kill an animal in self defense, to prevent substantial harm to the officer or others, or in situations where the animal is so sick or badly injured that humanity requires its relief from further suffering. A seriously wounded, sick or injured animal may be destroyed only upon direction of a supervisor, and only after all attempts have been made to request assistance from the Animal Control Officer (ACO) and the animal's owner, if known. If available, the Animal Control Officer should be notified to determine if the animal can be saved or should be destroyed in a safe manner. Prior to discharging a firearm to kill an animal the officer must consult with the Officer-in-Charge to ensure that no bystanders are in the area, and ensure that all chance of ricochet is eliminated. If the animal is in an inhabited area, it should, if possible, be moved to a secluded spot away from all homes and buildings. If the animal is so large that it cannot be removed and/or firing cannot be done in a safe manner, consult with a veterinarian as to an appropriate alternative for disposal.

The destruction of vicious animals shall be guided by the same rules, unless such animal is an immediate threat of physical harm to the officer or another.

### **Use of Firearms While Under the Influence of Alcohol and/or Drugs**

Officer shall not carry or use any firearms while impaired by alcohol or drugs.

### **Security, Storage, and Safe Handling of Firearms**

Various civilians have access to the building on a daily basis. Due to facility design, suspects, victims, and witnesses may sometimes be left periodically unattended. Whenever an officer is in the department and removes his/her handgun, the handgun must be secured in a locked area that is not readily accessible to civilians, suspects, victims, or witnesses. Handguns or other weapons are to be placed in a locked locker, a locked room or in a handgun security locker so that they are not readily accessible to unauthorized persons.

Except for general maintenance, storage, or authorized training, officers will not draw or exhibit their firearm unless the circumstances create a strong suspicion to believe that it may be necessary to lawfully use the weapon in conformance with other sections of this order. All general maintenance must be done in the Department armory, or an area designated by the Department Armorer, at an approved range, or under safe conditions at the officer's residence.

No person other than a Newburyport Police Officer shall be permitted access to any Department-owned firearm, except for repair or maintenance as approved by the Department Armorer or with the express permission of the City Marshal. Officers will secure and store

firearms both on and off duty in such a way as to ensure that no unauthorized person will have access to or gain control over the firearm. Officers will secure the firearm with the Department-issued trigger lock(s) when appropriate and in accordance with MGL Chapter 140 § 131L. All departmental firearms kept at home must be secured in a safe place, which is unavailable to family members, especially children.

No weapon shall be taken from the department arsenal without the authorization of the Shift Supervisor or Officer-in-Charge. No weapon may be removed by personnel not authorized and qualified to use the weapon as provided for in Section 1.3.11 of this Policy.

Discharge of a firearm is permitted only when in conformance with the Lethal Force Policy as found in Policy # 1.3.2 or during firearms training. Officers may discharge their firearm for the purpose of practice or firearms training on an established shooting range, or for legitimate recreational or sporting purposes. Officers will exercise all normal safety precautions and obey all appropriate rules or directives while practicing or participating in firearms training on the departmental or other established ranges. (Refer to Firearms Training Policies, Procedures, Programs, and Assignments Policy, Policy #33.5.1).

### **1.3.4 USE OF LESS LETHAL FORCE: WEAPONS AND CONTROL TECHNIQUES**

Officers shall exercise due care if a decision is made to use a less-lethal weapon and/or control techniques. Less-lethal weapons and/or control techniques shall only be those issued and/or approved for use by the Department. Use of such weapons and/or control techniques shall conform to applicable Departmental Standards of Conduct, policies, procedures, and training.

#### **Authorized and Approved Weapons**

Less-lethal weapons that are approved for carry and use by officers are generally those commonly accepted for use by law enforcement officers, and more specifically, those listed and approved for use by the Newburyport Police Department. In this section is a listing of less-lethal weapons, which are approved for use by officers of the Newburyport Police Department. The weapons are listed under descriptive type or classification heading. Any weapon fitting the type or classification and which is not included in the listing may not be used by officers.

The use of such weapons shall be limited to defensive and control purposes and the officer will use only the reasonable amount of force necessary to overcome resistance or accomplish the police task. The use of such less-lethal weapons will be in accordance with established policy. Retraining and recertification will be conducted on an annual basis in departmental in-service training programs for all such weapons. Upon use of the less-lethal weapons, for other than training purposes, officers shall submit a "Use of Force" report in accordance to section 1.3.6 of this Policy.

Weapons not currently listed as approved may be added later as technology, need, or law changes and the City Marshal approves authorization. This section of this Policy will be revised to reflect any approved changes when that specific need arises.

#### **Less-lethal shotgun**

The Newburyport Police Department utilizes the Remington 12 gauge Model 870 "Wingmaster" shotgun. The ammunition utilized by the Newburyport Police Department is the following:

- ❑ Defense Technology Corporation of America 12 gauge, drag stabilized "bean-bag" rounds.

The less lethal shotgun may be used when;

- ✓ The suspect is armed and will not surrender.
- ✓ The suspect is actively resisting arrest.
- ✓ The suspect is threatening harm to others or himself.

### **ECW X2 TASER**

The Taser may be used when;

- ✓ Active resistance, Dry Stun
- ✓ Assaultive Behavior, Probe Deployment

### **Use of Force**

Whenever any officer in the performance of their duties, deems it necessary to utilize any degree of physical force upon the person of another, the degree of physical force shall only be that which is reasonable and necessary to affect the arrest, prevent escape, overcome resistance, gain compliance / achieve order or to protect others and themselves from bodily harm and that force must be decreased to a control maintenance level once the objective is achieved or the resistance action has stopped.

When feasible, a higher level of force should be taken only after the preceding level or levels have been considered and determined to be inadequate or inappropriate. Again, officers should use only the amount of force reasonable and necessary to accomplish the legitimate objective. "Reasonableness" of the use of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. While the use of reasonable physical force may be necessary in situations that can not be otherwise controlled, use of force may not be resorted to unless other reasonable alternatives have been exhausted or would clearly be ineffective under the particular circumstances.

In all use of force situations we must consider the following.

1. Hostage or potential hostages
2. Innocent bystanders or non-participants
3. Other officers and self.
4. Suspect / perpetrator.

### **Collapsible Baton**

All officers will be issued a Manadnock 21" collapsible baton in black finish, constructed of high impact aluminum. All officers in uniform wearing the duty belt when assigned to patrol duties or appropriate special details must carry this defensive weapon. Officers will have the collapsible baton with them when out of service on a call for service or self-initiated police activity.

## **Striking Implement Guidelines for the Collapsible Baton**

The use of these striking implements shall be restricted to quelling physical confrontations where higher levels of force are not necessary and lower levels of force would be inappropriate or have been ineffective. Baton Strikes techniques may include restraint holds, defensive blocks, and strikes directed toward nerve motor points, major muscle mass, or center body mass to stop an aggressor's actions or to neutralize an attack. Striking structural areas refers to baton strikes intentionally directed to the subject's face, torso, or joint areas. Strikes intentionally directed to these areas present an increased risk of physical harm, including, but not limited to, fractures, joint separations, soft connective tissue injury and lacerations. Strikes intentionally directed to these areas are an escalation of force from strikes delivered to center mass, nerve motor points, and large muscle mass groups. Such strikes may be necessary for an officer to defend himself or herself from extreme aggression or when strikes delivered to less vulnerable areas are reasonably determined to be inadequate.

## **Use of OC Pepper Spray**

OC Pepper Spray is intended for use in situations when force is necessary to control belligerent, uncooperative persons or when verbal controls are ineffective. OC can be used to control or affect an arrest on actively resisting persons. This product is designed as a viable alternative to physical contact between the officer and person(s) involved. Use of this product may greatly reduce the need for other types of physical force by the officer that could result in serious or potentially lethal injury to the officer, person(s) involved, or others present.

OC Pepper Spray is effective with most individuals, including persons under the influence of alcohol or drugs, or persons with mental health or emotional problems. The product is also effective against animals. OC Pepper Spray causes no permanent physical harm and the symptoms mentioned previously begin to dissipate without treatment in forty-five (45) minutes.

Officer are issued Punch 2 M#3 , Punch 3 M3 and Sabre Red Pepper Spray.

The use of OC Pepper is intended to prevent injury to the person(s) involved, the officer, and other persons present. The governing factor in the use of OC Pepper Spray is whether its use is reasonable and necessary. The use of OC Pepper Spray, as an intermediate weapon, may prevent the use of more severe physical force and may be used:

- To affect a lawful arrest, or when an officer is threatened with physical force and other means of controlling the offender, such as verbal commands and persuasion, have been ineffective in inducing cooperation.
- When a dangerous animal threatens an officer.
- In cases where the size or demeanor (combative, uncooperative) offender indicates that the officer or the offender would be endangered by the use of other physical forces.

Since OC Pepper can adversely affect individuals in the immediate area of the person against whom it is used, an officer should make every effort to avoid unnecessarily exposing bystanders. To achieve full effectiveness, two shots of OC Pepper should be sprayed directly at the eyes and face in one (1) to three (3) second bursts. Once the subject is disabled, discontinue use.

Since OC Pepper is a method of physical control, and may be used to overcome resistance to an officer's lawful authority, any arrest in which OC Pepper is used may be considered a "resisting arrest" incident. Any use of OC Pepper Spray, contrary to the direction of this policy, can result in revocation of the officer's right to use such action and may subject the officer to disciplinary action. Authorization to use or carry OC Pepper Spray may be revoked by the City Marshal at any time.

### **Reporting the Use of OC Pepper Spray**

Whenever an officer uses OC Pepper Spray against another person, (other than in training exercises) a "Use of Force" report shall be submitted by the officer in accordance to procedures outlined in Section 1.3.6 of this order. In addition to the requirements in Section 1.3.6 "Use of Force Report" the contents of such report shall also include:

- All circumstances surrounding the use of OC Pepper;
- Effects on the offender that were caused by OC Pepper;
- First aid measures given, or offered to the offender to neutralize or alleviate the effects of the product;

Officers will only indicate injuries to persons exposed to OC Pepper Spray in cases requiring medical treatment beyond "normal after care" from the proper application of the chemical agent. The injuries will be indicated in all applicable reports. All accidental use of OC Pepper Spray are required to be documented, via the "Use of Force" report to the officer's Supervisor or the Officer in Charge and the City Marshal.

### **Cautions**

Whenever any weapon is used as an impact weapon, except when lethal force is warranted, great care is to be taken to avoid striking a person in the head, neck, spine, tailbone, kidneys, or solar plexus. Strikes to these areas present a high potential for inflicting death or serious physical harm

Officers must be aware that even weapons that are classified as less-lethal weapons may, under some circumstances, be used in such a manner so as to fall within the parameters of the "Lethal Force Policy." An officer must consider the potential consequences when any weapon is employed. An officer may employ as a weapon, in an extraordinary circumstance of necessity, a device, instrument, or process not normally classified as a weapon. All policies, procedures, and rules and regulations governing weapons and the use of force are applicable if this occurs.

Current departmental training standards are outlined in the most current Training Bulletin on police procedure entitled "Use of Batons, other Less-lethal Weapons, Control & Compliance Techniques, and Defensive Weapons."

### **Approved Compliance and Control Techniques**

The majority of arrests handled by officers of this department are made peacefully. In most cases, the arrestee is handcuffed, searched, and transported without incident. On occasion, police officers are faced with an uncooperative individual or one who refuses to be placed in custody and other alternatives would be inappropriate or have been ineffective. Incidents of this nature require officers to use some combination of strength, leverage, takedowns, holds, and "come-alongs" with sufficient force to make the lawful arrest without unnecessarily aggravating the situation. The object of this level of force is to gain control and compliance while

minimizing the risk of injury to the officer, the person being placed in custody, or innocent bystanders.

Approved and Authorized Compliance and Control Techniques Includes But is not limited to the Following:

### **Escorts or Balance Displacement**

These are low-level force techniques, which are designed to permit an officer to move a mildly noncompliant subject without use of strikes, pain compliance techniques, or joint locks. In some situations, although there is no real resistance, the subject may offer some reluctance in complying. Under these circumstances, some form of physical maneuvering may be required in order to escort the individual from one location to another. This level of force, by definition, would preclude the suspect from experiencing any pain or sustaining any injuries.

### **Soft Empty Hand Compliance Techniques**

These include physical joint manipulations, use of pressure points and compliance techniques such as arm locks, wristlocks, and pressure point applications, which use pain to gain compliance with minimal chance of physical harm. Officers should be aware that pain compliance is not always an effective methods, depending upon several factors, including: individual pain tolerance, alcohol or drug use which lessens an individual's sensitivity to pain, mental disturbance which lessens an individual's sensitivity to pain, or a response to the pain stimulus from increased adrenaline which lessens the individual's sensitivity to pain while simultaneously increasing the individual's strength and ability to resist the officer.

Takedown maneuvers are soft empty hand compliance techniques that provide an officer with a mechanical advantage for controlling a subject or taking the subject to the ground. Included are techniques such as transport wristlocks, bent or straight-arm-bars, or close quarter personal control takedowns.

### **Hard Empty Hand Strikes to Large Muscle Mass Area**

These strikes are designed to temporarily interrupt motor function to the target area for the purpose of overcoming active or aggressive resistance, or as a method of taking the aggressor to the ground for control. Strikes delivered to these areas can reasonably be expected to result in minor, temporary physical injury and pain. These include empty hand strikes, pushes, knee strikes or kicks directed to major muscle groups such as the thigh, calf, forearm, biceps, or associated nerve motor points such as the area of the common peroneal nerve, tibial nerve, radial and median nerves.

### **Hard Empty Hand Strikes to Structural Areas**

These strikes are designed to temporarily interrupt motor function to the target area for the purpose of overcoming active or aggressive resistance, or as a method of taking the aggressor to the ground for control. Strikes delivered to these areas can reasonably be expected to result in minor, temporary physical injury and pain, however since structural areas are involved, more severe results may occur. These include empty hand strikes, pushes, knee strikes or kicks directed to structural areas such as the knee, elbows, and other joints

The use of carotid restraint, lateral vascular neck restraints, and similar control techniques are not authorized for use by this Department personnel due to the inherent danger involved in



the use of such techniques. Training will be provided during annual use of force training on these techniques and the risks they pose.

### **Less Lethal Weapons Certification and Training**

The Administrative Lieutenant is responsible for maintaining a list and descriptions of approved less-lethal weapons and compliance and control techniques. In addition, the Administrative Lieutenant is responsible for the development and conducting of any required certification program for such weapons and techniques. Such certification may require classroom training, practical training, and proficiency testing which the City Marshal deems necessary or appropriate for the different type or classification of less-lethal weapon. Any questions relating to a less-lethal weapon not listed as approved are to be directed to the Administrative Lieutenant for consideration and resolution. Only the City Marshal has the authority to approve less-lethal weapons for use by officers of this Department.

All of these weapons require training, proficiency testing, and certification before the officer may carry them. All officers must be trained and complete certification for each of the above listed approved and authorized less-lethal weapons prior to being authorized to carry such weapons. An officer who has been certified as an instructor for each individual less-lethal weapon will conduct such training and certification. All of these same requirements apply to “Compliance and Control Techniques.”

### **Prohibited Weapons**

Officers are prohibited from carrying or using any weapons in the performance of their duties not authorized by the City Marshal. These prohibitions do not prohibit an officer from confiscating such weapons from other persons and transporting such weapons to the police department, court, etc.

This policy is not directed at knives or other cutting devices that officers carry.

### **1.3.5 ENSURING APPROPRIATE MEDICAL AID AFTER USE OF FORCE INCIDENTS**

When an officer finds it necessary to use force to effect an arrest, or for any other purpose, the officer shall determine whether or not the person is injured, and arrange for appropriate medical treatment of any injury. In addition, the officer will notify the Shift Supervisor or Officer-in-Charge that force was used, and if any injuries resulted from the use of force. Any time a person in custody is injured through no fault of the officer, the officer shall notify the Shift Supervisor or Officer-in-Charge as soon as circumstances allow. When any person complains that an officer has injured him or used unnecessary force against him, the officer is to immediately notify the Shift Supervisor or Officer-in-Charge.

Any time a person has visible injuries, complaints of being injured, or alleges he/she was injured as a result of force used against him/her by an officer, the officer must take appropriate actions to provide medical care for the injured person. This includes, but is not limited to, administering first aid, transporting the person to a hospital or other medical facility, requesting an ambulance, or arranging for other transportation to a hospital or emergency medical facility.

If the person refuses treatment at the hospital, the name of the attending physician, nurse or other hospital employee to whom the refusal was made shall be recorded in the police records

and narrative report. Additionally, other witnesses to the refusal (police officers, etc.) shall be listed in the report. If the injured person was offered, but refused treatment at a location other than the hospital, the names of witnesses (police officers, civilians, ambulance personnel, etc.) to this refusal shall be included in the report. If the injured person is unconscious or unable to either consent to treatment or refuse permission for treatment as a result of injuries received in a use of lethal or less-lethal force, the person shall be deemed to have not refused to give consent for the treatment of any injury.

Officers involved in "Use of Force Incidents" will complete and submit required reports. The primary officer involved in the use of force shall submit a "Use of Force Report." This "Use of Force Report" shall be in accordance with the requirements set forth in this Policy.

Any time a person has visible injuries, complains of being injured, or alleges he/she was injured as a result of force used against him/her by an officer, the Shift Supervisor or Officer-in-Charge will respond to the appropriate location (scene, police department, hospital, etc.) as soon as possible. In such cases the Shift Supervisor or Officer-in-Charge will, where warranted, take necessary photographs of the person's injuries and attach those photographs to the Use of Force Report.

This includes all lethal, less lethal and weaponless tactics used.

### **1.3.6 USE OF FORCE REPORTING**

Any Newburyport Police Department Officer shall complete a Departmental "Use of Force Report" whenever they:

- Discharge a firearm for other than training or recreational purposes,
- Take an action that results in, or is alleged to have resulted in, injury to or the death of another person,
- Apply force through the use of lethal or less-than lethal weapons; or
- Uses control techniques or such other lesser level of force to overcome resistance.

These include any technique above simple escort techniques. Examples of weaponless force include punches, kicks and takedown maneuvers.

#### **Officer's Responsibilities**

The officer shall verbally notify the Shift Supervisor or Officer-in-Charge, of the "Use of Force" incident when an officer finds it necessary to use force to affect an arrest, or for any other purpose, this notification should take place as soon as circumstances allow. In addition, the officer will advise the supervisor if any injuries resulted from the use of force. All officers involved in or witnessing "Use of Force" incidents, whether on-duty or off-duty, will complete and submit a "Use of Force Report." A "Use of Force Report" shall also be prepared and submitted whenever an officer is involved in a traffic crash during which, the officer or suspect used a vehicle as a weapon, or instrument of force.

The primary involved officer has the responsibility for completing the "Use of Report Form" and attaching any other additional reports, including, if necessary, supplementary reports. Such supplementary reports may be prepared using existing report forms, i.e. narrative reports,

statement forms, supplements, inter-office e-mail correspondence, etc., as an addendum. In most cases the officer's narrative report will suffice for purposes of the narrative report in addition to the "Use of Report Form" if it includes the necessary information. In such cases the primary officer need only write, "Refer to narrative report for further details" in the narrative section of that, report form.

All "Use of Force Reports shall be completed in accordance with the requirements set forth in this Policy. The officer in such circumstances should complete an Inter-Office-Memo containing further details not appropriate for the police incident report.

"Use of Force Reports" must be detailed and comprehensive, and contain the required information such as:

- time, date, location, nature of offense, and basic facts of case;
- what precipitated the incident;
- amount and type of force used, any weapons or instruments used ( if applicable);
- results of the use of force;
- end result of the incident;
- type and extent of injuries sustained by any persons involved in the incident;
- medical treatment provided, received, or offered (if applicable);and
- names, addresses, and statements, if possible, from participants and witnesses.

If practical, photographs of any injuries should be taken and these should accompany the "Use of Force Report."

All "Use of Force Reports" must be completed and forwarded to the Shift Supervisor or Officer-in-Charge as soon as practical after the incident, but no later than the end of the officer's current duty shift. Off-duty officers shall submit this report as soon as practical, but no later than 24 hours after occurrence of the "Use of Force" incident. These deadlines may be extended with the proper authorization of the Lieutenant's or City Marshal on a case-by-case basis.

#### **Shift Supervisor or Officer-in-Charge Responsibilities**

- When a "Use of Force" incident occurs the Shift Supervisor or Officer-in-Charge has the primary responsibility to make certain that all necessary "Use of Force Reports" are submitted and that the reporting requirements are completed as required by all officers under their command. When a Shift Supervisor or Officer-in-Charge is notified of a "Use of Force" incident involving an officer, it is that supervisor's responsibility to receive the Use of Force Report review it and forward it to the Lieutenant.

### **1.3.7 REVIEW OF USE OF FORCE REPORTS/INCIDENTS**

#### **Formal Use of Force Investigation and Review**

Formal Use of Force Investigation and Review will be required in those "Use of Force" incidents where a more formal investigation of the incident is necessitated due to the extent of the injury or special circumstances of the case. While all reports will be reviewed by the Lieutenant only certain Use of Force incidents will be formally investigated. These would

include those incidents where the use of force utilized by the officer results in serious injury or death and this would include, but is not limited to incidents such as;

- incidents where an complaint against an officer has been filed;
- incidents resulting in serious injury or death;
- incidents where an officer used lethal force;
- incidents where an officer intentionally discharged a firearm; and
- incidents where the Lieutenant or City Marshal determines that a formal investigation is necessary due to other circumstances present.

Such investigations will require a "Formal Administrative Investigation" and dependent upon the circumstances and a case-by-case analysis may require a separate "Criminal Investigation" being conducted on the "Use of Force" incident.

All "Use of Force" incidents will require an "Administrative Investigation" regardless of whether it is a "Routine" or a "Formal" investigation or review. In some cases there may be two departmental investigations in progress. One will be an "Administrative Investigation" and the other one will be a "Criminal Investigation." These investigations, when conducted in regard to the same incident, shall be conducted separately and independently. Two separate and distinct officers are to be named to conduct each of these investigations. The investigating officer for each investigation will be approved and appointed by the City Marshal. In some cases the "Administrative Investigation" may not proceed until the "Criminal Investigation" has been completed and submitted to the City Marshal for review. The City Marshal will make this determination.

No officer, regardless of rank or position within the Department, is to be involved in the review of any Use of Force incident in which he/she was directly involved. Supervisors involved in a "Use of Force" incident (Shift Supervisors, Officers-in-Charge, Lieutenants, and the City Marshal), will forward a report to the next level of command, not involved in the incident detailing the incident. Review will start at that next level of command.

### **Shift Supervisor or Officer-in-Charge Responsibilities (Routine Incidents)**

The officer's Shift Supervisor or Officer-in-Charge will personally investigate the incident. After conducting a thorough investigation of the circumstances related to the "Use of Force," the investigating supervisor shall submit a report in the form use of force report to the Lieutenant. In addition to the results of the investigation, this report shall also include all of the relevant facts and circumstances surrounding the incident including, but not limited to:

- Whether the "Use of Force" was justified in accordance to this Policy;
- Whether the action was consistent with departmental policy and procedures;
- Tactical considerations;
- Training considerations to include recommended changes in an existing training programs(s) or the creation of a new program(s);
- Quality of supervision;
- Counseling or disciplinary considerations;
- Equipment upgrade recommendations;
- Post incident investigative processes and their quality;
- Policy and procedure considerations to include recommended changes in existing policy and procedures or creation of Policies.

In the event the Shift Supervisor or Officer-in-Charge was involved and participated in the use of force incident the Shift Supervisor or Officer-in-Charge will cite this information in the report.

### **Lieutenant Responsibilities (Routine Incidents)**

After conducting a thorough investigation of the circumstances related to the "Use of Force," the investigating supervisor submits a report in the form of an "Use of Force Report" to the Lieutenant. The Lieutenant shall review the report and if he/she concurs with the Shift Supervisor the Lieutenant will maintain the report for annual use of force analysis.

Specifically, the report shall include the relevant facts and circumstances surrounding the incident, the investigation, and review of the incident by the Lieutenant and a conclusion as to whether the use of force was justified and in compliance with the guidelines and policies as outlined in this Policy. The Lieutenant is required to review all such reports, develop findings, and make recommendations in the appropriate following areas:

- Whether the action was consistent with departmental policy and procedures;
- Tactical considerations;
- Training considerations to include recommended changes in an existing training programs(s) or the creation of a new program(s);
- Quality of supervision;
- Counseling or disciplinary considerations;
- Equipment upgrade recommendations;
- Post incident investigative processes and their quality;
- Policy and procedure considerations to include recommended changes in existing policy and procedures or creation of Policies.

This report, along with all other relevant information shall be forwarded to the City Marshal.

### **Use of Force Report and Investigation Review by the City Marshal (Routine Incidents)**

The City Marshal will review all reports and findings from the "Use of Force" incident and determine whether the actions of officers/employee involved in the incident were justified and in compliance with Department policy. If the City Marshal determines that a "Use of Force" incident is not within policy and that remedial training, counseling and/or disciplinary action is warranted, the City Marshal will institute procedures for such in accordance with Department Policy. The City Marshal will report to the officer(s) involved, the Shift Supervisor or Officer-in-Charge, and the Lieutenant, his findings, in writing, at the conclusion of each "Use of Force" incident review submitted to his office.

### **Formal Use of Force Incidents: Report and Investigation**

When the on-duty Shift Supervisor or Officer-in-Charge becomes aware that an officer has been involved in a "Use of Force" incident which has resulted in death or serious injury to any person they will immediately report the incident to the Lieutenant and to the City Marshal. This also includes those cases where any firearm is accidentally or purposefully discharged

which results in injury or death to any person. "Use of Force" incidents meeting these criteria may include both on and off duty incidents. After such notification the City Marshal will appoint a supervisor(s) to investigate the incident and report the findings directly to the City Marshal.

### **Officer Responsibilities: Formal Investigations**

When an officer is involved in any incident that results in death or serious injury to another person, and the officer is not rendered unable to do so, he shall immediately do the following:

- determine the physical condition of any injured person and render first aid when appropriate;
- request necessary emergency medical aid;
- notify the Communications Center of the incident and location;
- request the Shift Supervisor or Officer-in-Charge respond to the scene.

The officer shall stay at the scene of the "Use of Force" until the appointed investigator arrives unless the officer is injured and requires treatment. The officer may also leave the scene of the "Use of Force" incident, if the officer's continued presence at the scene could incite problems from persons either sympathetic to a victim and/or hostile to the police. Otherwise, the officer's presence may result in an escalated situation. Furthermore, the officer may leave the scene if he/she has been directed to do otherwise by the supervisor.

The officer shall protect any firearm or weapon that was used in the "Use of Force" incident for examination, and submit it to the appointed investigator. The firearm or weapon is to be maintained in the same condition that it was in immediately following the conclusion of the incident. Security and preservation of the firearm or weapon and conditions concerning the incident will be more fully covered in other pertinent policies.

The officer is not to discuss the incident with anyone except:

- the appointed investigator;
- supervisors;
- the officer's attorney,
- union representative,
- or a member of the clergy; a physician; a psychologist; or immediate family.

The officer involved in such incidents shall not make any public statements except as provided, without the express consent of the City Marshal. The officer shall complete and submit a police narrative report and a "Use of Force Report" regarding the "Use of Force" incident through the chain of command to the City Marshal as outlined in this Policy.

### **Shift Supervisor or Officer-in-Charge's Responsibilities: Formal Investigations**

Upon being notified of an incident which results in death or serious injury to any person, or whenever any firearm is accidentally or purposefully discharged which results in injury or death to any person, the Shift Supervisor or Officer-in-Charge shall proceed immediately to the scene. The on-duty Shift Supervisor or Officer-in-Charge is responsible for securing the scene and preserving the evidence at the location of the incident until the assigned investigator arrives

and the investigation is formally turned over to him/her. Other duties of the Shift Supervisor or Officer-in-Charge are to:

- conduct a preliminary field investigation;
- request an investigator if the incident involves a shooting, serious injury, or death;
- Request an evidence technician when appropriate;
- Notify the Lieutenant or City Marshal;
- Render command assistance to the assigned investigator and/or evidence technician;
- Assist the involved officer(s);
- Submit a detailed written report in the form of a Use of Force Report detailing the events known to the supervisor;
- In the appropriate circumstances a detailed offense or crash report may also be required. The supervisor shall be responsible for taking the initial report. It may also be appropriate for the Shift Supervisor or Officer-in-Charge to submit an Use of Force Report through the chain of command detailing the facts of the incident.

The Shift Supervisor or Officer-in-Charge shall ensure that the involved officer's family is personally briefed as soon as practical by the officer, himself/herself, if the circumstances permit. If the officer is injured, the officer's family should be personally contacted and provided transportation with an informed officer to the treatment facility.

### **Investigation/Review/Reporting by Lieutenant's: Formal Investigations**

As a part of the Internal Affairs function, the City Marshal shall conduct or cause to be conducted an "Administrative Investigation" in each incident where the "Use of Force" has resulted in death or serious injury to any person, as a result of the actions taken by the officer.

The Administrative Investigation is subordinate to any necessary criminal investigation and will determine whether the officer's action was intentional or accidental, and whether the action was consistent with policy and procedure. The Administrative Investigation will also determine training considerations to include any of the following:

- The effect of training on the incident or need for revision in the training program;
- Drawing and exhibiting of a less-lethal weapon or firearm;
- Use of less-lethal weapon or firing of a firearm;
- Tactics prior to drawing/using a less-lethal weapon or firearm;
- Tactics during and following the use of a less-lethal weapon or during and following the discharge of a firearm; and
- The quality of supervision prior to, during, and following the incident.

Before interviewing or requesting written statements the Administrative Investigator shall advise the officer of his rights in an Administrative Investigation. These rights include:

- The right to know that the investigation is normally confined to the specific incident;
- The right to know whether or not he/she is suspected of misconduct and if so, what possible disciplinary action could ensue if the misconduct is sustained;
- That refusing to answer questions shall be grounds for disciplinary action, including possible dismissal;

- That the results of the internal investigation interviews will not be used against an officer in any subsequent criminal proceeding;
- That interviews, as much as practical and depending on the need, will be conducted during the officer's on duty time;
- That the officer shall, upon request, be provided with a copy of any statement given by her/her;
- That if there is a possibility of criminal charges being brought, the Administrative Investigator will not conduct the criminal investigation;
- The criminal investigation is separate from the administrative investigation; and
- When appropriate, any indications of equipment failure or inadequate equipment being involved in the incident.

Based on the above requirements, the Administrative Investigator will prepare a detailed report about the incident. This detailed report will be forwarded through the chain of command to the City Marshal and shall include the investigator's recommendation for any remedial training, counseling, or disciplinary action. The report also may contain any recommendation as to a need for a new training program(s), changes in existing training program(s), or review of existing Policies, or equipment upgrades.

### **The Criminal Investigation; Lieutenant's**

A thorough criminal investigation will be conducted into every "Use of Force" incident by a police officer, which results in death or serious injury to any person or any traffic crash which results in serious injury or death in which there is reasonable suspicion to believe that criminal conduct on the part of the officer was involved. Investigations into police "Use of Force" incidents will commence on the scene as close in time to the incident as possible. At the discretion of the City Marshal, similar investigations may be conducted into less serious use of force incidents and traffic crashes which involve officers of this department. Criminal investigations of police shootings, use of force incidents, and traffic crashes will be conducted by an investigator appointed by the City Marshal. If required by statute the investigation may be done by the State Police, the District Attorney or the Attorney General.

In most cases, one of the Lieutenant's will be named as the primary criminal investigator. However, other officers may be named to assist in the criminal investigation dependent on the individual case and its complexity. The appointed criminal investigator(s) shall proceed immediately to the scene, when notified, and take charge of the scene.

The on-duty Shift Supervisor or Officer-in-Charge will report to the scene of all such incidents and act as the Scene Commander of all such incidents until relieved by the assigned investigator or superior officer. The on-duty Shift Supervisor or Officer-in-Charge is responsible for securing the scene and preserving the evidence at the location of the incident until the assigned investigator arrives and the investigation is formally turned over to him/her. Any officer, regardless of rank, shall assist as requested by the investigator assigned to conduct such an investigation.

The appointed investigator shall take possession of the firearm or weapon involved in the "Use of Force" incident as soon as it is practical to do so, be it a Department issued duty handgun or other authorized weapon. The investigator should not take the firearm or weapon from the officer immediately at the scene if it will leave that officer unarmed and in a position of danger. In such cases if it is vital to immediately take the firearm the investigator should make



arrangements to immediately replace that firearm by giving the involved officer his/her firearm temporarily, taking the officer to the Department to receive the firearm, or some other reasonable alternative. Additionally, whenever possible, to reduce trauma, the investigator should avoid taking the officer's firearm in public view unless absolutely necessary to preserve the evidence. It is generally considered a better alternative to take custody of the firearm in a private location, out of public view. The investigator shall attempt to remove the involved officer(s) from the scene as soon as possible. This is all dependent on the individual case. When the officer's firearm/weapon is taken into custody by the investigator he/she shall prepare a receipt for the officer describing the firearm/weapon. If the weapon is a firearm the description should include the make, model, caliber, and serial number. Each shall retain a copy of the receipt, initialed by the officer and the investigator.

The investigator will examine the firearm(s) of all officers present at the scene when shots were fired to include secondary firearms and firearms in police vehicles. If a less-lethal weapon was used, the investigator will examine all weapons of those officers present at the scene where the incident occurred.

The appointed investigator shall conduct a thorough investigation of the "Use of Force" incident and will prepare a detailed report containing all factual findings and conclusions relevant to the incident. Reports and statements will be taken from all officers and witnesses. The assigned investigator is responsible for separating, securing, and interviewing all on-scene witnesses to the incident. The investigator will determine if the "Use of Force" resulted in injury to any persons or property.

When investigating incidents involving a firearms discharge, the investigator will attempt to account for each round fired and to determine the path and terminus of each, including fragments. He/she will seize samples of unspent ammunition from those officers who have fired their weapons. He/she will seize the firearms and weapons, which may have been used for the purpose of obtaining ballistic samples in accordance with previously outlined procedures above.

If any person is injured or struck by the discharge of a firearm, the investigator will detail the location and severity of each wound. The investigator will recover and preserve all pertinent physical evidence. The investigator will secure telecommunication recording when appropriate. If appropriate, the investigator will cause photographs, measurements, diagrams, and sketches to be prepared. The investigator shall conduct, or order conducted any other investigatory processes or procedures deemed necessary. The assigned investigator will be responsible to secure prosecution of suspects involved in the shooting incident.

All assigned investigators of the police shooting will abide by all guidelines outlined in other process and the police officer's labor agreement in the investigation of the incident and the interviewing of police officers. All officers and Department personnel involved in an officer-involved shooting or other Use of Force Incident will cooperate fully and completely with the assigned investigators, sharing all information with the investigators.

The investigator shall avoid having any of the officers involved in the incident conduct any investigation and/or interviews relevant to the incident. The investigator shall ensure that the involved officer(s) is transported to a nearby hospital within two hours of the incident for the collection of blood and urine specimens, and that the samples are submitted for analysis in order to detect any alcohol and/or drugs. The investigator shall be responsible for obtaining hospital, autopsy, laboratory, and photographic reports.

During a criminal investigation into a Use of Force Incident, prior to interviewing or requesting written statements from the involved officer(s), the investigator shall advise the

officer(s) of his/her Constitutional Rights. The assigned investigator shall submit the criminal investigation report through the chain of command and shall be responsible for presenting the case to the prosecutor in those instances where appropriate.

All incidents, which involve serious injury or death to a person as a result of discharging of a firearm or use of any lethal weapon, will be presented to the District Attorney's Office for review. If it is determined that departmental personnel may be charged with a crime as a result of the "Use of Force" incident, the City Marshal will coordinate the Department's activity in this regard with the respective District Attorney.

### **Use of Force Report and Investigation Review by the City Marshal: Formal Incidents**

All "Formal Use of Force Reports" (both Administrative and Criminal Investigations) will be submitted to the City Marshal for review. Copies of all investigative reports, sketches, pictures, etc., of the incident under investigation will be forwarded through the chain of command as soon as possible. The City Marshal will review all reports and findings from the use of force incident and determine whether the actions of officer(s) involved in the incident were justified and in compliance with department policy. If the City Marshal determines that a use of force incident is not within policy and remedial training, counseling and/or disciplinary action is warranted, the City Marshal will institute such procedures in accordance with Department Policy. The City Marshal will report to the officer(s) involved, the Shift Supervisor or Officer-in-Charge, and Lieutenant his findings, in writing, at the conclusion of each "Use of Force" incident review submitted to his office.

Throughout the course of the investigation, officers will not be denied their due process rights and will be notified of any specifications of violations of Department policy, procedure, rule or regulation, ordinance or law against them. Officers shall be periodically advised as to the current status of the investigation and review, and provided the results of the conclusion of the investigation and review.

After the investigation of the incident has been completed the City Marshal or his designee may confer with the City Solicitor, the Mayor, and District Attorney's Office. If appropriate, the findings of the investigation will be turned over to the District Attorney's Office.

### **1.3.8 OFFICER /EMPLOYEE REASSIGNMENT DURING ADMINISTRATIVE REVIEW OF USE OF FORCE INCIDENTS**

It is the policy of the Newburyport Police Department to attempt to strike a balance between the rights of the community and those of the individual officer/employee involved in a use of force incident or other critical incident involving serious physical harm or death to any person. As such, when death or serious physical injury has resulted from the use of force by a firearm or other means by an officer/employee (or civilian ), that officer/employee will, as soon as practical, be released from line duty by the supervisor pending a full investigation into the incident by the Department This investigation will be done by a supervisor not involved in the incident. . This is administrative leave and there will be no loss of pay. This leave will continue until terminated by the City Marshal following an administrative review of the incident. This review will be held as soon as practical following the incident. During the period of time an investigation into the incident is being conducted, the officer/employee will attend at least one professional counseling session to address the personal and emotional needs arising from such an incident. The City Marshal will name the professional counselor. The City Marshal may require

additional counseling sessions based upon recommendations from the counselor and as deemed necessary for the good of the employee. Such relief from duty will not be considered a suspension or disciplinary action taken against the officer/employee, but rather an administrative course of action for the purpose of relieving the person from further performance of duties while participating in stress counseling and permitting the Department time to conduct an objective investigation into the matter. The City Marshal, based on the counselor's recommendations, will determine the period of time spent on administrative leave.

While on administrative leave the officer/employee shall remain available at all times for official Departmental interviews and statements regarding the incident, and shall be subject to recall to duty at any time. The officer/employee shall not discuss the incident with anyone except as follows;

- the prosecutor or prosecutor's investigator;
- departmental personnel assigned to the investigation;
- other Department and City officials as determined by the City Marshal;
- the officer/employee's private attorney, psychologist, physician, clergy, union representative, and immediate family.

Upon returning to duty, the officer/employee may be assigned to administrative duty for a period of time as deemed appropriate by the City Marshal. This alternative may also be exercised instead of administrative leave where the City Marshal deems it appropriate and the officer/employee requests such.

Administrative leave and administrative assignment in these situations requires the approval of the City Marshal.

### **Psychological Services**

In all cases where a person has been seriously injured or killed as a result of a firearm discharge, or killed as a result of any other incidents, the involved officer will be required to undergo an emotional debriefing conducted by a Department furnished psychologist within five days of the incident. This should occur within 24 hours if at all possible, depending upon the physical condition of the officer/employee and the availability of the psychologist. The psychologist will be retained and paid for by the Department

The purpose of this debriefing is to allow the officer/employee to express his/her feelings and to have assistance in dealing with any moral, ethical, or psychological after-effects of the incident. The debriefing shall not be related to any departmental investigation of the incident. Nothing discussed in the briefing will be reported to the Department, unless it relates to the officer/employee's fitness to return to duty. The debriefing sessions are protected by a privileged professional psychologist's code of ethics and Physician/Patient Relationship.

In addition to the services provided to the officer/employee, his/her immediate family will have available to them the services of the Department furnished psychologist. The purpose of this offer is to provide the family with a source of professional consultation to aid them in dealing with the potential moral and ethical after effects of the incident. The services shall not be related to any department investigation of the incident and nothing discussed need be divulged to the department. The consultations will remain protected by the privileged relationship.

### **Legal Representation**

An officer/employee's private attorney may be immediately notified by or for any officer/employee involved lethal force incident when the officer/employee requests the attorney be so notified. The attorney may assist the officer/employee in drafting a formal statement as to the underlying facts and reasonableness as perceived by the officer/employee to justify the use of lethal force. The attorney should continue to assist the officer/employee during post-incident investigations, including criminal, civil, and Federal Civil Rights actions. All communications between the officer/employee and attorney are privileged and must remain confidential unless released by authority of the officer/employee.

### **The Civil Rights Investigation**

The department will respect the rights of the Federal Government to conduct an independent investigation to identify any Civil Rights violations that may have resulted due to an officer/employee's use of force. Federal government requests to interview an officer/employee shall be made in writing and directed to the City Marshal. The Department will not order any officer/employee who may be suspects or targets of the investigation to confer with Federal investigators without the officer/employee first being afforded the opportunity to consult with his attorney.

## **1.3.9 AUTHORIZED DUTY WEAPONS AND AMMUNITION**

### **General Guidelines**

It is the policy of the Newburyport Police Department that only weapons and ammunition authorized and approved by the City Marshal shall be used by Departmental Personnel in the performance of their law enforcement duties, either on or off duty, as authorized in this Policy; inclusive of the following use;

- The types and specifications of all lethal and Less Lethal weapons approved for use;
- The types and specifications of ammunition approved for use;
- The procedure for review, inspection, and approval of all weapons intended for use by each employee in the performance of duty, prior to carrying, by a qualified weapons instructor or Armorer, and a process to remove unsafe weapons; and
- The procedure for maintaining a record on each weapon approved by the City Marshal for official use.
- This directive does not include weapons used for hunting or range activities.

### **LETHAL WEAPONS: AUTHORIZED AND APPROVED;**

Only Sworn Police Officer/employees Who Have Completed Departmental Training, Proficiency, And Certification Standards Will Be Issued and/or Authorized to Carry or Use Any Firearm for Departmental Purposes.

### **Department Issued Duty Handgun**

The Department Issued Duty Handgun shall be the Glock Model 22/23/27, 40 caliber, semi-automatic pistol. All sworn officer are required to carry this gun as their duty handgun while on-duty at all times. Officer will train annually and qualify with their issued Glock. Officer

trained and who qualify with their issued Glock are certified for all Department issued or department type Glock.

The Department Armorer is responsible for the issuance of Departmental Issued Duty Handguns to each individual officer. The armorer will determine whether an officer is to be issued a Glock Model 22 or Glock Model 23 or Glock 27. All maintenance problems and requests are to be directed to the Department Armorer.

Officers are authorized, but not mandated, to carry a handgun while off duty. An officer who elects not to carry a handgun while off duty shall not be subjected to disciplinary action if an occasion should arise in which he/she could have taken police action if he/she were armed.

The following stipulations apply to carrying of handguns while off duty.

- All officers who elect to carry a handgun while off-duty shall have their badge of authority and police identification physically in their possession;
- All officers while carrying a handgun off-duty shall comply with all requests or demands from law enforcement personnel to show either the badge or identification;
- Officers who carry an off-duty handgun must wear it in such a manner that it is concealed and not unnecessarily exposed to public view; and

The Newburyport Police Department issues every sworn officer a Department Issued Duty Handgun as the officer's primary on-duty handgun. The Department Issued Duty Handgun is also the authorized Departmental Issued Off-Duty Handgun that may be carried by an officer.

**ALL OFFICERS WHILE ON THEIR REGULAR DUTY ASSIGNMENT MUST CARRY THEIR DEPARTMENT ISSUED DUTY HANDGUN AS THE PRIMARY HANDGUN.**

Prior to being authorized to carry such handguns the officer must successfully complete the departmental certification with every department issued or authorized weapon.

**Department Authorized and Issued Ammunition for Handguns**

Officers are required to carry Department authorized and issued ammunition in authorized Department Issued Duty Handgun(s) and Authorized Secondary Handgun(s). The Department will supply all ammunition used for practice, proficiency certification testing, and for use while on-duty. The Department will issue 40 caliber, 180 grain, of the following brands:

- ❑ Gold Dot Speer
- ❑ Magtech
- ❑ Winchester Ranger
- ❑ Winchester

The Department Armorer is responsible for the issuance of Department authorized and issued ammunition. Each officer will be issued a sufficient number of rounds to fill the Departmental Issued Handgun and the two extra magazines to capacity. All officers will carry two extra magazines (fully loaded) of Department authorized and issued ammunition in the magazine pouch of their duty gun belt when in uniform performing routine patrol duties. Officers carrying off-duty or secondary handguns, which have been authorized, will also be provided with the necessary amount of ammunition for all such firearms. The Department Armorer will keep records showing the disbursement of the new and collection of the old

Department issued ammunition, at least annually. The Department will replace ammunition that has been fired for legitimate purposes as the need arises.

Only Department authorized and issued ammunition for all Departmental approved firearms shall be carried or used in any firearm for any purpose. The authorized ammunition for all purposes shall be as set forth in a Special Order related to this subject approved annually by the City Marshal. Any firearm approved by the Department and any ammunition carried by an officer is subject to inspection at any time by a supervisor or Firearms Instructor. Periodic inspections of all authorized and issued firearms are to be conducted by the Armorer.

### **Department Issued Primary Shotguns**

The primary shotguns utilized by the Newburyport Police Department are (3) three Remington 12 gauge pump shotguns. Such shotguns shall have the magazine fully loaded with Department authorized 00 Buckshot shells, or with 12 gauge rifled slug shells. The officer may utilize his/her best judgment concerning the use of rifled slugs and must notify his/her supervisor of the action at the first practical moment.

The ammunition utilized in the primary shotguns is the Winchester Ranger rifled slug or the Winchester Ranger 00 buckshot.

One Shotgun is assigned to the Shift Supervisor's patrol cruiser. The shotgun is to be secured in the locking rack or trunk vault of the cruiser except when it is deployed for use, removed for normal inspection and maintenance, training, or when the vehicle is taken to a repair facility.

Shotguns may be used in other police vehicles when there are available shotguns for such purposes, but such shotguns must be placed and carried in the locked trunks or locked racks. As such, the police vehicle must be secured and the officer assigned to that shotgun must return the shotgun to the arsenal upon the end of that tour of duty.

All officers assigned a departmental shotgun must have met the certification requirements as required in this Policy. Shotguns may be deployed and used by officers when necessary, at their own discretion, in accordance with the provisions outlined in this Policy on the use of lethal force.

### **Department Issued Patrol Rifles**

The primary patrol rifles utilized by the Newburyport Police Department are the Bushmaster AR-15, Sig Sauer 223 and the Ruger 40 caliber semi-automatic "Police Carbine."

The AR-1, Sig 223 uses 223 REM. The Ruger Patrol Rifle uses caliber handgun, 40 caliber. The following brands are used:

- ❑ Gold Dot Speer
- ❑ Magtech
- ❑ Winchester Ranger
- ❑ Winchester

### **Arsenal Equipment**

The Shift Supervisor or Officer-in-Charge is given the authority to enter the arsenal and use whatever equipment is deemed necessary to control a given situation. The Lieutenant will be contacted as soon as possible and advised of the situation and the equipment used from the arsenal.

Anytime the Shift Supervisor or Officer-in-Charge enters the arsenal and uses special equipment to control a situation, a special report will be written to the City Marshal detailing the situation encountered and the equipment utilized for the incident. This report will be forwarded through the normal chain of command via a "Use of Force Report."

### **Less-lethal Weapons: Authorized and Approved**

All Less-lethal Weapons authorized and approved by the City Marshal are described in detail regarding specifications and procedures for use in this Policy Section 1.3.4 (Less-lethal Weapons).

### **Review, Inspection, Approval of Weapons/Removal of Unsafe Weapons**

All officers who are issued City-owned firearms are responsible to keep the weapon in good working order. Officers are responsible for the care and the cleaning of their handguns and may disassemble the handgun for routine cleaning functions as instructed by the Departmental Armorer or Firearms Instructors. No one is to work or permit anyone to work on a City-owned firearm or privately owned authorized secondary firearm except a qualified armorer employed by the Newburyport Police Department. All servicing of all City-owned firearms will be conducted through the Department Armorer. All maintenance performed on, or problems with, any firearms owned by the Newburyport Police Department will be documented and kept by the Department Armorer.

If an officer sustains the loss of, or damage to, any authorized firearm, it is to be immediately reported to the on-duty supervisor. Additionally, a written report detailing the loss or damage shall be prepared by the officer and submitted through the chain of command to the City Marshal via a police report

If repair, alteration, or modification is performed on a department issued firearm it becomes an unauthorized firearm until inspected and re-approved by the Department Armorer and the City Marshal. The nature of any such repair, modification, or alteration and who performed it is to be detailed in writing and submitted to the Department Armorer and City Marshal so that it may be attached to the firearms authorization documentation.

### **Maintaining Records on Weapons Approved by the City Marshal for Official Use**

The Department Armorer will be responsible for the issuance of all Department Issued Firearms, and other authorized weapons to individual officers. The Department Armorer will establish a record file on each particular weapon and update these files as required by the City Marshal. All maintenance requests and problems encountered with Department-owned firearms should be directed to the Department Armorer in writing, or e-mail, giving as much detail as possible about the problem or request. These problems and the corrective measures taken will be documented in written form and added to the particular weapon's file.

### **1.3.10 PROFICIENCY IN THE USE OF AUTHORIZED DEPARTMENTAL WEAPONS TO INCLUDE LETHAL, LESS LETHAL & OFF DUTY WEAPONS**

Prior to being approved to carry or use any authorized Departmental weapon, officers must demonstrate proficiency in the use of such weapons. Demonstrated proficiency will include but may not be limited to the following criteria:

- Demonstrating knowledge of laws regarding the use of force;
- Demonstrating knowledge of Departmental policy and procedures regarding the use of force and authorized weapons; and
- Demonstrating familiarity and recognized safe handling procedures for the use of authorized weapons
- Satisfactory completion of any classroom training with authorized weapons;
- Satisfactory completion of any practical training with authorized weapons;
- Achieving a satisfactory rating on a prescribed practical proficiency course for authorized weapons used;
- Only those firearms which the officer qualifies with at annual range training are authorized for carry on or off duty.
- Only officers trained with the expandable baton are authorized to carry/use it.
- Only officers trained in less lethal beanbag shotgun are authorized to use it.
- Only officers trained in OC Spray are authorized to carry/use it.

**SATISFACTORY COMPLETION OF THE ABOVE LISTED REQUIREMENTS FOR EACH WEAPON (LETHAL, LESS LETHAL AND OFF DUTY WEAPONS) IS SUFFICIENT FOR THE CERTIFIED FIREARMS INSTRUCTOR TO CERTIFY THE OFFICER FOR THAT WEAPON ANNUALLY. THESE REQUIREMENTS ALSO APPLY TO “COMPLIANCE AND CONTROL TECHNIQUES.”**

This classroom training, practical training, proficiency, and certification shall be done in accordance with the procedures listed in Section 1.3.11 of this order. The proficiency course established will be formulated by a Department Firearms Instructor and approved by the City Marshal. This policy applies to any and all weapons and/or “Compliance and Control Techniques” authorized for Departmental use by the City Marshal.

### **1.3.11 ANNUAL WEAPONS TRAINING, PROFICIENCY, AND CERTIFICATION**

#### **Introduction**

All officers authorized to carry Department authorized weapons are required to receive annual re-training on the Department's Policy 1.3 "Use of Force." This includes classroom and practical training on each authorized weapon. All officers must demonstrate proficiency at least annually with each authorized weapon. These sessions also will include practical instruction courses devoted to judgmental decision-making related to police use of each weapon. The annual training and annual proficiency course for each weapon will be determined by a Department Firearms Instructor and approved by the City Marshal. In-service training on weaponless control techniques will be done every 2 years.

#### **Monitoring Proficiency Training by a Certified Firearms Instructor**



All classroom training, practical training, and proficiency testing will be instructed and monitored by an officer certified as an instructor with the particular weapon and/or “compliance and control technique.”

Officers are required to attend sessions, as scheduled, and meet the minimum certification requirements annually. Officers may not use any Departmental Approved Weapons and “Compliance and Control Techniques” in the performance of duty until the officer has demonstrated certification and annual recertification in its use in accordance to this Policy.

Certification requires satisfactory performance as outlined by the Department Firearms Instructor for that weapon and the Department Defensive Tactics Instructor for “Compliance and Control Techniques.” Such standards shall be developed by the Administrative Lieutenant and approved by the City Marshal. Such standards shall require a practical demonstration of proficiency in the use of the weapon and/or “Compliance and Control Techniques” and satisfactory completion of a written examination pertaining to the weapon and laws related thereto.

- Practical demonstration and written examination both require a minimum score of 80%. Scores will be recorded in the training records as "Pass or Fail" with a minimum score of 80% required to pass a particular proficiency or test.

### **Training and Proficiency Must Documented by a Certified Firearms Instructor**

An officer certified as an instructor with the particular weapon and/or “compliance and control technique” must document all classroom training, practical training, and proficiency testing. Such documentation shall be forwarded to the Administrative Lieutenant to be filed in the officer’s paper and electronic training records files.

### **Mandated Remedial Training**

If an officer fails to meet the required training and proficiency with a weapon and/or “Compliance and Control Techniques” the officer will not be returned to full official duties until such time that training and proficiency is demonstrated and documented for that officer by the Department.

In the event of any accidental discharge of an authorized firearm an officer must undergo proficiency re-testing prior to returning to full duty, where practical. In such circumstances, the Shift Supervisor or Officer-in-Charge will advise the City Marshal of the circumstances who will determine whether the re-testing and/or remedial training is necessary immediately or, at his discretion, due to the circumstances, whether or not a grace period of 10 days may be granted to complete this process.

### **Exclusion of Carotid Artery Neck Hold or Similar Control Technique in Annual Training Curriculum**

The Department will not include training on the Carotid Artery Neck Hold or Similar Control Techniques in the Department’s Annual Use of Force Training Curriculum. The uses of carotid restraint, lateral vascular neck restraints or similar techniques are not authorized for use by Newburyport Police Department personnel due to the inherent dangers involved in the use of such techniques.

### **Annual Weapons Certification**

Satisfactory completion of the above listed requirements for each weapon is sufficient for the Department Firearms Instructor certify the officer for that weapon annually. These requirements also apply to the Department Defensive Tactics Instructor as it relates to “Compliance and Control Techniques.”

### **Proficiency Testing Protocol**

A premise accepted by the Newburyport Police Department is that adequate and relevant training is essential, and that as an officer is trained, so shall he/she act. Weapons training and proficiency testing shall be designed so as to encompass patterns of encounters that reflect the best available current information for police lethal force confrontations:

- Distance of the encounter; light level;
- Number of assailants and participants; and
- Pre-encounter circumstances and conditions;

Proficiency testing shall attempt to reflect the conditions and circumstances, which require decision-making as to target identification, and shoot/don't shoot situations. Sessions may be conducted during adverse lighting conditions. Scheduled sessions will be conducted regardless of adverse weather, except during extreme weather conditions such as lightning that would endanger officers.

All proficiency testing will be conducted with the officers wearing their prescribed uniform of the day when testing with department issued weapons. This includes the body armor for all officers. Proficiency testing with approved firearms will be conducted using the ammunition approved for on-duty use or ammunition that meets or exceeds the same ballistic standards as the duty service ammunition.

Officers will be provided with several opportunities during proficiency testing to demonstrate satisfactory performance (a score of 80% or greater). Officers failing to attain a satisfactory performance will be granted a 10-day grace period during which they may attempt to attain a satisfactory performance level. Within this period, the officer will report to the range for remedial training and retesting. Exceptions to the 10-day grace period may be made at the discretion of the City Marshal if there is another regularly scheduled proficiency within 30 days that the officer can attend.

Officers who fail to attain satisfactory performance will be subject to administrative action by the City Marshal, any officer who is injured or has other mitigating circumstances, which prohibit the officer from participating in the proficiency, may request permission from the City Marshal to waive or delay proficiency testing for a reasonable period. An officer who applies for such relief shall forfeit his authorization to carry a departmental issued handgun or an authorized secondary if one year has expired since the officer last satisfactorily completed a proficiency test with a particular firearm.

### **1.3.12 ISSUANCE AND INSTRUCTION OF POLICY 1.3 (USE OF FORCE)**

All Departmental personnel shall be issued a copy of Policy 1.3, **Use of Force**, and receive instruction on its contents prior to being authorized to carry any authorized lethal and less-lethal weapons. After the initial issuance of Policy 1.3, **Use of Force**, all Newburyport Police Department personnel authorized to carry lethal and less-lethal weapons shall be issued a

copy of the revised Policy, or the applicable sections of the revision, and receive instruction on the revisions prior to the effective date of any revision to this Policy.

New hired will be issued a copy of the policy and receive instruction on the policy.

The instruction on this Policy for Department personnel may be in the form of formal Internal Departmental Training, Roll-Call Training, Training Bulletins, or other appropriate method approved by the Administrative Lieutenant. The instruction and issuances will be documented.

### **1.3.13 ANNUAL ANALYSIS OF USE OF FORCE REPORTS/INCIDENTS**

In order to reveal patterns of behavior, training needs, trends, equipment upgrades, or the need to modify existing policies, a review shall be conducted annually of all incidents which resulted in a use of force. The Lieutenant conducts this review. The review shall be concluded on or about January 31<sup>st</sup> of each year and documented in an official Inter-Office-Memo to the City Marshal. This review and analysis shall include, as a minimum, the following elements:

- Number of use of force incidents;
- Demographic information on involved subjects and officers;
- Type of investigation;
- Injuries reported;
- Findings as to justification for use of force;
- Levels of force or weapons used;
- Levels of resistance or weapons encountered;
- Personnel action taken;
- Training, tactical, equipment, supervisory or policy considerations;
- Equipment Upgrades; and
- Recommendations

### **1.3.14 POST CRITICAL INCIDENT TRAUMA CONSIDERATIONS**

Police officers are trained to use the weapons authorized by this Department in response to life threatening situations, yet every officer hopes that he/she will not have to use that training. Lethal force incidents can be dramatic and unusual, and officers often feel isolated and unprepared as they try to cope with such incidents. The purpose of this section of Policy 1.3 is to prepare officers of the Department for what may follow a use of lethal force incident. This section provides information on what does normally occur after such an incident including the physical and psychological reactions, the administrative and legal aspects, and the help that is available in dealing with these issues. It is the belief of the Department that if an officer knows what to expect and what the normal reactions are to such an event then the negative impact of the incident will be reduced, and hopefully the officer will be better prepared to deal with the incident itself and the aftermath. To date only a small number of Newburyport Police Officers have been involved in lethal force use incidents, but such incidents have had an impact on their lives as well as their families' lives.

In the past, nationwide, officers involved in shooting incidents were often subjected to a harsh administrative, investigative, and legal aftermath that compounded the stress of using

lethal force. A "second injury" can be created by insensitivity and impersonally dealing with an officer that has been involved in such a critical event. Due partly to such treatment officers may have left law enforcement prematurely, as victims. It should be noted that an officer's reactions to shooting events are unpredictable in advance, and such reactions will vary with each incident and officer due to variety of factors such as:

- prior reputation and status
- the circumstances of the incident
- response of peers
- administration response
- media and community responses

Preparation for surviving a shooting incident and its aftermath begins by adopting the mental attitude that "in order to be prepared you must assume that you will, at some future date, become involved in a shooting incident"