

	<h1>Garner Police Department</h1> <h2>Written Directive</h2>	
	<b>Chapter:</b> 700 – Arrest, Detention and Use of Force	
	<b>Directive:</b> 710.01 – Use of Force	
<b>Authorized by:</b> Chief Brandon Zuidema		<b>Effective Date:</b> July 1, 2016
<b>CALEA Standards:</b> 1.3.1; 1.3.2; 1.3.3; 1.3.4; 1.3.5; 1.3.6; 1.3.7; 1.3.8; 1.3.11 and 1.3.13		<b>Last Revision:</b> October 1, 2015

### 710.1.1 – Policy

It shall be the policy of the Garner Police Department that officers will use only the force necessary to protect life and affect lawful objectives.

### 710.1.2 - Purpose

This directive serves as a guideline for the use of force and reporting of force used by sworn officers of the Garner Police Department. The content of this directive is for agency use only and does not apply in any criminal or civil proceedings. This directive will not be construed as creating a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this directive will only form the basis for agency administrative sanctions. Violations of law will be the basis for civil and criminal sanctions in recognized judicial settings.

### 710.1.3 – Definitions (1.3.2)

- A. Deadly Force - Any force which is likely to cause death or serious bodily harm, regardless of intent.
- B. Non-Deadly Force - Force not intended to or likely to cause death or result in serious injury.
- C. Reasonable Belief - Belief that would cause a similarly trained law enforcement officer to act or think in a similar manner based on the facts and circumstances at the time of the decision. *Graham v. Connor* 490 U. S. 386 (1989)
- D. Reasonably Necessary - A use of force is reasonably necessary when all other reasonable means to accomplish the desired action have been exhausted or would clearly be ineffective under the circumstances.
- E. Serious Injury - any bodily injury that:
  - 1. Creates a substantial risk of death, *or*
  - 2. Causes or is likely to cause serious, permanent disfigurement, *or*
  - 3. Results in or is likely to result in the long-term loss or impairment of any bodily member or organ.

### 710.1.4 – Laws (1.3.2)

The following case and statutory laws govern all aspects of this policy listed herein.

A. *Graham vs. Connor* - 490 U.S. 386, (1989)

Officer's actions are to be "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. Reasonableness is judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.

B. *Tennessee V. Garner* - 471 U.S. 1 (1985)

The Supreme Court ruled that deadly force may not be used unless necessary to prevent the escape of a fleeing felon and the officer has probable cause to believe that the suspect poses a significant threat of death or serious injury to the officers or others.

## C. North Carolina General Statute §15A-401(d)

1. Subject to the provisions of subdivision (2), a law enforcement officer is justified in using force upon another person when and to the extent he/she believes it is reasonably necessary:

- a. To prevent the escape from custody or to effect an arrest of a person who the officer reasonably believes has committed a criminal offense, unless he knows that the arrest is unauthorized; or
- b. To defend himself or a third person from what the officer reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect an arrest or while preventing or attempting to prevent an escape;

2. A law enforcement officer is justified in using deadly physical force upon another person for a purpose specified in subdivision (1) of this subsection only when it is or appears to be reasonably necessary thereby:

- a. To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force.
- b. To effect an arrest or to prevent the escape from custody of a person who he reasonably believes is attempting to escape by means of a deadly weapon or who by his conduct or any other means indicates that he presents an imminent threat of death or serious physical injury to others unless apprehended without delay; or
- c. To prevent the escape of a person from custody imposed upon him as a result of conviction for a felony.

D. Nothing in this subdivision constitutes justification for willful, malicious or criminally negligent conduct by any person which injures or endangers any person or property, nor shall it be construed to excuse or justify the use of unreasonable or excessive force.

**710.1.5 – When Force May Be Used (1.3.1, 1.3.2)**

A. For the purposes of this directive use of force will include both deadly and non-deadly force. The law provides for situations where officers may use force to accomplish their required duties. Laws do not provide that officers must use force, nor do they eliminate the civil or criminal consequences of the use of excessive force.

B. In the performance of their duties, no officer will use more force than is reasonably necessary under the existing circumstances to control the situation or obtain compliance. Officers are not authorized to use force after resistance has stopped.

- C. It is the duty of every officer to attempt to prevent any other officer from using unwarranted or excessive force. The use of any unwarranted or excessive force must be reported to a supervisor as soon as possible by the witnessing officer.

#### **710.1.6 – Use of Force Options (1.3.3, 1.3.4)**

While performing official duties, officers are authorized under laws described herein to use any level of force reasonably necessary to overcome unlawful resistance, to apprehend, to restrain, to prevent escape or stop an attack (defend another person).

##### **A. Conducted Electrical Weapon (Taser)**

1. The Taser will be used under the following guidelines and in accordance with departmental training:
  - a. The recommended aiming areas are lower center mass of the front of the subject and below the neck of the back of the subject. The head/face will not be targeted when attempting to control non-lethal force.
  - b. Once deployed the officers shall allow the full 5 second cycle to end uninterrupted. Additional cycles may be applied to gain control if necessary.
  - c. Officers should when possible announce the use of a Taser to other officers in close proximity by saying the word "Taser".
  - d. Officers shall take physical control of the subject as soon as possible to avoid the need for repeated or extended Taser cycles.
  - e. Officers should use caution on persons on elevated platforms or other areas where it is likely a fall from that height may cause serious injury.
2. The Taser may be utilized to drive stun in lieu of or in combination with deploying the probes:
  - a. Drive stun contact may be made with or without the cartridge in place.
  - b. Drive stun contact can be made as a primary response option or when the cartridge has failed.
  - c. Drive stun contact can be made to most areas of the body but is most effective on large muscle / tissue areas such as the lower stomach, back and buttocks.
  - d. Drive stun contact should not be made to the face or genitals.
3. Removal of Taser probes
  - a. Officers may remove probes embedded in skin; however, probes may not be removed if they are embedded in the eye, genitalia or fully embedded under the skin.
  - b. Probes may be removed by an officer using the following guidelines:
    - 1) Use protective / disposable gloves and other universal precautions to prevent exposure to blood borne pathogens.
    - 2) Secure the skin area by placing a thumb and finger directly around the probe.
    - 3) Using counter pressure with one hand, remove probe with the other hand by pulling it outward at a 90 degree angle from the impact area.

- 4) Once removed, inspect and collect the probes for evidence.
  - 5) Have EMS evaluate the probe injury site for treatment, if necessary (Wake County EMS protocol does not allow for the removal of probes by EMS staff).
4. After deployment of the Taser, the device's data will be downloaded and stored by the Administration Captain in accordance with *GPD directive 430.02 – Use of Recording Devices*.

#### B. Collapsible Baton

1. The collapsible baton may be used to control an individual or as an impact weapon. Either method may produce injuries.
2. The baton will be used under the following guidelines and in accordance with departmental training:
  - a. Officers may use the baton to strike large muscle areas and the extremities.
  - b. Officers may use the baton to manipulate joints, apply arm bar techniques or other similar tactics.
  - c. Strikes to the extremities may temporarily immobilize or limit the use of the extremity. Officers should be aware that this may cause a person to be unable to comply with a request to move a limb. This inability to comply should not be viewed as further resistance.
  - d. Officers should not strike the head or neck unless the use of deadly force is authorized.

#### C. Impact Munitions

1. Impact munitions may be used in the following circumstances and in accordance with department policy and training:
  - a. To disperse unruly, violent, unlawful or otherwise disobedient crowds.
  - b. To incapacitate persons with weapons who illustrate no imminent threat of death or serious injury to others as reasonably believed by officers on the scene. Time, surroundings, distance and the ability to contain the threat are all factors that should be considered in these circumstances.
  - c. To incapacitate persons who by actions, behaviors or appearances alone, pose a threat to safety if approached. Size, behavior, mental state, drugs and alcohol influence are all factors that should be considered in these circumstances.
  - d. To incapacitate persons who are attempting or threatening suicide or self inflicted injury, but are not yet an imminent threat to others as reasonably believed by officers on the scene.
  - e. When time is of the essence and any failure to act could result in further injury or death.
2. Officers deploying impact munitions should have a lethal cover officer nearby ready to use lethal force if necessary.

**D. Deadly/Lethal Force**

1. Deadly/Lethal force is any force that with or without a weapon, could reasonably lead to serious injury or death. Department personnel are permitted by laws outlined in this directive to use deadly force while performing their official duties.
2. Officers have a duty to not create their own jeopardy by placing themselves in situations that would require them to use deadly force when that jeopardy does not already exist. Examples include but are not limited to:
  - a. Facing a knife wielding person without the use of cover or distance when they are available.
  - b. Placing oneself in the path of an oncoming vehicle without an escape route.
3. Officers are not permitted to use warning shots.
4. Officers shall not fire into a moving vehicle unless the officer's life or the lives of others are in immediate danger and there is no reasonable or apparent means of escape.
5. Firing from a moving vehicle is prohibited except in exigent circumstances and in the immediate defense of life.
6. Additional information on firearms authorization and use is included in GPD directive 710.2, *Weapons Authorization and Use*.

**710.1.7 – Prisoner Management**

Officers will ensure that all suspects in their custody are cared for. Refer to GPD directive 710.4, *Prisoner Custody Responsibilities*, for prisoner custody and transportation procedures.

**710.1.8 – Officer Responsibilities in Use of Force Incidents (1.3.5, 1.3.6)**

- A. The following actions by an officer will be defined as a reportable use of force incident:
  1. Any use of force that causes an injury and/or a complaint of injury or pain to an officer or any other person;
  2. Any use of force that results in property damage to non-department owned property;
  3. The use of a baton, impact munitions, physical strike(s), or strikes with any other object;
  4. The release of a police canine for the purpose of apprehending a suspect;
  5. The discharge of a firearm or Taser for any lawful purpose other than training; and/or
  6. The intentional pointing of a firearm or Taser towards a person.
- B. Any officer who uses force as defined above must:
  1. Contact the on-duty supervisor as soon as is practical (and prior to leaving the incident scene) to make them aware of the use of force incident.
  2. Make a reasonable effort to keep any witnesses at the scene and any evidentiary material intact while awaiting the arrival of the on-duty supervisor.
  3. Request EMS respond to the scene if any of the following criteria are met:

- a. A subject involved in the use of force requests EMS assistance;
- b. A subject involved in the use of force has an apparent injury or complains of pain (unless the subject refuses medical treatment and the injury does not appear life threatening and does not involve a risk of contamination by body fluids – the refusal must be documented by responding supervisor);
- c. The officer utilized a baton strike, impact munitions, and/or Taser.

Note: Officers may apply basic first aid if safe and necessary, but only within the scope of their training and only after they have control of the situation and all reasonable safety precautions have been taken.

4. Complete a *Use of Force Report* (GPD form 710.1-A) or *Use of Force by Intentional Pointing* (GPD form 710.1-B) to document the justification for and the circumstances surrounding the use of force incident.
  - a. Officers are required to complete the form as a factual account of the actions by the suspect(s) justifying the force used as well as the type and amount of force used by the officer.
  - b. Officers should be allowed a period of time to recover mentally and physically prior to being required to complete the *Use of Force Report*, especially if the use of force resulted in serious physical injury or death.
  - c. The *Use of Force Report* is to be completed prior to the employee's shift ending unless the employee is unable to do so due to injury or the supervisor grants an extension due to extenuating circumstances.
- C. Any officer who witnesses a use of force by another Department employee but who does not use force him/herself will:
  1. Assist the involved officer(s) with managing the prisoner(s), identifying witnesses and keeping evidentiary material intact while awaiting the arrival of the on-duty supervisor.
  2. Provide a statement to the on-duty supervisor as to their actions and any actions by the involved officer(s) and/or the suspect(s) that they witnessed. A witness officer will be required to provide a written statement in memorandum format.
- D. Any officer who witnesses a use of force by an employee of another law enforcement agency, by a private security officer or by any other citizen but who does not use force him/herself will document their observations in memorandum format. The memo should be sent to their immediate supervisor.

**710.1.9 – Supervisory Responsibilities in Use of Force Incidents (excluding Intentional Pointing Incidents) (1.3.5, 1.3.7)**

- A. A supervisor investigating a use of force incident (other than an intentional pointing) will:
  1. Respond to the scene as soon as practical.
  2. Request EMS if they are required and have not already been notified.
  3. Evaluate the physical and emotional state of the officer(s) involved and determine if they are fit to continue with the arrest process. If the officer is deemed to need relief, the supervisor will assign another officer to complete the arrest process.

4. Speak with the involved officer(s) to get a basic overview of the use of force incident in order to address any exigent circumstances and to guide the on-scene investigation.
    - a. Any involved officer(s) and any witness officers will be required to provide basic incident details relevant to clarifying if there are any exigent circumstances such as injured persons, suspects who have fled, what direction shots were fired in, the location of weapons and/or other similar details related to immediate public safety and/or evidentiary issues.
    - b. Any such statement is not subject to Garrity warnings; the Supreme Court has ruled that a supervisor questioning officers on the scene of a use of force with no implied threat of job loss does not require Garrity protections (*United States v. Camacho*).
  5. Collect any evidence from the scene, including:
    - a. Photographs of the following:
      - 1) The location where the use of force occurred (the incident scene);
      - 2) A full body view of the suspect(s);
      - 3) Any known or alleged injuries to a suspect;
      - 4) A full body view of the involved officer(s);
      - 5) Any known or suspected injuries to an officer;
      - 6) Any damage to property (including Department equipment);
      - 7) Any other evidentiary items (prior to collection).
    - b. Taser tags, cartridge, probes and wires when the probes made contact with the suspect or the suspect's clothing;
    - c. Civilian witness statements (to include those civilians who were on scene but state they did not witness the incident); and/or
    - d. Available video, including cell phone footage, in-car camera footage, body camera footage and/or any surveillance footage.
    - e. Spent impact munitions or samples when multiple projectiles were delivered and are scattered about a scene.
  6. Notify the involved employee's Division Lieutenant; notification may be made the next business day unless extenuating circumstances justify immediate notification.
- B. If the supervisor investigating the use of force incident determines that the use of force has resulted in serious physical injury, death, the supervisor will follow the protocol outlined in section 710.1.11 – *Use of Force Resulting in Serious Injury or Death*.
- C. If the supervisor investigating the use of force incident determines that the use of force has involved shots fired by an officer where no one is struck, the supervisor will follow the protocol outlined in section 710.1.12 – *Use of Force – Officer Involved Shooting*.
- D. Once the supervisor has completed the on-scene investigation they will:

1. Take statements from any witness officers who were on scene but did not use force. Statements from witness officers will be documented in memorandum format.
  2. Review the *Use of Force Report(s)* submitted by the involved officer(s) for accuracy and completeness.
  3. Complete an investigative summary of the event utilizing the *Use of Force Supervisory Investigation* (GPD form 710.1-C). The investigative summary will include the following:
    - a. The supervisor's summary of the incident details based on his/her investigation;
    - b. Summaries of statements from the involved officer(s), witness officer(s), the suspect(s) and any civilian witnesses;
    - c. A description of any noteworthy evidence;
    - d. An explanation of any deviation from policy;
    - e. Any recommendation for disciplinary action (including remedial training) against the involved officer(s); and
    - f. Any known or suspected liability incurred by the Department stemming from the use of force incident.
- E. The completed use of force investigation will be sent up the chain-of-command through the employee's Division Lieutenant, the Operations Captain (even if the employee is in the Administrative Bureau), and the Chief of Police before being forwarded to the Administrative Captain for filing.
1. The completed investigation shall include the following:
    - a. All completed Use of Force Forms;
    - b. The supervisor's investigative summary;
    - c. Originals of any written witness statements;
    - d. Copies of all incident reports from the incident;
    - e. Copies of any arrest paperwork;
    - f. Photos, audio files or video.
  2. Each supervisor in the chain-of-command is responsible for reviewing and approving the use of force investigation.
  3. The Administrative Captain will review but will not approve or disapprove the use of force.

(Note – additional details regarding the supervisory investigation of a use of force incident can be found in the Department's *Internal Affairs Manual*).

#### **710.1.10 – Supervisory Responsibilities in Use of Force by Intentional Pointing (1.3.8)**

- A. A supervisor investigating a use of force by intentional pointing incident will:

1. Evaluate whether or not an on-scene response is necessary. Supervisors are not required to respond to the scene for an intentional pointing of firearm or Taser. Supervisors are encouraged to respond to the scene if any of the following circumstances exist:
    - a. The pointing involves one or more juveniles;
    - b. The employee believes the incident is likely to generate a complaint;
    - c. The pointing involves an elected official, another public safety employee, or other person that may generate interest from the media and/or Town officials;
    - d. The employee requests the supervisor;
    - e. Any other circumstances where the officer or supervisor believes a supervisor response would be beneficial.
  2. Speak with the involved officer(s) to get a basic overview of the intentional pointing incident.
  3. Speak with any witness officers to verify the basic details of the incident (officer memorandums are not necessary in intentional pointing incidents).
  4. Notify the involved employee's Division Lieutenant of the use of force by intentional pointing incident. If the incident occurs during normal business hours, the Lieutenant should be notified prior to the end of that business day. If the incident occurs after hours or at a time when the Lieutenant is not at work, this notification may be made the next business day.
- B. Once the supervisor has completed the on-scene investigation they will:
1. Ensure that any officer who intentionally points a firearm or Taser completes a Department *Use of Force by Pointing Report* form (GPD 710.1-B). It is critical that the report be accurate in documenting the intentional pointing on the front of the report and that the officer narrative on the back provides an accurate description of the suspect's actions that resulted in (i.e. justified) the use of force by intentional pointing by the officer.
  2. Review each *Use of Force Report(s)* for accuracy and completeness. Each individual report should be an accurate depiction of the reporting officer's involvement in the use of force by intentional pointing incident.
- C. The completed *Use of Force by Pointing Report* form (GPD 710.1-B) is to be forwarded to the involved employee's Division Lieutenant for review and approval. No investigative summary is necessary; however, any comments or narrative offered by the investigating supervisor may be included in the "Notes" section of the Administrative Investigations Management (AIM) software.

(Note – additional details regarding the supervisory investigation of a use of force by intentional pointing incident can be found in the Department's *Internal Affairs Manual*).

#### **710.1.11 – Supervisory Responsibilities in Use of Force Resulting in Serious Physical Injury or Death (1.3.8)**

- A. In the event a supervisor determines that a serious injury or death has resulted from a use of force, he or she will:
1. Immediately respond and secure the scene, all witnesses and any known evidence;

2. Address exigent circumstances;
  3. Immediately notify the involved employee's Division Lieutenant; and
  4. Assign another officer (another supervisor if one is available) to escort the officer involved in the shooting until the involved officer is released from duty.
- B. The Command Staff response will be as follows:
1. The Division Lieutenant will respond to the scene to coordinate with the on-scene supervisor and will make immediate notification to the Operations Captain.
  2. The Operations Captain will respond to the scene and will notify the Chief of Police.
  3. The Chief of Police will respond to the scene and will notify the Administrative Captain, the Town Manager and (if appropriate) the District Attorney.
  4. The Administrative Captain will respond to the scene to determine the known facts of the incident and to make a recommendation to the Chief of Police as to how to proceed.
- C. In the case of an officer involved shooting incident, the Chief of Police will contact the State Bureau of Investigation (SBI) to conduct a criminal investigation of the incident. In the case of a non-shooting incident that results in serious injury or death, it is at the discretion of the Chief of Police as to whether to have the SBI conduct a criminal investigation of the incident.
- D. The criminal investigation of the suspect's actions that precipitated the use of force will normally be conducted by personnel appointed by the Chief of Police.
- E. An employee whose use of force results in death or serious injury will:
1. Be relieved from the line of duty through either Modified Duty or Emergency Relief from Duty as outlined in GPD Directive 320.1, *Complaint Investigation*;
  2. Report for mandatory counseling to a mental health professional selected by the department. The counseling is mandatory to ensure that the involved officer(s) receives timely assistance.

(Note – additional details regarding the supervisory investigation of a use of force by intentional pointing incident can be found in the Department's *Internal Affairs Manual*).

**710.1.12 – Supervisory Responsibilities in Use of Force – Officer Involved Shooting (No One Struck) (1.3.8)**

- A. In the event a supervisor determines that an officer has been involved in a shooting incident where no one is struck, he or she will:
1. Immediately respond and secure the scene, all witnesses and any known evidence;
  2. Address exigent circumstances;
  3. Immediately notify the involved employee's Division Lieutenant; and
  4. Assign another officer (another supervisor if one is available) to escort the officer involved in the shooting until the involved officer is released from duty.

- B. The Command Staff response will be as follows:
1. The Division Lieutenant will respond to the scene to coordinate with the on-scene supervisor and will make immediate notification to the Operations Captain.
  2. The Operations Captain will respond to the scene and will notify the Chief of Police.
  3. The Chief of Police will respond to the scene and will notify the Administrative Captain and, when sufficient information is available, the Town Manager.
  4. The Administrative Captain will respond to the scene to determine the known facts of the incident and to make a recommendation to the Chief of Police as to how to proceed.
- C. The Chief of Police will not normally initiate a criminal investigation for an officer involved shooting with no one struck unless there are unique circumstances that warrant such action. If a criminal investigation is warranted, it is at the discretion of the Chief of Police as to whether to request the SBI to conduct the investigation or to assign an internal investigator.
- D. The criminal investigation of the suspect's actions that precipitated the use of force will normally be conducted by personnel appointed by the Chief of Police.
- E. An employee who is involved in a line of duty shooting incident where no one is struck will:
1. Have their duty status evaluated by the Chief of Police based on the specific circumstances of the incident. The involved officer can be left on Active Duty, placed on Modified Duty or placed on Emergency Relief from Duty
  2. Be given the opportunity to attend counseling with a mental health professional selected by the department. The counseling is intended to ensure that the involved officer(s) receives timely assistance if needed.

(Note – additional details regarding the supervisory investigation of a use of force by intentional pointing incident can be found in the Department's *Internal Affairs Manual*).

#### **710.1.13 – Training and Analysis (1.3.11, 1.3.13)**

- A. All officers will be required to complete annual use of force training.
1. Use of force training will include both classroom and practical instruction.
  2. Proficiency training must be monitored by a certified weapons or tactics instructor.
  3. Training in proficiency must be documented.
  4. Officers failing to meet any set standard of proficiency will be required to attend remedial training prior to resuming official duties.
- B. The Administrative Captain will compile an annual report and analytical summary on the Department's use of force activities, policies and practices.