

	<b>ITHACA POLICE DEPARTMENT</b>  <b>POLICY AND PROCEDURE GENERAL ORDER</b>	<b>Distribution</b>  <b>ALL PERSONNEL</b>	<b>General Order Number</b>  <b>3.03</b>
		<b>Original Issue Date</b>  0710/2019	<b>Reissue/Effective Date</b>  MM/DD/YY
<b>Order Title:</b>  <b>USE OF OLEORESIN CAPSICUM</b>		<b>Accreditation Standard:</b> NY 2.2; 2.7; 6.1; 8.1; 14.1; 20.1; 20.6; 21.2; 25.1; 32.4; 33.1; 35.1; 40.1; 40.2; 41.3	<b>Section</b>  3
		<b>Section Title</b> <b>RULES OF CONDUCT</b>	
<b>Rescinds: General Order 336 – Use of Oleoresin Capsicum</b>		<b>Dennis Naylor, Acting Chief of Police</b>	

*This General Order is for departmental use only and does not apply in any criminal or civil proceeding. This General Order should not be construed as creation of a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this General Order will only form the basis for departmental administrative sanctions. Violations of law will form the basis for civil and criminal sanctions in a recognized judicial setting*

## I. PURPOSE

The purpose of this General Order is to establish guidelines and procedures governing Ithaca Police Department officers' use of a chemical agent while performing their duties.

## II. POLICY

The policy of the Ithaca Police Department ("Department") is to use only that amount of force reasonably necessary to effect an arrest, control a situation, or defend themselves or others from harm. The Department recognizes that combative, non-compliant, armed and/or violent subjects cause handling and control problems that require specialized training and equipment. Thus, the Department has adopted the use of a non-lethal force philosophy to assist with the de-escalation of potentially violent confrontations. Any use of chemical agents must comply with the Department's Use of Force Policies.

Any police officer who makes an unlawful, excessive, or unauthorized use of a chemical agent will be subject to disciplinary actions and may be subject to civil and criminal liability.

## III. DEFINITIONS

**Actively Resisting:** When a subject makes evasive physical movements to interfere with an officer's attempt to control that subject. Evasive physical movements include, but are not limited to, bracing against officer actions, tensing, pulling away, or pushing.

**De-escalation:** A decrease in the severity of force used in an incident in direct response to a decrease in the level of resistance.

Force: Any physical strike or instrumental contact with a person; any intentional attempted physical strike or instrumental contact that does not take effect; or any significant physical contact that restricts the movement of a person. The term includes the discharge of a firearm or pointing a firearm at or in the direction of a human being, use of chemical spray, use of impact weapons, use of electronic control weapons (ECW), chokeholds or hard hands, taking of a subject to the ground, or the deployment of a canine. The term does not include escorting or handcuffing a person with minimal or no resistance. Use of force is lawful if it is **objectively reasonable** under the circumstances to effect an arrest, or protect the officer or other person.

Chemical Agent: A pepper compound that irritates the eyes and causes tears, pain, and even temporary blindness, and reduced air flow due to swelling of the respiratory tract. A chemical agent is an intermediate weapon that is classified as less-lethal. It should only be used, however, when an officer is met with active resistance.

Passive Resistance: When a subject does not cooperate with an officer's commands but does not take action to prevent being taken into custody. For example, a protestor who lies down in front of a doorway and must be carried away upon arrest.

#### IV. PROCEDURE

##### A. Use of Force Standard

The following are applicable use of force standards directly related to the deployment of a chemical agent:

1. The use of a chemical agent involves the application of force.
2. Each application of a chemical agent constitutes a separate, additional use of force.
3. Multiple applications of chemical agent cannot be justified solely on the grounds that a subject fails to comply with a command, or the initial application did not reach the subject's face absent other indications that the subject is about to flee or poses an immediate threat to an officer.
4. Any decision to apply multiple applications of a chemical agent must take into consideration whether a subject is capable of complying with the officer's commands.
5. The chemical agent is not intended to replace the use of firearms when lethal physical force is necessary, but rather to provide a non-lethal alternative.

B. Authorization to Carry and Use a Chemical Agent

1. Only a chemical agent meeting Ithaca Police Department specifications and issued by the Department may be used by police officers in the course of law enforcement responsibilities, both on and off duty.
2. The use and carry of a chemical agent is restricted to officers who are trained and demonstrate proficiency of use.
3. All officers assigned to uniformed patrol shall carry the chemical agent once they have been issued the chemical agent and have been trained in its proper use.

C. Permitted Use of a Chemical Agent

Officers are only permitted to use a chemical agent in accordance with training in the following instances:

1. To effect an arrest of suspects who are actively resisting.
2. To incapacitate a subject who poses a threat of imminent physical injury to himself/herself or others.
3. To subdue a hostile or combative individual.
4. To prevent the commission of a public offense.
5. Against aggressive animals that pose a threat of physical injury to officers or others.
6. During Department authorized training programs and/or demonstrations.

D. Restrictions on Use of a Chemical Agent

Department issued a chemical agent may not be used in the following circumstances:

1. To effect the arrest of a person that is only passively resisting (e.g., going limp, offering no physical resistance);
2. On individuals with frail health, young children, the elderly, women believed to be pregnant, or persons with known respiratory conditions. A chemical agent may only be used under exceptional circumstances involving an imminent danger of suffering serious bodily harm, and the use of a chemical agent is the only reasonable method to control the child or elderly in order to avoid such harm;

3. Once a suspect complies, becomes incapacitated, or is restrained;
4. To wake up an intoxicated individual; or
5. To threaten or elicit information from a person.

**Members are required to remove a subject exposed to a chemical agent from a prone (face-down) position as soon as it is safe to do so.**

#### E. Verbal Commands

1. A verbal warning and time to allow the subject to comply should be given prior to the use of a chemical agent, unless a warning would present a danger to the officer or others.
2. Verbal commands before, during, and after the application of a chemical agent are important in order to de-escalate any situation and gain compliance and control of an actively resisting or aggressive subject.
3. After resistance has ceased, the subject must be reassured that nothing further will happen to him or her, and that decontamination for the spray application is forthcoming. Without this reassurance, the subject may again become violent from frustration, or in an effort to escape discomfort. Statements such as “No one is going to hurt you” and “Stay calm and we will help you” provide incentive for cooperation and demonstrate the de-escalation of force as the subject’s resistance is reduced.

#### F. Application Techniques

1. Initially, one one-second discharge of the Department issued a chemical agent should be directed to suspect’s face.
2. Direct discharge into the eyes should be avoided at very close distances (less than 2 feet).
3. Additional discharges may be used if the initial burst proves ineffective. Allow a brief time for the pepper to take effect before additional applications. Be prepared to take other appropriate action should the spray fail to be effective.

#### G. Post-Use Decontamination and Treatment

1. Once the spray has been applied, and/or empty-hand techniques are being used, commands must be given to direct the now-confused and distracted subject: e.g., "Kneel down on the ground" or "Put your hands behind your back" and "Stop resisting arrest" - tell the subject what is required and how to stop the pain of a compliance technique.
2. Subjects should be assured that the effects of the chemical agent are temporary.
3. After a chemical agent has been used and the subject has been restrained and moved to an uncontaminated area, the affected areas of the subject should be flushed with water within 20 minutes, absent exceptional circumstances.
4. Subjects should be asked if they suffer from any respiratory diseases or problems, such as asthma, bronchitis or emphysema. If a subject displays respiratory problems, the subject should be exposed to fresh air if possible and medical attention should be sought immediately.
5. While transporting a subject to a police or medical facility, the subject's condition should be monitored for signs of breathing difficulty, nausea, or other physical discomfort. A subject should never be left unattended until the effects of the chemical agent have completely diminished or the individual indicates that they have fully recovered from the effects of the spray.
6. Under normal circumstances, all symptoms should disappear within thirty to forty-five minutes. If the symptoms persist beyond forty-five minutes, medical attention should be sought immediately.
7. Forty-five minutes after use of a chemical agent, subjects shall be inspected to determine whether or not additional decontamination or first aid measures are required.
8. Booking Facility personnel shall be informed when a subject has been sprayed with a chemical agent.

#### H. Training and Certification in the Use and Operation of a Chemical Agent

1. Each Ithaca Police Department officer who has been assigned a chemical agent as part of the official equipment must receive training every two years prior to carrying or using the weapon.
2. In order to meet the quality standards, all trained police officers shall be recertified every two years.

3. All training, including remedial training, shall be documented.

I. Reporting Required

1. After deploying a chemical agent, the officer shall notify a supervisor as soon as it is practical to do so.
2. After deployment of a chemical agent, the officer who discharged the spray shall comply with all reporting and investigation requirements outlined in the Department's Reporting and Investigating Force Policy, and shall include:
  - a. The facts and circumstances which dictated the officer's use of force;
  - b. Commands given to the subject, including any appropriate warning;
  - c. Manner in which the subject refused to comply;
  - d. Targeted area (face, upper torso or other)
  - e. Witnesses to the discharge of a chemical agent;
  - f. Number of discharges, and length of each;
  - g. Estimated distance at which a chemical agent discharge(s) occurred;
  - h. Extent, if any, of the subject's injuries;
  - i. Description of first aid provided;
  - j. The name of the supervisor notified; and
  - k. Time of such notification.

J. Supervisory Responsibility

1. Department supervisors shall comply with all reporting and investigation requirements outlined in the Department's Reporting and Investigating Force, General Order # 3.05.
2. Any misapplication or misuse of a chemical agent is subject to disciplinary action, along with criminal and civil liability.