

TOWN BOARD
GARNERVILLE, NY
MARCH 11, 2019

The Town Board of the Town of Haverstraw met at a Regular Meeting on Monday, March 11, 2019, at 7:00 p.m. in the Meeting Room of the Town Hall, One Rosman Road, Garnerville, New York.

The meeting was opened with the Pledge of Allegiance.

On Roll Call the following members answered to their names:

| | |
|------------|-----------------------------|
| Supervisor | Howard T. Phillips, Jr. |
| Councilman | Isidro Cancel |
| Councilman | Vincent J. Gamboli (Absent) |
| Councilman | John J. Gould |
| Councilman | Hector L. Soto |

ADOPTION OF MINUTES

150-19 **ADOPTION OF MINUTES - TOWN BOARD MEETING OF FEBRUARY 25, 2019** as submitted by the Town Clerk and on motion by Councilman Soto, seconded by Councilman Gould were unanimously adopted.

PAYMENT OF BILLS

Councilman Cancel offered the following resolution, which was seconded by Councilman Soto and on roll call unanimously adopted.

151-19 **RESOLVED**, that bills numbered 690 through 833 in the amount of \$703,667.48 and Highway bills numbered 105 through 135 in the amount of \$23,467.44 audited at this meeting, be and they are hereby paid.

ACCEPTANCE OF REPORTS

None.

The Town Board of the Town of Haverstraw held a continuation of a Public Hearing on Monday, March 11, 2019 at 7:05 p.m. in the Meeting Room of the Town Hall, One Rosman Road, Garnerville, New York.

On Roll Call the following members answered to their names:

| | |
|------------|-----------------------------|
| Supervisor | Howard T. Phillips, Jr. |
| Councilman | Isidro Cancel |
| Councilman | Vincent J. Gamboli (Absent) |
| Councilman | John J. Gould |
| Councilman | Hector L. Soto |

Supervisor Phillips announced that this is the continuation of a Public Hearing that is being held to consider adopting Local Law No. 1 – 2019, designating property pursuant to Chapter 167-67.1 and .2 of the Town Code of the Town Of Haverstraw as within the Assisted Living Residence (ALR) Floating Overlay.

The Town Clerk read the proof of publication.

TOWN BOARD
GARNERVILLE, NY
MARCH 11, 2019

PRESENTATION BY STEVE SILVERBERG, PLANNING AND ZONING ATTORNEY

Steve Silverberg, Consulting Attorney stated that more than thirty days have passed since the serving of notices pursuant to the General Municipal Law, and several agencies submitted letters addressing concerns which will have to be addressed in full through modifications of the plans in any site plan review but does not impact the designation of the site in the overlay zone.

BOARD MEMBERS

No comment.

PUBLIC PARTICIPATION

No comment.

CLOSE HEARING

152-19 On motion by Councilman Cancel and seconded by Councilman Gould, unanimously adopted, the Public Hearing was closed.

**RESOLUTION ADOPTING PROPOSED LOCAL LAW NO. 1 OF 2019
AMENDING THE TOWN ZONING CODE**

The following resolution was offered and unanimously adopted by all of the Town Board Members.

153-19 WHEREAS, THE TOWN BOARD PREVIOUSLY ADOPTED AMENDMENTS TO THE TOWN ZONING CODE TO CREATE GREATER FLEXIBILITY FOR USES ALONG STATE ROUTE 202 IN ORDER TO BRING A GREATER MIX OF COMMERCIAL USES AND PROVIDE FOR HOUSING FOR AN EXPANDING POPULATION OF SENIORS IN NEED OF ASSISTED LIVING, AND

WHEREAS, IN ACCORDANCE WITH THE PROVISIONS OF THE TOWN ZONING CODE AN APPLICATION WAS FILED BY THE OWNERS OF THE PROPERTY SHOWN ON THE TAX ASSESSMENT MAP AS SECTION 26.09, BLOCK 4, LOTS 11 THROUGH 15 LOCATED ON THE EAST SIDE OF WEST RAMAPO ROAD (ROUTE 202), APPROXIMATELY 110 FEET SOUTH OF ELIZABETH PLACE TO DESIGNATE THOSE LOTS TO BE DEVELOPED AS A SINGLE LOT WITHIN THE ASSISTED LIVING RESIDENCE (ALR) FLOATING OVERLAY ZONE PURSUANT TO SECTION 167-67.3 OF THE TOWN CODE OF THE TOWN OF HAVERSTRAW, AND

WHEREAS, A DULY NOTICED PUBLIC HEARING WAS HELD ON MONDAY, FEBRUARY 25, 2019 AT 8:05 P.M. IN THE MEETING ROOM OF THE TOWN HALL, ONE ROSMAN ROAD, GARNERVILLE, NEW YORK AND ADJOURNED AND CONTINUED TO MARCH 11, 2019,

WHEREAS, MORE THAN THIRTY (30) DAYS HAVE PASSED SINCE THE SERVING OF NOTICES PURSUANT TO THE GENERAL MUNICIPAL LAW, AND

WHEREAS, THE ROCKLAND COUNTY OFFICE OF FIRE AND EMERGENCY SERVICES SUBMITTED A LETTER ADDRESSING CONCERNS THAT THE SAMPLE LAYOUT OF THE SITE RAISES ISSUES AS TO THE ACCESSIBILITY OF FIREFIGHTING EQUIPMENT AND OTHER SAFETY ISSUES WHICH WILL HAVE TO BE ADDRESSED IN FULL THROUGH MODIFICATIONS OF THE PLANS IN ANY SITE PLAN REVIEW BUT DOES NOT IMPACT THE DESIGNATION OF THE SITE IN THE OVERLAY ZONE, AND

TOWN BOARD
GARNERVILLE, NY
MARCH 11, 2019

WHEREAS, THE ROCKLAND COUNTY DEPARTMENT OF HEALTH HAS NOTED THAT THERE IS AN EXISTING WELL ON THE SITE WHICH WILL HAVE TO BE CLOSED PRIOR TO DEVELOPMENT OF ANY USE ON THE SITE AND MUST BE ADDRESSED AT THE TIME OF ANY SUBSEQUENT SITE PLAN REVIEW, AND

WHEREAS, THE ROCKLAND COUNTY DEPARTMENT OF PLANNING NOTED A TYPOGRAPHICAL ERROR IN THE PROPOSED LOCAL LAW AND THE BULK TABLE WHICH WERE CORRECTED IN ADVANCE OF THE CONTINUED PUBLIC HEARING ON MARCH 11, 2019, AND

WHEREAS, A FULL ENVIRONMENTAL ASSESSMENT FORM, PART 1, ALONG WITH SUPPLEMENTAL INFORMATION REGARDING TRAFFIC AND SEWER SERVICE HAVE BEEN SUBMITTED BY THE APPLICANTS TO DEMONSTRATE THE SUITABILITY OF THE COMBINED LOTS FOR DEVELOPMENT AS AN ASSISTED LIVING RESIDENCE, AND

WHEREAS, THE TOWN'S PLANNING CONSULTANT HAS PREPARED THE FEAF PARTS 2 AND 3 WHICH HAVE BEEN REVIEWED BY THIS BOARD, AND

WHEREAS, SITE PLAN APPROVAL AND SPECIAL PERMIT APPROVAL SHALL BE REQUIRED FOR ANY SPECIFIC PROJECT IN THE ALR ZONE, AND

WHEREAS, ALL THOSE WISHING TO COMMENT ON THE APPLICATION WERE GIVEN AN OPPORTUNITY TO BE HEARD AT THE HEARINGS HELD ON FEBRUARY 25, 2019 AND MARCH 11, 2019, AFTER WHICH THE TOWN BOARD CLOSED THE PUBLIC HEARING ON MARCH 11, 2019.

NOW THEREFORE,

BE IT RESOLVED, THAT THE TOWN BOARD HEREBY ADOPTS THE ANNEXED SEQRA NEGATIVE DECLARATION FINDING THAT THE PROPOSED AMENDMENT REQUIRES NO FURTHER ENVIRONMENTAL REVIEW, AND

BE IT FURTHER RESOLVED, THAT FOR THE FOREGOING REASONS THE TOWN BOARD HEREBY ADOPTS LOCAL LAW NO. 1 OF 2019 DESIGNATING THE AFOREMENTIONED LOTS IN THE ALR ZONE, SUBJECT TO ALL OF THE LOTS BEING MERGED INTO A SINGLE BUILDING LOT FOR PURPOSES OF DEVELOPING AN ASSISTED LIVING RESIDENCE, AND SUBJECT TO OBTAINING ALL OTHER APPROVALS, PERMITS AND REQUIREMENTS OF THE CODES, LAWS, RULES AND REGULATIONS OF THE TOWN OF HAVERSTRAW.

ROLL CALL:

AYES: SUPERVISOR PHILLIPS, COUNCILMAN CANCEL, COUNCILMAN GOULD, COUNCILMAN SOTO

NAYS:

ABSTAIN:

ABSENT: COUNCILMAN GAMBOLI

TOWN BOARD
GARNERVILLE, NY
MARCH 11, 2019

DRAINAGE EASEMENT AT 9 SYCAMORE STREET, GARNERVILLE, NY

Councilman Gould offered the following resolution, which was seconded by Councilman Cancel and on roll call unanimously adopted.

154-19 RESOLVED, THE TOWN BOARD HEREBY AUTHORIZES THE SUPERVISOR TO EXECUTE A DRAINAGE EASEMENT AGREEMENT CONCERNING THE PROPERTY LOCATED AT 9 SYCAMORE STREET, GARNERVILLE, NEW YORK AND FURTHER AUTHORIZES PAYMENT TO W.E. JAMES ENGINEERING AND LAND SURVEYING, PLLC IN THE SUM OF \$150.00 TO COMPLETE THE LEGAL DESCRIPTION OF THE AREA OF THE EASEMENT.

FY2018 ANNUAL SUBRECIPIENT AGREEMENT WITH THE COUNTY OF ROCKLAND COMMUNITY DEVELOPMENT AGENCY

Councilman Soto offered the following resolution, which was seconded by Councilman Gould and on roll call unanimously adopted.

155-19 RESOLVED, THAT THE TOWN BOARD OF THE TOWN OF HAVERSTRAW HEREBY AUTHORIZES THE SUPERVISOR TO ENTER INTO AN AGREEMENT WITH THE COUNTY OF ROCKLAND TO OBTAIN A COMMUNITY DEVELOPMENT BLOCK GRANT FOR BOWLINE POINT PARK IMPROVEMENTS- ADDITION OF PICKLE BALL COURTS IN AN AREA PREVIOUSLY USED FOR SAND VOLLEYBALL COURTS THAT ARE NO LONGER USED, IN THE SUM OF \$36,500.00.

AGREEMENT WITH MICHAEL LAUDIEN, GOLF PRO AND THE TOWN OF HAVERSTRAW

Councilman Cancel offered the following resolution, which was seconded by Councilman Gould and on roll call unanimously adopted.

156-19 RESOLVED, THAT THE TOWN BOARD OF THE TOWN OF HAVERSTRAW HEREBY AUTHORIZES THE SUPERVISOR TO ENTER INTO AN AGREEMENT WITH MICHAEL LAUDIEN AS GOLF PRO FOR THE TOWN OF HAVERSTRAW'S PHILIP J. ROTELLA MEMORIAL GOLF COURSE COMMENCING MARCH 1, 2019 AND TERMINATING FEBRUARY 28, 2023 FOR A FOUR (4) YEAR PERIOD.

AMENDMENT TO THE TOWN OF HAVERSTRAW 2019 SUMMER CONCERT SERIES

Councilman Gould offered the following resolution, which was seconded by Councilman Cancel and on roll call unanimously adopted.

157-19 RESOLVED, THAT THE TOWN BOARD OF THE TOWN OF HAVERSTRAW DOES HEREBY AUTHORIZE THE SUPERVISOR TO ENTER INTO AN AGREEMENT WITH THE JON BATES BAND FOR THE PURPOSE OF PROVIDING MUSICAL ENTERTAINMENT FOR THE TOWN OF HAVERSTRAW'S 2019 SUMMER CONCERT SERIES AT BOWLINE POINT PARK ON THURSDAY, JULY 18, 2019 FROM 7:30 PM TO 9:00 PM AT A COST OF \$1,400.00 TO REPLACE BACK TO THE GARDEN 1969.

TOWN BOARD
GARNERVILLE, NY
MARCH 11, 2019

ADOPTION OF USE OF FORCE POLICY FOR THE COURT OFFICERS FOR THE TOWN OF HAVERSTRAW JUSTICE COURT

Councilman Soto offered the following resolution, which was seconded by Councilman Gould and on roll call unanimously adopted.

158-19 RESOLVED, THAT THE TOWN BOARD HEREBY ADOPTS THE USE OF FORCE POLICY DATED DECEMBER 15, 2003 TO APPLY TO THE COURT OFFICERS AND OR ATTENDANTS ON DUTY ON THE TOWN OF HAVERSTRAW JUSTICE COURT.

AUTHORIZATION FOR SUPERINTENDENT OF HIGHWAYS TO ATTEND ITHACA COLLEGE (2019 HIGHWAY SCHOOL)

Councilman Cancel offered the following resolution, which was seconded by Councilman Soto and on roll call unanimously adopted.

159-19 RESOLVED, THAT THE TOWN BOARD OF THE TOWN OF HAVERSTRAW, HEREBY GRANTS PERMISSION FOR GEORGE WARGO, JR., SUPERINTENDENT OF HIGHWAYS TO ATTEND ITHACA COLLEGE, 2019 HIGHWAY SCHOOL, TO BE HELD FROM JUNE 2, 2019 TO JUNE 5, 2019 IN ITHACA, NEW YORK, SPONSORED BY TOWN AND COUNTY OFFICERS TRAINING SCHOOL, AND THE ASSOCIATION OF TOWNS OF THE STATE OF NEW YORK, AT A COST FOR CLASS AND ACCOMMODATIONS NOT TO EXCEED \$800.00.

ADOPTION OF 2019 BOWLINE POINT PARK SEASON RATES AT THE TOWN OF HAVERSTRAW

Councilman Gould offered the following resolution, which was seconded by Councilman Soto and on roll call unanimously adopted.

160-19 RESOLVED, THAT THE TOWN BOARD OF THE TOWN OF HAVERSTRAW, DOES HEREBY ADOPT THE 2019 BOWLINE POINT PARK SEASON RATES AT THE TOWN OF HAVERSTRAW (SEE ATTACHED 2019 RATES.)

AWARD OF RFP NO. 2 - 2019 – DRYJET AERIFICATION - GOLF COURSE

Councilman Cancel offered the following resolution, which was seconded by Councilman Gould and on roll call unanimously adopted.

161-19 RESOLVED, THAT ONE (1) RFP WAS SUBMITTED TO CHRISTOPHER DYROFF, GREENSKEEPER, TO DRYJET AERATE TO THE TOWN OF HAVERSTRAW GOLF COURSE FOR THE 2019 GOLF SEASON, AND BE IT FURTHER

RESOLVED, THAT THE TOWN BOARD OF THE TOWN HAVERSTRAW DOES HEREBY AWARD RFP NO. 2-2019 FOR DRYJECT AERATION OF THE GREENS FOR THE PHILIP J. ROTELLA GOLF COURSE IN APRIL 2019 TO DRYJECT NORTH EAST, LLC OF DELAWARE WATER GAP, PENNSYLVANIA, THE SOLE SUPPLIER, AT A PRICE OF \$6,750.00.

TOWN BOARD
GARNERVILLE, NY
MARCH 11, 2019

AWARD OF RFP NO. 3 - 2019– DEEP TINE AERATION - GOLF COURSE GREENS

Councilman Cancel offered the following resolution, which was seconded by Councilman Soto and on roll call unanimously adopted.

162-19 RESOLVED, THAT ONE (1) RFP WAS SUBMITTED TO CHRISTOPHER DYROFF, GREENSKEEPER, TO PROVIDE DEEP TINE AERATION TO THE TOWN OF HAVERSTRAW GOLF COURSE GREENS, AND BE IT FURTHER

RESOLVED, THAT THE TOWN BOARD OF THE TOWN HAVERSTRAW DOES HEREBY AWARD RFP NO. 3 - 2019 FOR DEEP TINE AERATION OF THE GREENS FOR THE PHILIP J. ROTELLA GOLF COURSE IN APRIL 2019 TO DRYJECT NORTH EAST, LLC OF DELAWARE GAP, PENNSYLVANIA, THE SOLE SUPPLIER, AT A PRICE OF \$3,990.00.

ADVERTISE TO REBID - BID NO. 8 – 2019 – SUPPLY AND DELIVER OF ONE (1) 2018 OR 2019 MODEL YEAR FORD F-250/RAM 2500 4X4 PICKUP TRUCK FOR THE TOWN OF HAVERSTRAW PARKS DEPARTMENT

Councilman Soto offered the following resolution, which was seconded by Councilman Gould and on roll call unanimously adopted.

163-19 RESOLVED, THAT THE TOWN BOARD DOES HEREBY AUTHORIZE THE PUBLICATION FOR LEGAL ADVERTISEMENT TO REBID TO SUPPLY AND DELIVER ONE (1) 2018 OR 2019 MODEL YEAR FORD F-250/RAM 2500 4X4 PICKUP TRUCK FOR THE TOWN OF HAVERSTRAW PARKS DEPARTMENT. SEALED PROPOSALS WILL BE RECEIVED BY THE TOWN CLERK OF THE TOWN OF HAVERSTRAW LOCATED ON ONE ROSMAN ROAD, GARNERVILLE, NEW YORK UNTIL THURSDAY, MARCH 21, 2018 AT 10:00 A.M.

RESOLUTION CONDEMNING ANTI-SEMITISM

The following resolution was offered and unanimously adopted by all of the Town Board Members.

1164-19 WHEREAS, U.S. REPRESENTATIVE ILHAN OMAR HAS RECENTLY MADE ANTI-SEMITIC STATEMENTS REGARDING THE INFLUENCE OF JEWISH MONEY IN SUPPORT OF THE STATE OF ISRAEL, AND

WHEREAS, REP. OMAR HAS MADE ADDITIONAL ANTI-SEMITIC STATEMENTS REGARDING THE DIVIDED LOYALTIES AND ALLEGIANCE OF AMERICAN JEWS WHO SUPPORT THE STATE OF ISRAEL, AND

WHEREAS, ISRAEL IS THE ONLY DEMOCRATIC NATION IN THE MIDDLE EAST AND IS AND ALWAYS HAS BEEN A STRONG ALLY OF THE UNITED STATES AND SHARES THE VALUES WHICH ALL AMERICANS CHERISH, AND

WHEREAS, REGARDLESS OF THESE FACTS, REP. OMAR IS FREE TO CRITICIZE THE STATE OF ISRAEL, HOWEVER, SHE IS NOT FREE TO ATTACK THOSE WHO SUPPORT ISRAEL, AND

WHEREAS, THESE ATTACKS ARE A CASE STUDY OF INSIDIOUS ANTI-JEWISH BIGOTRY AND MUST NOT BE TOLERATED, AND

WHEREAS, THE US HOUSE OF REPRESENTATIVES HAS PASSED A BROAD NON-SPECIFIC RESOLUTION CONDEMNING ALL HATE SPEECH, AND1 BY NOT SPECIFICALLY CONDEMNING HER FOR THESE STATEMENTS, IDEAS ONCE THOUGHT OF AS INTELLECTUALLY UNCOOUTH AND MORALLY REPULSIVE

TOWN BOARD
GARNERVILLE, NY
MARCH 11, 2019

HAVE SUDDENLY BECOME MERELY CONTROVERSIAL. IT'S HOW ANTI-ZIONISM HAS ABRUPTLY BECOME AN ACCEPTABLE POINT OF VIEW IN REPUTABLE CIRCLES, AND

WHEREAS, THE PEOPLE OF THE TOWN OF HAVERSTRAW BELIEVE THAT REP. OMAR'S ANTI-SEMITIC STATEMENTS MUST BE SPECIFICALLY RENOUNCED.

THEREFORE BE IT RESOLVED THAT A LETTER BE SENT TO SENATOR CHARLES E. SCHUMER, SENATOR KIRSTEN GILLIBRAND, CONGRESSWOMAN NITA M. LOWEY AND CONGRESSMAN SEAN PATRICK MALONEY REQUESTING THAT THE HOUSE OF REPRESENTATIVES CENSURE REP. ILHAN OMAR FOR HER ANTI-SEMITIC STATEMENTS AND THAT SHE BE IMMEDIATELY REMOVED FROM HER POSITION ON THE HOUSE COMMITTEE ON FOREIGN AFFAIRS.

AUTHORIZATION TO RETAIN DICHTER LAW LLC – SUEZ RATE CASE

The following resolution was offered and unanimously adopted by all of the Town Board Members.

165-19 RESOLVED, THAT THE TOWN BOARD OF THE TOWN OF HAVERSTRAW DOES HEREBY AUTHORIZE THE SUPERVISOR TO ENTER INTO A RETAINER AGREEMENT WITH DICHTER LAW LLC TO UNDERTAKE REPRESENTATION OF THE TOWN IN THE SUEZ RATE CASE AT A COST NOT TO EXCEED \$9,000.00.

AWARD OF RFP NO. 4-2019 – CERTIFICATE COVERS

Councilman Gould offered the following resolution, which was seconded by Councilman Soto and on roll call unanimously adopted.

166-19 RESOLVED, THAT ONE (1) RFP WAS SUBMITTED TO ALEX GUARINO, ASSISTANT TO THE SUPERVISOR, TO PROVIDE CERTIFICATE COVERS FOR DISTINGUISH SERVICE AWARDS FOR TOWN OF HAVERSTRAW, AND BE IT FURTHER

RESOLVED, THAT THE TOWN BOARD OF THE TOWN HAVERSTRAW DOES HEREBY AWARD RFP NO. 4-2019 TO GFI COMMUNICATIONS CORP OF PEEKSKILL, NEW YORK FOR 500 CERTIFICATE COVERS, ONE COLOR SILVER WITH TOWN EMBLEM ON FRONT COVER, AT A PRICE OF \$2,660.00, THE SOLE BIDDER.

SCHEDULE PUBLIC HEARING – TO HEAR ALL COMMENTS AND SUGGESTIONS REGARDING THE PROPERTY LOCATED AT 1 MARINO BOULEVARD, POMONA, NY 10970

Councilman Cancel offered the following resolution, which was seconded by Councilman Gould and on roll call unanimously adopted.

167-19 RESOLVED, THAT THE TOWN BOARD OF THE TOWN OF HAVERSTRAW PURSUANT TO CHAPTER 127-31 OF THE TOWN CODE OF THE TOWN OF HAVERSTRAW DOES HEREBY SCHEDULE A PUBLIC HEARING TO HEAR ALL COMMENTS AND SUGGESTIONS REGARDING THE PROPERTY LOCATED AT 1 MARINO BOULEVARD, POMONA, NEW YORK 10970 DUE TO THE FAILURE OF THE OWNER AND/OR TENANT AND/OR OCCUPANT OF THE ABOVE PREMISES TO CORRECT A CONDITION COMPLAINED OF, SPECIFICALLY THAT THERE IS AN ABUNDANCE OF DEBRIS ON THE

TOWN BOARD
GARNERVILLE, NY
MARCH 11, 2019

PROPERTY CAUSING A PUBLIC NUISANCE. SAID PUBLIC HEARING WILL BE HELD ON MONDAY, APRIL 8, 2019 AT 7:05P.M. AT THE TOWN HALL, ONE ROSMAN ROAD, GARNERVILLE, NEW YORK, AND BE IT FURTHER

RESOLVED, THAT THE TOWN CLERK SHALL PUBLISH SAID NOTICE AND ALL PERSONS ARE INVITED TO ATTEND AND WILL BE HEARD BY THE BOARD.

PUBLIC PARTICIPATION

No comments.

ANNOUNCEMENTS

The Youth Police Academy had their orientation at Town Hall on Tuesday, February 26th. We wish the students great success.

The Marian Shrine started their Lenten Dinners on Fridays from 5-8 pm.

S.W. Johnson started their Annual Friday Night Fish Fry during Let from 6-8 pm.

The Town of Haverstraw Youth Board has several trips scheduled for spring: Aquatopia Camelback Resort on Friday, March 22nd, The Maritime Aquarium on April 27th and the Yankee/ Mets Game at the Yankee Stadium on June 10th.

ADJOURNMENT

168-19 Supervisor Howard T. Phillips, Jr. stated that he would like to close tonight's meeting in memory of Joan Mary Schott Mulcahy, Helen Cusack, Denise Tallman and Helen Darnobid who recently passed away. A motion was made by Councilman Gould, seconded by Councilman Cancel and unanimously adopted and the Town Board Meeting was adjourned.

RAQUEL VENTURA
Town Clerk

SECTION: 7

TITLE: USE OF FORCE

SUB SECTION: 7.10

TITLE: POLICY

EFFECTIVE DATE: APRIL 1, 1989 (Revised 12/15/03)

- A. This section is not intended to broaden or modify a peace officer's civil or criminal liability in any way and should not be construed as creating a higher or lesser standard of safety or care than that set forth by law.

- B. A peace officer shall be familiar with the provisions of Article 35 of the New York State Penal Law, "Defense of Justification," as well as any other policies, directives or memoranda regarding the use of force.

- C. Physical Force
 - 1. In the complex environment in which court officers work, they are confronted daily with situations where control must be exercised in order to protect themselves and the public safety.

 - 2. Depending on the circumstances, officers have a variety of options to achieve control. The range of available options is called the "Physical Force Continuum." The initial steps in the continuum, i.e., officer presence and verbal direction (including advice, warnings and persuasion), do not involve physical interaction between the subject(s) and the officer. This should be the first option which an officer considers in order to control the situation, whenever circumstances allow. The following techniques should be utilized:
 - a. Speak in a calm, deliberate manner, listen to the subject and request their cooperation.

 - b. Explain the consequences if the subject does not cooperate.

 - 3. Depending on the actions of the subject, it may be necessary for a court officer to proceed along the physical force continuum into "soft empty hands or hard empty hands techniques." These techniques require physical contact with the subject and may include, incrementally: holding a subject, come-along holds and take-down maneuvers.

SUBSECTION: 7.10 (continued)
TITLE: POLICY

4. Throughout all physical force encounters, it is important for court officers to remember that they may enter the continuum at any point, but that their force actions are designed to exercise control and are dictated by the actions of the subject(s) and not the officer's emotions. The Unified Court System recognizes the value of all human life and is committed to respecting the dignity of every individual. Only the minimum force necessary to gain control of the situation shall be used.
5. In rare circumstances, the actions of a subject(s) may require officers to use non-lethal "intermediate weapons" such as batons or pepper spray to exercise control as appropriate. This is a significant progression along the physical force continuum because the use of these weapons may cause pain and/or disability, even if only temporarily, to the subject(s). Additionally, the improper or inappropriate use of these weapons may be construed as an abuse of authority and may lead to criminal and civil sanctions against the officer. Only officers who are trained, currently certified, and authorized to carry a baton and/or pepper spray may use these intermediate weapons.

Court officers who utilize physical force (i.e., soft empty hand techniques, hard empty hand techniques or intermediate weapons) on any individual shall file an Unusual Occurrence Report (UF-101). Additionally, any court officer who unholsters and/or points a firearm at any individual shall file an Unusual Occurrence Report (UF-101). The court officer shall describe the circumstances necessitating the use of physical force in the "Details" section of the UF-101 and check all boxes that apply in the "Physical Force Used" section.

6. Under no circumstances shall force used by court officers exceed that provided for by statute. Excessive force will not be tolerated. Court Officers will NOT use chokeholds. (
7. Any uniformed supervisors present shall direct and control the use of force activity.
8. Individuals taken into custody (i.e., arrests, EDP's, etc.) shall be rear cuffed at the earliest opportunity to reduce potential resistance.

SUBSECTION: 7.10 (continued)
TITLE: POLICY

9. If a person appears to be having difficulty breathing or is otherwise demonstrating life threatening symptoms, medical assistance will be requested immediately. The uniformed supervisor will direct that alternate means to maintain custody be utilized, if appropriate.
10. The use of restraints to "hog tie" subjects and the transportation of subjects in face down position is prohibited.

D. Deadly Physical Force

1. Deadly physical force may be used when there is reasonable cause to believe the use of such force is necessary to protect oneself or another person from the use or imminent use of deadly physical force.
 - a. Where feasible and consistent with personal safety, the warning "Police Don't Move" should be given.
2. A firearm shall not be discharged:
 - a. Under circumstances where the lives of innocent persons may be endangered unless failure to use deadly force is likely to result in serious physical injury or death, to the officer or another.
 - b. At an unarmed fleeing felon or an escaping prisoner, unless the officer's life or the life of another person is in danger.
 - c. As a warning shot. However, when feasible and consistent with personal safety, a warning of some type (other than a shot) should be given.
 - d. As a means of summoning assistance.
 - e. From or at a moving vehicle unless the occupants of the vehicle are using deadly physical force against the court officer or another by any means other than the vehicle.
 - f. At dogs or other animals unless an immediate risk of physical injury exists and there are no other means to control the animal or escape injury.
 - g. In defense of property.
3. Court officers with revolvers shall not, under any circumstance, cock the revolver. The revolver must be fired double action at all times.

SUBSECTION: 7.20

TITLE: BATONS

EFFECTIVE DATE: 12/15/03

- A. The use of a baton constitutes physical force under the New York Penal Law (Article 35). The use of the baton must be considered to be an incremental step along the physical force continuum used only when reasonably believed necessary for:
 - 1. Effecting an arrest of a resisting subject or preventing escape from custody.
 - 2. Defense of self or another from what is reasonably believed to be the use or imminent use of physical force.
- B. The Chief of Public Safety shall designate the type(s) of batons authorized for use and the posts on which they may be allowed.
- C. Only uniformed supervisors and court officers who are authorized to carry batons, trained by the Unified Court System, and have current certification in the use of batons, may carry authorized batons on duty.

SUBSECTION: 7.30
TITLE: PEPPER SPRAY DEVICES
EFFECTIVE DATE: 12/15/03

A. Use of Oleoresin Capsicum (O.C.) pepper spray constitutes physical force under the New York State Penal Law. Use of pepper spray by a uniformed supervisor or court officer authorized to carry and utilize O.C. is proper when used in accordance with Article 35 of the Penal Law and UCS procedure. O.C. pepper spray may be used when an officer reasonably believes it is necessary to effect an arrest of a resisting subject, for self-defense or defense of another from unlawful force, or to take a resisting emotionally disturbed person into custody.

will
that

1. In many cases, pepper spray will reduce or eliminate the need for substantial physical force to effect an arrest or gain custody. It often reduce the potential for injuries to officers and suspects

may result from physical restraint and it should be regarded as a possible alternative to such force and restraint where practical.

O.C. pepper
supervisors may
duty.

2. Only uniformed supervisors and court officers who are authorized to carry, trained by the Unified Court System and have current certification in the use of O.C. pepper spray may carry spray devices. Authorized and trained officers and carry O.C. Pepper Spray Devices both on and off

arrest
and/or
effective in

3. O.C. Pepper spray shall not be used in situations that do not require the use of physical force. O.C. pepper spray may be used in or custodial restraint situations where physical presence verbal commands have not been, or would not be, overcoming physical resistance.

should
options and tactics.

4. O.C. Pepper spray will not automatically stop all subjects, and even when it does incapacitate, the effects are temporary. Officers therefore be ready to use other appropriate force

5. The only O.C. pepper spray authorized for use is that which is issued to court officers and approved by the Chief of Public Safety.

SUBSECTION: 7.30

TITLE: PEPPER SPRAY DEVICES (continued)

6. While on duty in uniform, pepper spray shall be carried in an appropriate holster attached to the gun belt.
7. Uniformed supervisors and court officers authorized to carry O.C. pepper spray shall comply with all training guidelines regarding the use of O.C. pepper spray. All officers shall avoid discharging pepper spray indiscriminately over a large area for disorder control.
8. Uniformed supervisors shall assess all situations, if practicable, prior to utilizing or authorizing the use of pepper spray.
9. All uniformed supervisors and officers authorized to use pepper spray should attempt, when practical and consistent with the safety of all persons involved, to de-escalate the situation before using pepper spray or other force. The following techniques may be employed, when appropriate:
 - a. Act and speak in a calm deliberate manner;
 - b. Maintain a safe distance from the subject;
 - c. Listen to the subject and request their cooperation;
 - d. Explain the consequences (e.g., possible additional charges) of the subject's behavior if they do not cooperate;
 - e. Request assistance of higher-level supervisors and additional officers, if available.
10. In utilizing pepper spray, a court officer shall aim and discharge pepper spray into a subject's eyes, nose, and/or mouth for maximum effectiveness, in two (2) short one - second bursts and only in situations where the officer reasonably believes that it is necessary to:
 - a. Protect self, or another from unlawful use of force (e.g., assault).

- b. Effect an arrest, or establish physical control of a subject resisting arrest.

SUBSECTION: 7.30

TITLE: PEPPER SPRAY DEVICES (continued)

- c. Establish physical control of a subject attempting to flee from arrest or custody.
- d. Establish physical control of an emotionally disturbed person (EDP).

11. Once pepper spray is used, arrest the criminal suspect on whom it was used and charge the suspect with the crime that initiated the use of the pepper spray.

- a. Call local police if person is mentally ill or an Emotionally Disturbed Person.
- b. Do not use pepper spray on subjects who passively resist (e.g., going limp, offering no active physical resistance). If possible, avoid using pepper spray on persons who appear to be (in frail health, young children, women believed to be pregnant, or persons with known respiratory conditions. Avoid discharging pepper spray indiscriminately over a large area for disorder control.

12. Request the response of Emergency Medical Service (E.M.S.) once the situation is under control and if the subject requests or needs medical attention, but does not require immediate transportation to the hospital.

- a. Advise person sprayed that E.M.S is responding.

13. Remove the subject from the contaminated area and expose to fresh air while awaiting the arrival of E.M.S., or transportation to hospital/police facility, if tactically feasible.

14. Position subject on their side or in a sitting position to promote free breathing.

- a. The subject should never be maintained or transported in a face-down position.
- b. Do not sit, stand, or kneel on subject's chest or back.

SUBSECTION: 7.30

TITLE: PEPPER SPRAY DEVICES (continued)

15. Provide assistance to subject as follows:

- a. When consistent with officer safety, and provided a source of water is readily available, the officer should flush the contaminated skin area of subject with profuse amounts of water.
- b. Repeat flushing at short intervals, if necessary, until symptoms of distress subside.
- c. Continue flushing the contaminated skin of the subject in custody, as needed.
- d. Commence the flushing of a subject's contaminated skin upon arrival at the police facility, if this has not already been done.

16. Prepare Unusual Occurrence and/or Aided report(s) as circumstances dictate.