



Answers to Questions Received by the City of Burlington
Prepared by Police Chief Jeffrey Smythe
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This document was prepared by Chief Jeffrey Smythe in response to questions recently asked by community members. Community member questions represented in **bold text**.

As a resident of Burlington, I want to make sure that my local police department is taking the necessary preventative measures to ensure that incidents like this will not occur in the future. So, I ask:

1. **Are the police officers in the Burlington Police Department being trained to de-escalate altercations by using peaceful conflict resolution strategies?**

Yes. The state has modified academy curriculum over the last few years and the BPD greatly exceeds their requirements for de-escalation. Our data shows an overall decline in use of force over the last four years based on this work.

2. **Are the police officers in the Burlington Police Department forbidden from using carotid restraints (chokeholds, strangleholds, etc.) and hog-tying methods?**

There is no training provided by the State of North Carolina or the Burlington Police Department about the authorization or use of these tactics. Although, we have never had a use of force related to these tactics, we have decided to formally prohibit them per policy.

It is important to recognize that if the officer is authorized to use a firearm in a life or death situation, they are equally authorized to use a chokehold, blunt object, or any other tactic to survive the deadly encounter.

Furthermore, are they forbidden from transporting civilians in uncomfortable positions, such as face down in a vehicle?

Yes. We clearly discuss in policy placing an arrestee in the recovery position after an arrest where force was used and the requirement to transport them in a seated position. We also teach the issues of positional asphyxia and do not allow an arrestee to be bound hand and foot with their limbs pulled behind them.

3. **Are the police officers in the Burlington Police Department required to intervene if they witness another officer using excessive force?** Yes. Our policy is quite clear on

this matter. Additionally, all uses of force are reported and reviewed. If there is an allegation of excessive force, this would receive a higher level of review.

4. **Will officers be reprimanded if they fail to intervene?** Yes.
5. **Are the police officers in the Burlington Police Department forbidden from shooting at moving vehicles?** Yes. We have had this policy for many years.
6. **Is there a clear and enforced use-of-force continuum that details what weapons and force are acceptable in a wide variety of civilian-police interactions?**

We follow a “Force Options Model” that is approved by NC Standards and Training and is well understood by our staff. We also overlay that with the Critical Decision-Making Model endorsed by the Police Executive Research Forum (PERF). The PERF model encourages “big picture thinking” as officers’ factor in de-escalation techniques and apply the force model. Given the widely divergent factors encountered by police officers on the street, no simplistic or linear model will work effectively. Our Force Options Model is depicted as a wheel and officers apply control levels after evaluating subject resistance levels and other variable that might include the size of the officer and offender, knowledge of impairment, prior encounters with the subject, etc. Every use of force is reviewed at two or more levels for full compliance with our training and policy. I encourage interested persons to evaluate our use of force annual report posted on our web page.

7. **Are the officers in the Burlington Police Department required to exhaust every other possible option before using excessive force?**

I think you intend to say “force” here and not “excessive force?” We are prohibited from using excessive force so there is no need to say that you do something else before you “plan” to use excessive force.

So, to answer the question: Are the officers required to exhaust every other possible option before using force? No. “Every possible option” is not a tenable legal standard. We use the more common “reasonable force option”. So theoretically it is “possible” to dodge bullets and wait for the suspect to shoot all of his/her bullets before attempting the arrest. But clearly that is not reasonable or safe.

I imagine another permutation of this question may have been: Do we exhaust every possible option before we use **deadly force**? Given the answers above, the answer is yes. We would never take a life with deadly force if reasonable lesser options were available.

8. **Are the officers in the Burlington Police Department required to give a verbal warning to civilians before drawing their weapon or using excessive force?**

No and Yes. No, we are not required to give a verbal warning before we draw a firearm. Yes, we are required to give a verbal warning before we shot a firearm. Again, this is with the caveat in policy “when reasonable to do so”. If the suspect is shooting at me, I can draw my weapon and fire back without a delay for a verbal warning. There is no requirement to warn someone before we draw a weapon, only when we intend to use it.

9. **Are the officers in the Burlington Police Department required to report each time they threaten to or use force on civilians? Yes.**

10. **Are the officers in the Burlington Police Department thoroughly vetted to ensure that they do not have a history with abuse, racism, xenophobia, homophobia / transphobia, or discrimination?**

Yes, to the best of our ability. There is no exact science here to determine these things. We conduct a thorough background to include contacting developed sources, a polygraph and psychological exam. All of these are state requirements and they verify our compliance.

11. **Are the officers in the Burlington Police Department trained to perform and seek necessary medical action after using excessive force?**

Again, in this circumstance I think you mean “use force” rather than only when we might use “excessive force?” So yes, within the bounds of our level of basic first aid training, we would provide live saving care to any person in any circumstance. Very few of our officers are EMT trained, so we teach our staff to immediately call EMS and provide basic lifesaving techniques.

12. **Is there an early intervention system enforced to correct officers who use excessive force?**

We have an early warning system for all employees, regardless of whether they use excessive force or not. This system is engineered to detect officers under stress for family issues, financial issues, and/or repetitive minor conduct issues that might indicate other factors. Any use of force is tracked and adds “points” into the warning system. There is no different point factor or different warning should an officer use excessive force. If an officer uses excessive force (incredibly rare for us), we would provide retraining and any discipline required and then pay special attention to all of their future actions for a period of time.

13. **Additionally, how many complaints does an officer have to receive before they are reprimanded?**

An officer can be reprimanded for a single occurrence of any behavior. Beyond that we have progressive discipline and use that regularly as needed. Last year I terminated three employees and we place a high emphasis on accountability and integrity. We generally have very few internal affairs complaints in any given year.

14. **Before they are terminated?**

There is no set number of complaints that lead to termination. While there is a cumulative effect, there is not a math formula for this.

15. **More than three complaints are unacceptable.**

So, we believe that all complaints are not equal. We also believe that unfounded complaints

should not be counted. Do you believe the same? There is no magic number here. We evaluate the severity and outcome of every complaint to determine discipline. And then we factor in the time and distance from prior complaints. During a 30-year career, a lot can happen. I am happy to discuss this more as you see fit.

Continued Statements from community member and Smythe's comments below:

A) Statistics have indicated that by enforcing these policies, there is a significant decrease in civilian complaints and injury due to excessive force.

I am curious to learn your source. I don't disagree, I am simply curious as I am always looking to learn more.

B) If any of the policies are not currently in place, then what is being done to ensure that they are going to be enforced in the near future? What can I do, as a concerned citizen, to set these policies in motion?

You can be involved. I recommend you attend one of our 10-week community police academy sessions and become active as a volunteer in the PD to learn more and positively impact our agency. We have two per year in English and hope to have an additional class in Spanish each year. You can share your thoughts with me as the police chief and also communicate directly with my boss, the City Manager. You can also be present at City Council Meetings and express your thoughts, suggestions, and views with Council Members.

Additionally, I will tell you that our policy manual is a fluid document. It is in constant review as we update sections to comply with new court rulings, academic research leading to new industry best practices, the inclusion of new grants or programs, and changes at the state level for certification and training requirements or Legislative action. We are assisted in this endeavor by a contractual relationship with a company that drafts and vets policy for police departments across the country.

C) I also want to increase the level of trust between the police department and the community. To establish trust, there has to be transparency. I would like to see the Burlington Police Department collect and report data on civilian deaths that occurred in custody and as a result of an officer's use of excessive force.

Again, I am confused a bit by the request here for "excessive" force. There is also a distinction in my industry between an in-custody death and a use of force death. Since the City does not operate a jail (where most in-custody deaths take place) I will assume that you mean "deadly" force?

We actually do collect and report our use of force data annually. Over the last decade, we have only had one death by firearm and zero in-custody deaths. The fatal use of force case involved a Hispanic male who was attacking officers with a machete. This was in 2018. I can take you back to an earlier question about what options do we use before we use deadly force. In this case, officers were on scene for several minutes before the encounter turned deadly. The officers used calming

and de-escalation techniques. We called for a counselor who unfortunately did not arrive in time. When the subject refused to listen and approached officers with the machete, we first deployed tasers. Both officers had two unsuccessful attempts to subdue him with a taser. He hacked at us with the machete and we retreated. He attacked again running at the officer with the raised machete at which point he was shot. In this case he was trying to reenter the house and there were other innocent people inside we needed to protect. Therefore, we were unable to retreat again, and the suspect forced our actions. This is a tragic outcome, but I assure you the officers did everything in their power to not use deadly force.

This case was independently investigated by the North Carolina State Bureau of Investigation who forwarded their conclusions to the Alamance County District Attorney. The District Attorney reviewed the facts in the case and determined the officers were justified to use deadly force in self-defense in this case.

D) The data should be broken down by demographics and should showcase the race, gender, sexuality, and religion of the civilians.

Our data is currently broken down by race, gender and age. I am not sure it is reasonable or possible to include the sexuality and religion as these are not officially tracked.

E) Allowing the public access to this information will show us where we, as a community, fall short.

I hope upon evaluating our data you will find that we will not fall short. However, there is always room for improvement, and I welcome your reasonable suggestions.

F) Thank you for your time and I hope that we can work together to protect the Burlington community. I refuse to let the next hashtag come from here.

I also refuse to let the next hashtag come from Burlington! My job as the police chief is to ensure the success of our staff on every single call. We do our very best! Take care and thank you for your informed questions and I look forward to meeting you in the future!

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