



MINUTES of 2:00 p.m. August 3, 2020 Regular Meeting
Board of Public Works & Safety and Stormwater Board

Held Goshen Police & Court Building, 111 East Jefferson Street, Goshen, Indiana

Present: Board Chair Jeremy Stutsman, Member Mike Landis, Member Mary Nichols

No minutes were presented

Landis/Nichols moved to approved agenda as presented. Passed 3-0.

Clerk's note: An updated agenda was provided and approved for the meeting, including two items (attached here as pages 12-23) not included in the first draft of the agenda:

Conditional Offer of Employment with Adam W. Peisker

Resolution 2020-26: Approve Goshen Police Department Policy 09 (2020A)

(1) Monroe St. Bridge Closure:

Director of Public Works Dustin Sailor presented request on behalf of Elkhart County Highway.

Nichols/Landis moved to permit Elkhart County Highway to close the bridge over Rock Run Creek on Monroe St. on Aug. 10 for maintenance. Passed 3-0.

(2) Parking Lot D (South of City Hall) Use Request for Electric Vehicle Ride & Drive Event, Fri. Oct. 2:

Director Department of Environmental Resilience Aaron Sawatsky-Kingsley requested permission for use of lot as described in packet memo.

Nichols/Landis moved to approve the closing of Parking Lot D south of City Hall on Oct. 2, 6-8 p.m. Passed 3-0.



Mayor suggested Street Dept. put out signs a couple days ahead of time.

(3) Parking Lot (Washington St./Water St.) Use Request for Outdoor Concert, Sun. Sept 6:

Jesse Sensenig of Goshen Brewing Company presented request for use of 2/3 of lot, describing social distancing plan and procedures. Mayor stated that event plan must be approved by Elkhart County Health Dept. and a copy of approved plan must be provided to City. Landis asked how expectations would be communicated to concertgoers. Sensenig explained that tickets would come with explanations, in addition to communication at the event. Mayor mentioned new health order makes fines for event organizers possible if COVID-19 procedures are not followed. Sensenig acknowledged.

Nichols/Landis moved to approve use of Washington St. / Water St. parking lot for an outdoor concert on Oct. 6 provided that Elkhart County Health Dept. plan is approved and provided. Passed 3-0.

(4) Variance Request: Parking & Driveway Surfaces – 2307 Bashor Rd.

Norm Weaver explained that he installed crushed concrete without authorization in an approximately 60' x 12' area adjacent to his driveway as depicted in the drawing in the packet. He further explained that he has six vehicles that routinely move around, driving on and damaging the grass.

Director of Public Works Dustin Sailor said that right-of-way permit is needed, and maximum width of residential driveway approach is 24'. Hard surface would be needed in right-of-way and any gravel or widening beyond 24' would need to occur on the property, not in right-of-way. Mayor asked if Sailor was okay with what was going on at the property. Sailor replied that current situation exceeds 24'.

Assistant City Planner Rossa Deegan explained that this would also require Board of Zoning Appeals approval. Deegan reported that planning staff suggested that if Mr.



Weaver proceed to BZA he submit a plan moving the parking area farther away from the right-of-way and on the west side of the house.

Landis noted that two issues are the material itself and also the width/placement. He explained that generally the Board has looked for a neighborhood to have more than half of the driveways in gravel in considering variances. He noted with respect to the width, a recent situation wherein a property owner had to remove the gravel that had already been installed. Landis also noted that campers, etc. must be stored behind the front line of the house, noting a prior request that had not been accommodated.

Mayor asked for clarification regarding which portions of the request would be handled by Board of Works and which by BZA. Deegan stated his understanding that Board of Works was looking at material, and possibly the position of the material. Sailor stated Engineering Department position that they only deal with right-of-way and they would not issue a permit for gravel in the right-of-way.

Norm Weaver explained that he had already installed three inches of crushed concrete to the sidewalk on the weekend of July 4th.

Mayor stated he is personally not offended by the gravel.

Landis stated he struggles with inconsistent application of the design standards. If this use of gravel is approved then there is really no place where gravel would not be okay.

Norm Weaver said there are some gravel driveways on Bashor and Greene Rds.

Mayor said that potentially more pervious surface for rainwater could be a benefit, and perhaps ordinance should be revisited. Landis said that would make it easier from his standpoint. Imagined if he were the neighbor this could start looking like a used car lot. If they say no to gravel it could provide impetus for a new plan to be submitted that is more consistent with the objectives of the ordinance and design standard. Landis said he is not inclined to approve, as it is not consistent with the ordinance or the neighborhood.

Mayor asked if the gravel generally bothers Landis, or if moving it back might make a difference. Landis pointed out that a business along US 33 was denied use of gravel behind the business where it would not have been visible. Asked whether businesses are



treated differently than individuals. Requested more discussion before a vote to allow gravel.

Mayor suggested a site visit and a postponed vote.

Stutsman/Nichols moved to postpone until Aug. 10. Passed 3-0.

(5) Agreement: Lacy Construction Group Inc. d/b/a The New Deal to Seal Deck at City Hall.

Legal Compliance Administrator Shannon Marks presented an agreement to complete sealing work at a cost of \$12,000, with work to be completed within 60 days of a notice to proceed. Mayor reminded the Board that prior bids were to replace the concrete deck. Sailor noted that water is entering a records storage area under the deck and \$80,000 was budgeted this year for the project, but with COVID-19 financial impacts a less expensive alternative is being presented.

Nichols/Landis moved to enter into an agreement with Lacy Construction Group Inc. d/b/a The New Deal to Seal Deck at City Hall at a cost of \$12,000 with work to be completed within 60 calendar days of a notice to proceed. Passed 3-0.

(6) Contract: Progressive Architecture Engineering (Grand Rapids, MI) for Lincoln Corridor Traffic Study

Sailor presented traffic study for Lincoln Ave. from Indiana Ave. to 8th St. to add cycletrack while assuring sufficient vehicular level of service with lane reduction.

Mayor said this another big piece of making our community more bicycle friendly.

Landis noted that MACOG had performed some traffic studies in the past. Sailor Said MACOG rarely gathers traffic data on behalf of City, but data by Linway Plaza was recently updated and consultant will make use of new data.



Nichols/ moved to approve and award Progressive AE with the amount of \$19,989.00 for the Lincoln Corridor Traffic Study for the Engineering Department. Passed 3-0.

(7) Participation Agreement: Central States, Southeast and Southwest Areas Health and Welfare Fund for Employee Health Insurance

Marks presented request consistent with packet memo. Mayor asked whether \$1000/yr is typical increase. Marks explained that it has been “not to exceed” in the recent past, but in this agreement the rates are set. Landis asked whether this was the cost for an individual employee. Mayor confirmed that stated that City pays most of this cost. Marks explained that the rate includes the 80% City share and the 20% employee share.

Nichols/Landis moved to approve and authorize the Mayor to execute the participation agreement with Central States, Southeast and Southwest Areas Health and Welfare Fund. Passed 3-0.

(8) Agreement: Goshen Theater for Financial Assistance

Mayor stated that City has been contributing \$50,000 annually for theater operations. Request was increased to \$75,000 for 2020, and budget accommodation was made. Mayor explained that their need increased because of renovation and COVID making them not able to be open.

Nichols/Landis moved to approve the increase from \$50,000 to \$75,000 for the Goshen Theater. Passed 3-0.

(9) Agreement: Economic Development Corp. of Elkhart County for Financial Assistance

Mayor stated that we cannot afford to have this kind of service in-house. Goshen is third-highest governmental contributor behind Elkhart County and Elkhart City. Contribution is based on population.



Nichols/Landis moved to approve the agreement with Economic Development Corp. of Elkhart County in the amount of \$65,000. Passed 3-0.

(10) Conditional Offer of Employment: Adam W. Peisker

Marks presented request consistent with packet memo.

Nichols/Landis moved to extend a conditional offer of employment to Adam W. Peisker as a probationary firefighter and approve and execute the Conditional Offer of Employment Agreement with Adam W. Peisker.

Passed 3-0.

(11) Resolution 2020-26: Approve Goshen Police Department Policy 09 (2020A)

Chief of Police Jose Miller explained that this policy change clarifies that if an officer sees an inappropriate response to resistance they are to take action and notify their supervisor. Miller explained that this is already covered indirectly by other policies, but this is a more direct approach. Miller and Mayor further explained that as a matter of clarifying existing policy already in place for some years, chokeholds and strangleholds are reserved for deadly force situations.

Discussion clarifying that this item is only the two changes to the policies already reviewed and approved both in 2019 as part of comprehensive policy review as well as reviewed and updated again in May 2020.

Nichols/Landis moved to adopt Resolution 2020-26, Goshen Police Department Policy 09 (2020A). Passed 3-0.

(12) Goshen Fire Chief Dan Sink updated the Board regarding gas main issue.



PRIVILEGE OF FLOOR: No one spoke

**Mayor/Landis moved to approve civil city and utility claims and adjourn.
Passed 3-0.**

Adjournment at 2:38 p.m.

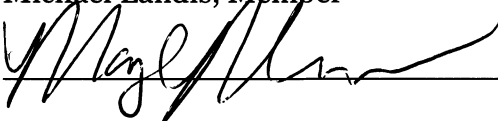
APPROVED



Jeremy Stutsman, Chair

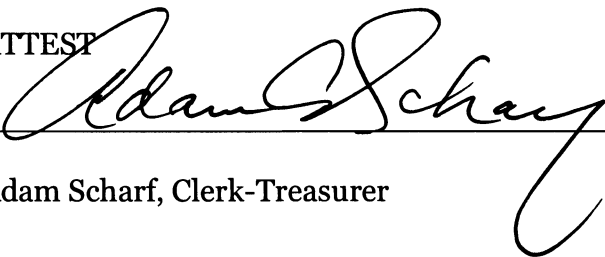


Michael Landis, Member



Mary Nichols, Member

ATTEST



Adam Scharf, Clerk-Treasurer



CITY OF GOSHEN LEGAL DEPARTMENT

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August 3, 2020

To: Board of Public Works and Safety

From: Shannon Marks

Subject: Conditional Offer of Employment Agreement with Adam W. Peisker

On behalf of the Fire Department, I am recommending that the Board:

- (1) Extend a conditional offer of employment to Adam W. Peisker as a probationary firefighter.
- (2) Approve and execute the Conditional Offer of Employment Agreement with Adam W. Peisker.

The agreement sets forth the conditions to be met prior to beginning employment with the City and requirements to complete paramedic training and serve as an active paramedic. The Board will be requested to confirm the offer of employment when a position opening becomes available in the Fire Department.

CONDITIONAL OFFER OF EMPLOYMENT AGREEMENT

THIS AGREEMENT is entered into on _____, 2020, between the **City of Goshen, Indiana**, by and through the Goshen Board of Public Works and Safety (City), and **Adam W. Peisker** (Peisker).

In consideration of the terms, conditions and mutual covenants contained in this agreement, City and Peisker agree as follows:

PREREQUISITES TO BEGINNING EMPLOYMENT

City conditionally offers Peisker employment as a probationary firefighter of the Goshen City Fire Department. Peisker accepts City's conditional offer of employment. City does not have a current position available in the Goshen City Fire Department. City and Peisker understand and agree that the offer of employment is contingent upon the following:

(1) A personnel vacancy in the Goshen City Fire Department rank and file must exist. Peisker understands that currently no vacancy exists in the rank and file of the Fire Department. Although the Fire Department is initiating the pension physical and psychological testing, Peisker understands that no permanent employment will be offered until such time that a personnel vacancy is available and/or additional staffing is hired to increase the number of firefighters.

(2) Peisker must submit a complete application for membership to the Indiana Public Retirement System (InPRS) and the 1977 Police Officers' and Firefighters' Pension and Disability Fund (1977 Fund). Peisker understands that the application for membership requires the completion of a comprehensive medical history and the administration and successful passage of the baseline statewide physical examination and baseline statewide mental examination.

(3) City agrees to pay the initial cost for Peisker to complete the baseline statewide physical examination and baseline statewide mental examination as required by Indiana Code §§ 36-8-8-7(a) and 36-8-8-19. In the event that InPRS requires any additional reports and/or testing to establish physical and mental fitness beyond the baseline statewide physical examination and baseline statewide mental examination requirements, such costs for the additional reports and/or testing shall be at Peisker's expense.

(4) InPRS will determine whether Peisker has any Class 3 excludable conditions. Peisker understands that if InPRS finds that Peisker has any Class 3 excludable conditions, Peisker will be prevented from receiving certain Class 3 impairment benefits for a certain period of time and will be disqualified from receiving disability benefits from the 1977 Fund throughout Peisker's employment if the disability is related to the Class 3 excludable condition. In addition, City will review the InPRS findings to determine whether the City's conditional offer of employment will be withdrawn.

(5) City and Peisker understand that the board of trustees of the InPRS must approve the application for membership to the 1977 Fund.

City will confirm its offer of employment to Peisker if the board of trustees of the InPRS approves the application for membership to the 1977 Fund. City's confirmation will occur when a position opening becomes available in the Goshen City Fire Department. In the event that approval is not given by the board of trustees of the InPRS, City withdraws this conditional offer of employment, and Peisker accepts City's withdrawal and this agreement shall be terminated.

**AGREE TO ENROLL AND COMPLETE PARAMEDIC TRAINING,
BECOME CERTIFIED/LICENSED, AND SERVE AS A PARAMEDIC**

(1) As a condition of employment, City shall require and Peisker agrees to attend and successfully complete a paramedic training course and obtain an Indiana paramedic certification/license.

(2) After consultation, the Fire Chief will instruct Peisker when to enroll in the paramedic training course. Peisker shall schedule all training sessions when Peisker is scheduled to work to the extent possible.

(3) City will pay the cost of the paramedic training and Peisker will be paid for the time Peisker spends in class and required clinical sessions. City will pay for Peisker to attend the paramedic training course one (1) time. City will not pay for a refresher course or time for Peisker to attend a refresher course.

(4) Peisker shall have twenty-four (24) months from the first day of paramedic class to complete the paramedic training course. Peisker agrees to obtain an Indiana paramedic certification/license within one (1) year after completion of the paramedic training course.

(5) If Peisker refuses to attend the paramedic training course when instructed to do so, fails to successfully complete the paramedic training course within twenty-four (24) months from the first day of paramedic class, or fails to obtain an Indiana paramedic certification/license within one (1) year after completion of the paramedic training course, Peisker's employment with City and the Goshen City Fire Department will be terminated for cause.

(6) If Peisker leaves employment with City and the Goshen City Fire Department before receiving an Indiana paramedic certification/license, including termination, Peisker agrees to repay City the City's actual cost for Peisker to attend the paramedic training course, including the cost of the course and time City paid Peisker to attend class and required clinical sessions. In no event shall the reimbursement amount exceed the sum of Fifteen Thousand Dollars (\$15,000).

(7) Upon receiving an Indiana paramedic certification/license, Peisker agrees to serve City as an active paramedic in accordance with the requirements set forth in the contract between the City of Goshen and the Goshen Firefighters Association, Local No. 1443, as amended from time to time, and to maintain Peisker's paramedic certification/license as long as Peisker is required to serve City as a paramedic.

(8) Peisker agrees to serve City as an active paramedic for a minimum of three (3) full years. If Peisker fails to serve City as an active paramedic for three (3) full years, Peisker agrees to repay City a prorated portion of Fifteen Thousand Dollars (\$15,000) for the paramedic training. The Fifteen Thousand Dollars (\$15,000) will be credited at the rate of Five Thousand Dollars (\$5,000) for each full year Peisker serves City as an active paramedic. (Credit will not be given for partial years of service.)

No repayment will be due City if Peisker fails to serve as an active paramedic for three (3) full years because of disability or illness which make it impractical to continue to serve as a paramedic in the foreseeable future, or death.

(9) Peisker's repayment to City is due (30) days after withdrawing from service as an active paramedic or within thirty (30) days of Peisker's last day of employment with City. Interest will accrue on the unpaid balance of the repayment at the rate of eight percent (8%) per annum beginning thirty (30) days after withdrawing from service as an active paramedic or within thirty (30) days of Peisker's last day of employment with City.

AMENDMENT

This agreement may be amended only by the mutual written consent of the parties and approved by the Goshen Board of Public Work and Safety.

SEVERABILITY

If any provision, covenant, or portion of this agreement or its application to any person, entity or property is held to be invalid, such invalidity shall not affect the application or validity of any other provisions, covenants or portions of this agreement.

INTEGRATION

This agreement supercedes all prior agreements and negotiations that relate to the subject matter and is a full integration of the agreement of the parties.

INDIANA LAW

This agreement shall be governed by and construed in accordance with the laws of the State of Indiana. Proper venue to enforce the terms and conditions of this agreement shall be in Elkhart County, Indiana.

BINDING EFFECT

This agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns, provided that this agreement may not be assigned without the written consent of the parties.

IN WITNESS WHEREOF, the parties have executed this agreement on the dates as set forth below.

City of Goshen, Indiana
Goshen Board of Public Works and Safety

Jeremy P. Stutsman, Mayor

Adam W. Peisker

Michael A. Landis, Member

Date: _____

Mary Nichols, Member

Date: _____



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August 3, 2020

To: Board of Public Works and Safety
From: Shannon Marks
Subject: Resolution 2020-26 – Approve Goshen Police Department Policy 09 (2020A)

It is recommended that the Board adopt Resolution 2020-26, Approve Goshen Police Department Policy 09 (2020A).

This resolution approves Response to Resistance, Policy 09 (2020A) which revises the current Policy 09 (2020) that was adopted this past May. Upon approval of the revised policy, the current policy will be repealed. I have attached to this memo the pages to show the redlined revisions to the Response to Resistance policy.

4. Members of the Goshen Police Department may use reasonable force in the performance of their duties in the following circumstances:
 - a. to prevent the commission of a crime;
 - b. to prevent a person from injuring himself/herself;
 - c. to affect the lawful arrest of persons resisting or attempting to flee from custody;
and
 - d. in self-defense or in the defense of another person.

An officer is not required to announce the intention to use reasonable force that is reasonably necessary under the circumstances. Firearms may be readied for use in situations where it is reasonably anticipated that they may be required.

5. Officers will use only approved weapons unless circumstances exist which pose an imminent threat to the safety to the officer or the public requiring the immediate use of a non-approved weapon to counter a threat.
6. Officers shall complete a Response to Resistance Report anytime force beyond verbal direction is used or escorts are utilized. The Response to Resistance Report shall also be completed when verbal direction is given while displaying a firearm and/or a taser (i.e. arch display). The Response to Resistance Report shall be completed prior to the end of the officer's scheduled work period unless approved by a member of the Executive Staff. The information related to the events shall be noted in the officer's case report, and if appropriate, in the officer's probable cause affidavit.
7. Officers are required to notify a supervisor as soon as feasible if they witness inappropriate response to resistance. Officers are also required to physically intervene against unauthorized response to resistance when possible, or otherwise shall be subject to discipline to the same severity as if they themselves engaged in the prohibited response to resistance.

B. RESPONSE TO RESISTANCE CONTINUUM:

The following Response to Resistance Continuum is intended to be used as a general guideline only. Specific facts and circumstances of each situation should be analyzed by the officer to determine the level of response for the resistance. Officers may enter the continuum at any level as long as the response to the resistance is reasonable.

- (3) the subject is a woman who is obviously pregnant;
 - (4) the subject is a child who appears under the age of fourteen (14);
 - (5) the subject is an elderly person; or
 - (6) if the subject is in water which could result in drowning or submersion.
- iii. The taser should not be used in the presence of flammable liquids or gases. The taser also should not be used on individuals located at dangerous heights such as trees, roofs and bridges.
 - iv. If trained, officers may remove the probes from an individual when the taser is discharged. When the taser is discharged on a person in sensitive areas such as eyes or the groin, or if the individual is observed to be in distress or delirium, EMS personnel will be summoned to the scene. EMS personnel will evaluate the person's need for medical treatment.
 - v. Following the operational discharge of taser probes, the taser probes will be collected and placed into the appropriate disposal unit. Officers should photograph the areas of the probe strikes, if possible, before and after probe removal. All photographs will be placed into evidence.
- d. Use of Deadly Force to Accomplish Custody
- i. Deadly force is any force used by an officer that the officer knows, or reasonably should know, creates a substantial risk of causing death or great bodily harm.
 - (1) The intentional discharge of a firearm in the direction of another person, or at a vehicle in which another person is believed to be, constitutes deadly force.
 - (2) The intentional choke or strangle hold on an individual's neck to gain compliance is strictly prohibited unless the officer is responding to a deadly force situation.
 - ii. An officer may only use deadly force if the officer has reasonable cause to believe that deadly force is necessary to prevent the commission of a forcible felony, or to affect an arrest of a person who the officer has probable cause to believe poses a threat of serious bodily injury to the officer or a third person. A law enforcement officer who has an arrested person in custody is justified in using the same force to prevent the escape from custody as the officer would be justified in using if the officer was arresting that person. However, deadly force

RESOLUTION 2020-26

**Approve Goshen Police Department
Policy 09 (2020A)**

WHEREAS the Goshen Police Department recommends to the Goshen Board of Public Works and Safety the approval of the policy attached to this resolution and the repeal of the current Goshen Police Department policy.

NOW, THEREFORE, BE IT RESOLVED that the Goshen Board of Public Works and Safety APPROVES the following Goshen Police Department policy, a copy of which is attached to and made a part of this resolution:

Response to Resistance, Policy 09 (2020A)

BE IT FURTHER RESOLVED that upon the approval of Response to Resistance, Policy 09 (2020A), the Goshen Board of Public Works and Safety REPEALS the following current Goshen Police Department policy:

Response to Resistance, Policy 09 (2020)

PASSED and ADOPTED on August _____, 2020.

Jeremy P. Stutsman, Mayor

Michael A. Landis, Member

Mary Nichols, Member

RESPONSE TO RESISTANCE

POLICY 09 (2020A)

I. **BACKGROUND:** Officers have special legal authority to use force and deadly force. Notwithstanding this authorization, officers are under a duty to employ extraordinary care in determining to use force and in the handling of firearms and other deadly weapons. It is essential that each officer exercise sound judgment and act reasonably when any force is applied. With this in mind, the use of force is authorized in those situations where force is appropriate and reasonable to affect a lawful arrest, to protect the arresting officer, or to protect a third party. This policy sets forth department policy on the use of force, establishes general guidelines for the escalation of force, and establishes procedures for reporting the use of force.

II. POLICY:

A. USE OF REASONABLE FORCE:

1. Officers should use force that is reasonably necessary to accomplish the intended objective without impairing the safety of others. This provision should not be construed to require officers to first attempt using types and degrees of force that reasonably appear to be inadequate to accomplish the intended objective. It shall be deemed reasonable for officers to use that type and degree of non-deadly force necessary to bring a subject whom the officer intends to arrest or capture quickly under control.
2. Whether or not force is "reasonable" is judged by the facts and circumstances of each case and whether the officer's actions were reasonable in light of the facts and circumstances judged from the perspective of the officer on the scene. The use of force is determined based on what is reasonably known or perceived by the officer at the time. Facts discovered after the event, no matter how compelling, cannot be considered later in determining that force was not justified.
3. Each officer shall use the appropriate amount of force necessary to affect an arrest. To this end, the officer shall consider the following:
 - a. The severity of the crime at issue.
 - b. Whether the suspect poses an immediate threat to the safety of the officer or others.
 - c. Whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

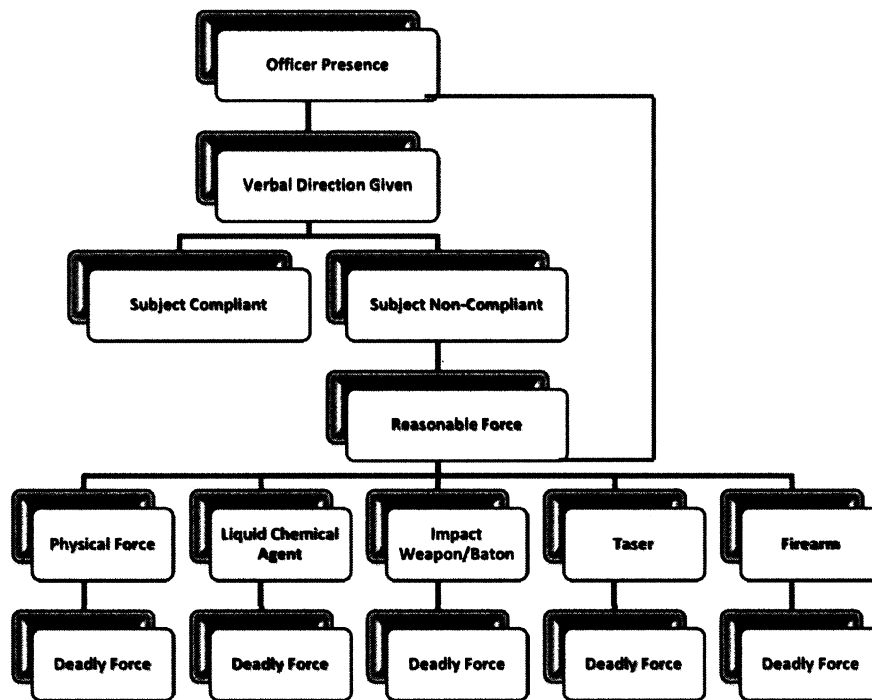
4. Members of the Goshen Police Department may use reasonable force in the performance of their duties in the following circumstances:
 - a. to prevent the commission of a crime;
 - b. to prevent a person from injuring himself/herself;
 - c. to affect the lawful arrest of persons resisting or attempting to flee from custody;
and
 - d. in self-defense or in the defense of another person.

An officer is not required to announce the intention to use reasonable force that is reasonably necessary under the circumstances. Firearms may be readied for use in situations where it is reasonably anticipated that they may be required.

5. Officers will use only approved weapons unless circumstances exist which pose an imminent threat to the safety to the officer or the public requiring the immediate use of a non-approved weapon to counter a threat.
6. Officers shall complete a Response to Resistance Report anytime force beyond verbal direction is used or escorts are utilized. The Response to Resistance Report shall also be completed when verbal direction is given while displaying a firearm and/or a taser (i.e. arch display). The Response to Resistance Report shall be completed prior to the end of the officer's scheduled work period unless approved by a member of the Executive Staff. The information related to the events shall be noted in the officer's case report, and if appropriate, in the officer's probable cause affidavit.
7. Officers are required to notify a supervisor as soon as feasible if they witness inappropriate response to resistance. Officers are also required to physically intervene against unauthorized response to resistance when possible, or otherwise shall be subject to discipline to the same severity as if they themselves engaged in the prohibited response to resistance.

B. RESPONSE TO RESISTANCE CONTINUUM:

The following Response to Resistance Continuum is intended to be used as a general guideline only. Specific facts and circumstances of each situation should be analyzed by the officer to determine the level of response for the resistance. Officers may enter the continuum at any level as long as the response to the resistance is reasonable.



1. The following are several, but not all, of the variables and considerations that may affect the continuum:
 - a. officer size, gender, and physical condition in relation to suspect size, gender, and apparent physical condition;
 - b. totality of the factual circumstances, including environmental conditions and danger to officers and others, as well as number of aggressors;
 - c. reaction timing issues such as the amount of time the officer has to react to the totality of the circumstances;
 - d. distance between aggressor and innocent bystanders; and
 - e. motive, opportunity, ability, and jeopardy.

C. OPTIONS OF FORCE:

The following sections discuss the various options of force, generally in order of increasing severity, to accomplish a lawful police task by use of non-deadly force.

1. **Verbal Direction as a Means of Affecting Custody**

Verbal direction is a method of force used to provide instruction to a cooperative individual to comply with lawful commands if there is no threat of harm caused by the subject's behavior. The practice of courtesy in all public contacts encourages understanding and cooperation. Lack of courtesy arouses suspicion, resentment, and often physical resistance. Simple instructions are by far the most desirable method of dealing with an arrest situation. Control may be achieved through advice, persuasion, and warnings before resorting to physical force. It should not be construed that verbal direction is appropriate in all situations. An officer should never lose control of a situation, thus endangering the officer's personal safety or the safety of others. Officers are permitted to use that amount of force that is appropriate and reasonable under the circumstances.

2. **Physical Force to Accomplish Custody**

The use of physical force by an officer to bring a subject into custody is appropriate in a wide range of circumstances. The appropriate amount of physical force used will depend on the specific situation. Generally, physical contact or directional contact to accomplish the escort of the individual is appropriate when the individual is failing to follow but is not physically resisting the officer's instruction. When the subject's resistance is not simply verbal, but also active, more physical force is warranted. In these situations, physical force may include joint locks, takedowns, and other reasonable force. The use of more serious physical force to effectuate custody is appropriate where the subject's resistance is active and violent and likely to bring about imminent injury to the officer, the subject, or others. Other acceptable methods of force that officers may use to exert serious physical force over a subject include the use of a liquid chemical agent, a department issued impact weapon, or a taser device. Use of each of these methods require additional considerations and requirements for their use.

a. **Use of a Chemical Agent to Accomplish Custody**

- i. Before an officer will be authorized to use a chemical agent, he or she must successfully complete training by the department. A chemical agent is not designed to replace the police handgun or impact weapon. Chemical agents will not be applied to any person for the purpose of effectuating punishment.
- ii. It is the officer's responsibility to see that proper first aid is administered whenever physical force is applied to a person in custody. After a chemical agent has been used, proper first aid shall be provided to the individual(s) as soon as it is safe to do so.

b. Use of an Impact Weapon to Accomplish Custody

- i. Impact weapons may only be used after proper training authorized by the Goshen Police Department. Officers should only use impact weapons where efforts involving the use of less force have failed or where it reasonably appears that such methods would be ineffective if attempted. The use of impact weapons should only be used to subdue an attacker or to overcome resistance likely to result in injury to the suspect, the officer, or others. Officers shall carry only those impact weapons approved by the Goshen Police Department. These weapons are not to be altered in any way.
- ii. Officers striking another person with an impact weapon should avoid striking, if possible, bodily areas likely to result in serious bodily injury or death unless deadly force is authorized under this policy. These areas include the head, neck, throat, groin, armpits, and spine. Officers striking another person with an impact weapon should attempt to strike, if possible, bodily areas likely to result only in incapacity. These areas include center mass target areas such as the arms, legs, and body.
- iii. Striking a submissive person with an impact weapon is strictly prohibited.

c. Use of a Taser Device to Accomplish Custody

- i. The taser, an electronic control device (ECD), may only be used after proper training authorized by the Goshen Police Department. In addition to general guidelines on taser use, handling, maintenance, and storage, the training will provide officers with information regarding the health hazards from taser use. The taser should only be used when an officer is attempting to subdue a person whose behavior or resistance is likely to result in injury to the suspect, officer, or other persons. Before deploying a taser, the officer if possible, should give a loud verbal warning to the subject that a taser will be used if the subject does not comply with officer orders. When an officer uses the taser, he or she shall use the taser only until the situation or person is under control. At which time the officer will re-evaluate the situation and make the determination if follow up use is necessary.
- ii. The officer, unless no other reasonable force options are available, should not use the taser when:
 - (1) the subject is already in handcuffs;
 - (2) the subject is only offering minor or passive resistance;

- (3) the subject is a woman who is obviously pregnant;
 - (4) the subject is a child who appears under the age of fourteen (14);
 - (5) the subject is an elderly person; or
 - (6) if the subject is in water which could result in drowning or submersion.
- iii. The taser should not be used in the presence of flammable liquids or gases. The taser also should not be used on individuals located at dangerous heights such as trees, roofs and bridges.
 - iv. If trained, officers may remove the probes from an individual when the taser is discharged. When the taser is discharged on a person in sensitive areas such as eyes or the groin, or if the individual is observed to be in distress or delirium, EMS personnel will be summoned to the scene. EMS personnel will evaluate the person's need for medical treatment.
 - v. Following the operational discharge of taser probes, the taser probes will be collected and placed into the appropriate disposal unit. Officers should photograph the areas of the probe strikes, if possible, before and after probe removal. All photographs will be placed into evidence.
- d. Use of Deadly Force to Accomplish Custody
- i. Deadly force is any force used by an officer that the officer knows, or reasonably should know, creates a substantial risk of causing death or great bodily harm.
 - (1) The intentional discharge of a firearm in the direction of another person, or at a vehicle in which another person is believed to be, constitutes deadly force.
 - (2) The intentional choke or strangle hold on an individual's neck to gain compliance is strictly prohibited unless the officer is responding to a deadly force situation.
 - ii. An officer may only use deadly force if the officer has reasonable cause to believe that deadly force is necessary to prevent the commission of a forcible felony, or to affect an arrest of a person who the officer has probable cause to believe poses a threat of serious bodily injury to the officer or a third person. A law enforcement officer who has an arrested person in custody is justified in using the same force to prevent the escape from custody as the officer would be justified in using if the officer was arresting that person. However, deadly force

can only be used if the officer has reasonable cause to believe that deadly force is necessary to prevent the escape from custody of a person who the officer has probable cause to believe poses a threat of serious bodily injury to the officer or a third person. If feasible, the officer should warn the person against whom deadly force is to be used. A warning shot shall not be used as a warning.

- iii. Officers must use reasonable caution when employing deadly force in situations where innocent bystanders could be injured.

III. DEFINITIONS

- A. Force: Any act of employing physical power or strength whether by hand or other means to respond to resistance.
- B. Forcible Felony: (IC 35-31.5-2-138) A felony that involves the use or threat of force against a human being, or in which there is imminent danger of bodily injury to a human being.
- C. Impact Weapons: Response to resistance using weapons or objects consisting of, but not limited to, bean bag rounds fired from a designated bean bag gun. The use of impact weapons, depending on the intended location of application, can fall under less lethal or deadly force.
- D. Physical Force: The weaponless use of physical techniques consisting of but not limited to holds, restraints, joint locks, take downs, punches, strikes and kicks. Physical force, depending on the type of tactic and intended location of application, can fall under less lethal force or deadly force.
- E. Serious Bodily Injury: (IC 35-31.5-2-292) Bodily injury that creates a substantial risk of death or that causes:
 - 1. Serious permanent disfigurement;
 - 2. Unconsciousness;
 - 3. Extreme pain;
 - 4. Permanent or protracted loss or impairment of the function of a bodily member or organ; or
 - 5. Loss of a fetus.

F. Verbal Direction: Commands of direction or arrest, communicated verbally along with the use of body language and gestures.

A handwritten signature in black ink, appearing to be 'Jose Miller', with a stylized flourish at the end.

Jose' Miller #116
Chief of Police