


Policy Title:		Pepper Spray	
	OFFICE OF THE CHIEF ADMINISTRATIVE OFFICER	Category	Security
		Administrative Policy #	100-ADM-Pepper Spray
		Revision #	N/A
		Review Frequency	As Needed – no less frequently than triennially
Administrative Division	Security and Integrity Division	Reviewed By	Chief Administrative Officer, General Counsel, Chief of Security & Integrity Division
BOWC Approval	3/15/2019	Last Reviewed/Update Date	3/15/2019
Implementation Date	3/15/2019	Resolution #	19-0079

1. LEGAL AUTHORITY

1.1 Section 16 of the Michigan Code of Criminal Procedure (MCL 764.16) regulates arrest by a private person. A private person may make an arrest—in the following situations:

- (a) For a felony committed in the private person's presence.
- (b) If the person to be arrested has committed a felony although not in the private person's presence.
- (c) If the private person is summoned by a peace officer to assist the officer in making an arrest.
- (d) If the private person is a merchant, an agent of a merchant, an employee of a merchant, or an independent contractor providing security for a merchant of a store and has reasonable cause to believe that the person to be arrested has violated section 356c or 356d of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.356c and 750.356d of the Michigan Compiled Laws, in that store, regardless of whether the violation was committed in the presence of the private person.

1.2 DWSD employees will endeavor at all times to contact the Detroit Police Department when an incident arises that may lead to detention or arrest. In those instances where time or circumstances do not provide an opportunity for the Detroit Police Department to arrive on the scene as first responder, this policy applies.

2. OBJECTIVES

- 2.1. To establish guidelines and internal controls for the use of pepper spray devices.

3. PURPOSE

- 3.1. Detroit Water and Sewerage (DWSD) Security and Integrity Division employees may be issued pepper spray in order to protect employees in our facilities or out in the field, as well as to protect customers and visitors in DWSD facilities. For the protection of all

persons and to minimize or prevent risk of liability, we must ensure Officers receive the proper training so they safely carry out their duties.

4. DEFINITIONS

“Actively Resisting” means the subject is making physically evasive movements to defeat an Officer’s attempt at control, including bracing, tensing, pulling away, or pushing.

“DWSD” stands for Detroit Water and Sewerage Department.

“DWSD Security” means the Security and Integrity Division.

“Force” means the following actions by an Officer.

- a) Any physical strike or instrumental contact with a person;
- b) Any intentional attempted physical strike or contract that does not take effect
- c) Any significant physical contact that restricts the movement of a person
- d) Discharge of a firearm
- e) Use of pepper spray

“Objective Reasonableness” is an Officer’s action consistent with the actions another officer would take given the same circumstances.

“Officer” means any person employed by the DWSD Security and Integrity Division.

5. SCOPE

5.1. This policy applies to all DWSD Security and Integrity Division Officers and staff.

6. RESPONSIBILITIES

6.1. The Chief of DWSD Security and Integrity Division is responsible for administration and oversight of this policy.

7. POLICY

7.1. Only Officers who have completed the prescribed training on the use of department issued pepper spray are authorized to use or carry such spray.

7.2. Action to Use Pepper Spray

7.2.1. DWSD has issued pepper spray to provide Officers with an additional use of force option for gaining lawful compliance of actively resisting or aggressive individuals. Officers shall only use the department-issued pepper spray when warranted and in accordance with the guidelines and procedures set forth here and in this department’s policies (Use of Force Continuum).

7.2.2. An Officer’s action to use pepper spray should be objectively reasonable in accordance with the Use of Force Continuum. The indiscriminate use of department-issued pepper spray shall not be tolerated.

7.3. Bi-Annual Inspections

- 7.3.1. Bi-annually, supervisors or a designee shall ensure that the pepper spray canisters issued to Officers are inspected.

7.4. Pepper Spray Replacement

- 7.4.1. Officers with a defective, expired or nearly empty canister shall request a replacement by preparing an incident report to their immediate supervisor, including the depleted canister and its serial number.

7.5. Usage Criteria

- 7.5.1. Department issued pepper spray shall only be used under the following circumstances when a lesser degree of force has not been or will not be effective:
 - a) Self-defense or the defense of others;
 - b) To effect the arrest of a person actively resisting arrest for a felony committed in their presence;
 - c) To prevent a person from injuring an officer or another person; or
 - d) To repel or control attacking or menacing animals.
- 7.5.2. Department-issued pepper spray shall not be used in the following circumstances:
 - a) To effect the arrest of a person that is only offering verbal or visual cues (e.g., blank stare, clenched fists, tightening of jaw muscles, etc.) or other forms of inactive resistance (e.g. not responding to commands);
 - b) To effect the arrest of a person that is only passively resisting (e.g., going limp, offering no physical resistance);
 - c) On a handcuffed individual;
 - d) Once a subject succumbs, becomes incapacitated or is restrained.
 - e) To threaten or elicit information from a person.
- 7.5.3. To the greatest extent possible, use of pepper spray shall be avoided on persons who appear to be in frail health, young children, women believed to be pregnant or persons with known respiratory conditions.
- 7.5.4. Officers must obtain prior approval of a supervisor any time pepper spray is to be used against a crowd.
- 7.5.5. Officers are to use extreme caution when utilizing pepper spray in confined spaces.
- 7.5.6. Where possible, Officers should avoid using department-issued pepper spray on a subject in a crowded area where non-involved persons are likely to be contaminated.
- 7.5.7. Officers must be able to articulate the intent to arrest an individual when any force is used on an individual.
- 7.5.8. A Use of Force Report shall be completed once spray is deployed. Refer to the corresponding Use of Force policy for a copy of the form.

7.5.9. DWSD's Use of Force Continuum must be followed at all times and is incorporated into this policy by reference.

7.5.10. Officers shall not discharge the pepper spray into or near an open flame.

7.6. Verbal Commands

7.6.1. A verbal warning and a reasonable time to allow the subject to comply must be given prior to the use of pepper spray, unless such warning would present a danger to the Officer or others (If a verbal warning cannot be given prior to use, the reason shall be documented on the Officer's Use of Force Report).

7.7. Exposure to Pepper Spray and Officer's Response

7.7.1. If a person complains of continued effects after having been decontaminated, or they indicate that they have a pre-existing medical condition (e.g., asthma, emphysema, bronchitis or heart ailment) that may be aggravated by a pepper spray, EMS shall be contacted immediately to treat or convey the individual to the closest emergency room or any other designated medical facility for medical treatment.

7.7.2. Officers shall not leave a restrained person on his or her back or stomach after having been sprayed with pepper spray. Both positions can contribute to Positional Asphyxia, a condition where the subject's body position interferes with breathing and causes death. Restrained subjects should be placed in an upright or seated position.

7.7.3. If temporary prone positioning is required for control, the subject must be closely and constantly monitored. Officers should be alert for signs of obvious physical distress, disabilities, impaired mental state, or the possibility the subject is under the influence of alcohol or drugs. All persons should be placed in an upright or seated position as soon as possible.

7.8. Reasonable and Necessary Accommodations

7.8.1. Management may issue reasonable and necessary directives to accomplish the intent of this policy.

8. PROCEDURE

8.1. Verbal Commands

8.1.1. Verbal commands shall be used before, during, and after the application of the pepper spray to de-escalate situations and gain compliance and control of an actively resisting or aggressive subject.

8.1.2. Verbal commands given before the actual use of force shall be used when possible to attempt to gain cooperation from the subject.

8.1.3. Once the spray has been applied and/or empty-hand techniques are used, commands shall 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.

- 8.1.4. After resistance has ceased, the subject shall be reassured that nothing further will happen to him or her, and that decontamination for the spray application is forthcoming.

8.2. Application Techniques

- 8.2.1. A one (1) or two (2) second burst of the department-issued pepper spray should be directed to the subject's face area. (Direct discharge into the eyes should be avoided).
- 8.2.2. When possible, do not discharge pepper spray when closer than three (3) feet from the subject because of the increased risk for self-contamination, or contamination of other Officers at the scene.
- 8.2.3. An additional burst may be used if the initial burst proves ineffective. Allow a brief time for the pepper spray to take effect before a second application. Be prepared to take other appropriate action should the agent fail to be effective.

8.3. Exposure to Pepper Spray and Officer Response

- 8.3.1. All subjects shall be handcuffed as soon as possible after being sprayed as the effects of pepper spray vary among individuals. Officers should also be prepared to employ other means to control the subject—to include, if necessary, other force options consistent with agency policy if he or she does not respond sufficiently to the spray, and cannot otherwise be subdued.
- 8.3.2. When an Officer employs a pepper spray and a person is exposed to the pepper spray, the Officer shall, unless incapacitated, implement the following procedures:
 - a) Ensure that the subject has been properly restrained or no longer poses an immediate threat to the safety of Officers or others;
 - b) Immediately after spraying a subject, Officers shall be alert to any indications that the individual needs medical care. This includes, but is not necessarily limited to, breathing difficulties, gagging, profuse sweating or loss of consciousness. Upon observing these or other medical problems, or if the subject requests medical assistance, the Officer shall immediately summon emergency medical aid;
 - c) Monitored subjects for indications of medical problems. Subjects shall not be left alone while in custody. In addition, Officers shall render first aid and summon Emergency Medical Services (EMS), if a person is inadvertently sprayed or exposed to a pepper spray.
 - d) Move the person to an area that provides fresh air and direct the person's face into the wind;
 - e) If an Officer is required to transport the person, rather than Detroit Police Department or Emergency Medical Services personnel, the Officer shall drive with vehicle windows partially lowered to ensure adequate ventilation;

- f) Provide assurance to subjects that have been sprayed that the effects are temporary, encourage them to relax and not rub the affected area;
- g) Disallow the application of salves or creams to the affected area as they will trap the pepper agent against the skin and cause burning;
- h) Afford the subject the opportunity to flush the exposed area with plenty of cold water within twenty (20) minutes of application of spray or apprehension; and
- i) Instruct individuals wearing contact lenses to remove the lenses as soon as possible.

8.4. Bi-Annual Inspections

- 8.4.1. Bi-annually, supervisors or a designee shall ensure that the pepper spray canisters issued to DWSD security officers are inspected. As the procedure requires a brief discharge of the canister, the inspection shall be done outside of the buildings. Supervisors or designee shall conduct the inspection in the following manner:
 - a) Visually inspect the canister for the expiration date and signs of leakage;
 - b) Shake the canister to ensure that it contains fluid;
 - c) Compare the weight of the canister being inspected with that of a full one; and
 - d) Point the canister towards the ground in a safe direction and discharge a one (1) second burst to ensure that the canister contains sufficient propellant to effectively disperse the agent.
- 8.4.2. The supervisor or designee conducting the inspection shall submit a bi-annual inspection sheet to the administration documenting the results.

8.5. Reporting

- 8.5.1. Officers shall notify their immediate supervisor following any discharge of a pepper spray device, including accidental discharges of a pepper spray against any individual and any use of force. The incident should be reported using the Use of Force form.
- 8.5.2. An immediate supervisor shall respond to all other uses of force on a priority basis. For the purpose of this directive, a “priority basis” is defined by the current availability of supervisors and the nature of the situation (e.g., highly charged situations, agitated by-standers, potential for violence) whereas response to the scene may increase volatility or be impossible.
- 8.5.3. Upon arrival at the scene, the supervisor shall interview the Officer(s), canvass for witnesses and examine the subject(s) for injury, and ensure that the subject(s) receives, or has received, needed medical attention. No Officer shall delay rendering medical attention, requesting EMS, or when directed by a supervisor, the conveyance of any subject to a medical treatment facility, pending the arrival of a supervisor.
- 8.5.4. In the event an injured person has been conveyed for medical treatment prior to the supervisor’s arrival at the scene, the supervisor shall interview the subject at the medical facility when the interview will not interfere with the subject’s medical

treatment. If the subject has been turned over to Detroit Police Department for handling, then the supervisor will defer to Police Department personnel.

8.6. Use of Force Continuum

- 8.6.1. DWSD's Use of Force Continuum Procedures also apply in situations where pepper spray is used and are incorporated herein by reference.

