

Jesse Arreguin
Councilmember, District 4

REVISED AGENDA MATERIAL

Meeting Date: January 20, 2014

Item Number: 28

Item Description: Amendments to BPD General Orders C-64 (Crowd Control), M-2 (Mutual Aid), and U-2 (Use of Force)

Submitted by: Councilmember Jesse Arreguin

The recommendation has been revised to refer the Oakland Police Department and San Francisco Police Department Crowd Control and Use of Force policies to the PRC and City Manager to review and suggest revisions to BPD General Orders, rather than proposing specific text amendments to BPD General Orders.

The recommendation regarding the adoption of a temporary City policy on the use of tear gas and other non-lethal force has also been revised.



Jesse Arreguín
City Councilmember, District 4

REVISED
ACTION CALENDAR
January 20, 2015

To: Honorable Mayor and Members of the City Council
From: Councilmember Jesse Arreguín
Subject: Amendments to BPD General Orders C-64 (Crowd Control), M-2 (Mutual Aid) and U-2 (Use of Force)

RECOMMENDATION

1. ~~4-~~ Refer to the Police Review Commission (PRC) and City Manager the attached policies from the Oakland Police Department and San Francisco Police Department on crowd control and use of force and request that they return to the City Council with proposed changes to BPD General Orders C-64, M-2, U-2 to reflect the policies adopted in these cities.

~~—, and request that they return to the City Council with recommended revisions to the General Orders.~~

~~The proposed changes (**Attachments 1-3**) are modeled after the Oakland Police Department's recent amendments to their Crowd Control Policy and address issues raised with the police response to the December 6, 2014 Ferguson protests.~~

2. Adopt a motion declaring as a temporary City of Berkeley policy that the use of chemical agents (tear gas etc.), rubber bullets and other projectiles ~~Specialty Impact Less Lethal Weapons~~ (“projectiles” or rubber bullets, wooden dowels, stinger grenades, rubber bullets) and over the shoulder baton strikes, are prohibited uses of force in responding to crowd situations, until such time as an investigation by the Police Review Commission is ~~conducted~~ completed as to regarding the Police response to the December 6, 2014 protests, and a review and revisions to of General Orders C-64, M-2, and U-2 are ~~is~~ completed.

FINANCIAL IMPLICATIONS

Unknown

BACKGROUND

The police response to the protests on December 6, 2014 and the use of less lethal force including tear gas, baton strikes and projectiles in dispersing crowds have raised issues regarding whether BPD complied fully with its policies and whether policy changes are

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warranted to adapt police response to demonstrations, planned or spontaneous events and large crowds.

In response to public criticism and lawsuits over the police response to the Occupy protest on October 25, 2011, the City of Oakland initiated an independent investigation that resulted in recommended changes in departmental procedures on crowd control. In reviewing the Oakland Police Department's (OPD) Crowd Control Policy (Index Number III-G) a number of policies differ from BPD's, namely: tactical approaches, permitted uses of force, and policies on media access and maintaining public safety while protecting non violent protesters and bystanders.

Since OPD revised its crowd procedures, the number of police complaints has decreased and it has resulted in a more targeted response that facilitates First Amendment activity while protecting public safety. These policies and tactics should be specified in BPD's crowd control policy.

BPD General Order C-64

One of the biggest concerns raised over the December 6, 2014 protests were the allegations of excessive force when dispersing crowds. Section 5 of BPD General Order C-64 provides some guidelines into use of force for crowd management and control, but more can be done to make the policies clearer as to what constitutes as excessive force. BPD's policy allows for greater use of force than Oakland's policy, and allows certain weapons that are prohibited in Oakland's policy (projectiles).

The Oakland Police Department's policies on crowd control (Index Number III-G, see **Attachment 14**) are explicitly written to protect First Amendment rights and minimize the risk of using excessive force. Examples which are not included in the language of BPD's policy include, but are not limited to: suspending dispersal techniques while a crowd is dispersing, only using batons at physically aggressive persons and banning baton strikes to the head, neck, throat, kidneys, spine, and groin, banning the indiscriminate use of Direct Fired Specialty Impact Less-Lethal Munitions (SIM) such as bean bags, and providing accommodations to the media. The OPD policy also reiterates Penal Code Section 830.10, which mandates officers to clearly and visibly wear a badge or nameplate with their name and identification number, which was allegedly violated during the December 6 protests. OPD policies also point out the importance of remaining professional and not resorting to impulsive or independent actions. To quote Section 12 of Index Number III-G, "the Incident Commander and supervisors shall make every effort to ensure that the police mission is accomplished as efficiently and unobtrusively as possible with the highest regard for the human dignity and liberty of all persons and with minimal reliance on the use of physical force". In amending General Order C-64, policies presented in OPD's Crowd Control and Management should be examined.

BPD General Order M-2

ACTION Calendar

January 20, 2015

The Berkeley Police Department has multiple agreements with regional law enforcement agencies for mutual aid. However, these police agencies are currently free to use whatever tactics, equipment, and techniques their departments use, even if it differs from Berkeley's policies. For example, the Hayward Police Department used an armored vehicle over multiple days in the Berkeley protests, despite public and City Council opposition to the use of such vehicles by the BPD.

As seen during the December 6th protests, outside police agencies allegedly used tactics and equipment not used by BPD and in some cases in violation of BPD policies/procedures, resulting in poor crowd controlling and likely increased allegations of excessive force. Having other police agencies follow the standards and regulations of the BPD while within Berkeley City limits will allow for better transparency and cooperation.

In 2012, in the wake of the police response to the Occupy protests in Oakland and on UC campuses, the Berkeley City Council referred the issue of modifying General Order M-2 to the PRC. The Commission proposed amendments to require that BPD follow its policies and procedures in mutual aid incidents, and to require that the Department seriously evaluate whether to call for mutual aid or respond if the request involves civil disobedience or First Amendment activity and not a threat to public safety. The Council adopted this policy in September 2012. Arguably, the police response on December 6, 2014 did not meet the spirit if not the letter of this policy. In trying to protect officers from threats to physical safety and maintain order, some non-violent protesters (including press) were the subject of unnecessary force including chemical agents, baton strikes and projectiles. While there were some individuals who were engaging in property damage or violence, the widespread use of these tactics against the larger crowd of non-violent protesters is questionable not only in their effectiveness but in their appropriateness.

BPD General Order U-2

The BPD's policy over use of force supersedes all other policies. Section 20 of General Order U-2 provides a list of prohibited uses of force. On September 16, 1997, the City Council passed a policy banning the use of Oleoresin Capsicum (pepper spray) as a crowd control technique. Because of the indiscriminant nature of tear gas, innocent bystanders are often exposed to its harmful effects. Additionally, people with asthma or other respiratory ailments, infants, and the elderly could have a serious or potentially fatal reaction. Therefore, tear gas should also be prohibited for use as a crowd control technique.

Another potentially fatal use of force due to potential head injuries are the use of projectiles and baton strikes above the shoulder. Indiscriminate use of projectiles against crowds can result in innocent persons getting hit or cause property damage and may result in serious injuries. Use of projectiles in crowd control situations should be prohibited. Above the shoulder baton strikes should be banned in any case due to the high risk of potentially fatal head injuries.

PRC Recommendations

At its meeting on December 10, 2014, the Berkeley Police Review Commission on a 5-0-3 (three Commissioners absent) passed two urgency items relating to the police response on December 6, 2014.

The first motion (**Attachment-65**) called on the Council to suspend the use of tear gas for crowd control until an investigation is conducted regarding the use of tear gas to disperse the crowd on December 6, 2014. This item recommends that the Council set a temporary City policy to prohibit the use of tear gas for solely crowd situations, as the PRC suggested.

The second motion (**Attachment-76**) called on the Council to prohibit the use projectiles and over the shoulder baton strikes by BPD until a complete review of General Order C-64 is conducted. This item also recommends that Council set a temporary City policy to prohibit the use of projectiles and over the shoulder baton strikes by BPD until a review of General Order C-64 is completed.

These temporary prohibitions for crowd control situations only will allow the City time to conduct a review into the events of December 6, 2014 and a through review of department policy on crowd control, use of force, and mutual aid, before such tactics are deployed in the future.

The proposed policy would not prohibit use of these non-lethal tactics for non-crowd control situations, such as dealing with armed suspects.

ENVIRONMENTAL SUSTAINABILITY

No adverse affects to the environment.

CONTACT PERSON

Jesse Arreguin, Councilmember, District 4 510-981-7140

Attachments:

- ~~1. Proposed changes to General Order C-64 (Crowd Control)~~
- ~~2. Proposed changes to General Order M-2 (Mutual Aid)~~
- ~~3. Proposed changes to General Order U-2 (Use of Force)~~
- ~~4.~~

1. Oakland Police Department Training Bulletin III-G (Crowd Control)
2. San Francisco Police Department Crowd Control Policy
3. through 5. Current language of BPD General Orders C-64, M-2, and U-2
6. and 7. ~~5. and 6.~~ December 10, 2014 PRC recommendations on Tear Gas and Projectiles

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OFFICE OF CHIEF OF POLICE
OAKLAND POLICE DEPARTMENT

MEMORANDUM

TO: All Personnel

DATE: 04 Oct 13

SUBJECT: Revision of Training Bulletin III-G, CROWD CONTROL AND CROWD
MANAGEMENT POLICY (Rev. 28 Oct 05)

The purpose of the revision to this order is to update Departmental policy and procedures regarding crowd control and crowd management.

This following summary of the substantive changes to TB III-G shall not take the place of the review and understanding of the entire document:

- Added Part III, A, 4 (General Principles-Planning): Internal Affairs personnel and civilian staff will not have operational/tactical assignments or decision making roles for crowd control events.
- Added Part III, A, 4 (General Principles-Planning): Internal Affairs and Criminal Investigations Division shall have sufficient personnel available to conduct internal and criminal investigations during a crowd control event.
- Added Part III, A, 5 (General Principles-Planning): The Incident Commander of a crowd control event shall coordinate with the City Attorney and County District Attorney to ensure policies and case law information are current.
- Deleted the following from Part III, C, 1 (General Principles-Policing a Crowd): “Where additional resources are needed, they should be deployed to the greatest extent possible so they are not readily visible to the crowd”.
- Deleted the following from Part V, H, 1 (Display of Officers): “Once this tactic is selected, officers should be assembled in formation at a location outside the view of the crowd” and “Do not bluff the crowd.”
- Deleted from Part V, H, 3, c (Police Formations and Use of Batons): “When reasonably necessary for protection of the officers or to disperse individuals in the crowd pursuant to the procedures of this policy, batons may be used in a pushing or jabbing motion. Baton jabs should not be used indiscriminately against a crowd or group of persons but only against individuals who are physically aggressive or actively resisting arrest. Baton jabs should not be used in a crowd control situation against an individual who is physically unable to disperse or move because of the press of the crowd or some other fixed obstacle”.
- Added Part V, H, 4, d (Non Hand-held Crowd Control Chemical Agents): Indirect use of chemical agents shall not be used unless approved by the Incident Commander. Under exigent circumstance, a commander or supervisor can use chemical agents. The Incident Commander shall be notified immediately upon an exigent use of chemical agents.
- Added Part V, H, 5, a (Hand-thrown chemical agents or pyrotechnic gas dispersal devices): Hand-thrown chemical agents or pyrotechnic gas dispersal devices shall not be used unless approved by the Incident Commander.

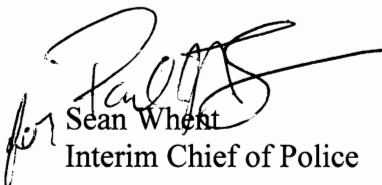
Under exigent circumstance, a commander or supervisor can use hand-thrown chemical agents or pyrotechnic gas dispersal devices chemical agents. The Incident Commander shall be notified immediately upon an exigent use of hand-thrown chemical agents or pyrotechnic gas dispersal devices.

- Added Part VI, G (Electronic Immobilizing Devices): "Officers are not restricted from using Tasers in accordance with Department General Order K-3, USE OF FORCE."
- Added Part VI, I (Munitions Inventory Log): Documentation and responsibilities for a munitions inventory log.
- Added Part VIII, B (Cite/Release and Booking Procedures): "...officers may cite and release arrestees from temporary processing stations or police facilities as near the site of the arrest as possible. While detained during the citation and release process, arrestees shall have reasonable access to toilet facilities and to appropriate medical attention."
- Added Part VIII, C (Cite/Release and Booking Procedures): "No fingerprinting will be done as part of the citation and release process. Arrestees may be instructed to appear for booking prior to or after arraignment. Commanders shall exercise discretion as to whether property searches are necessary. Property of persons who qualify for citation and release will not be confiscated unless it is found to contain contraband. The intention of this policy is to release citation-eligible arrestees as promptly as possible, and to obviate the need to transfer such arrestees to the Sheriff's custody. Persons for whom a valid warrant is confirmed, or who do not produce valid identification or who are otherwise found ineligible for citation will be transferred to the Sheriff's custody".
- Added Part IX, 1-7 (Mutual Aid and Multi-Agency Coordination). Roles and responsibilities.
- Added Part X, 1 (Documentation): "Officers shall utilize their Personal Digital Recording Device (PDRD) in accordance with DGO I-15.1. In addition, officers shall activate their PDRDs whenever taking any enforcement action during a crowd control situation or when ordered to activate their PDRD by a supervisor or commander".
- Added Part XI, B, C, 1-5 (Reporting): The Incident Commander will be responsible for conducting a debrief of the crowd control event within 72 hours and an After Action Report within 30-days.
- Added Part XIV Crowd Management Coordinator): The responsibilities of the Crowd Control Coordinator.

The provisions of Special Orders 7088 and 8135 are incorporated into this order and are hereby canceled.

Personnel shall acknowledge receipt, review, and understanding of this directive in accordance with the provisions of DGO A-1, DEPARTMENTAL PUBLICATIONS.

By order of


Sean Whent
Interim Chief of Police

Date Signed: 03 OCT 13

TRAINING



BULLETIN

Date of Issue / Revision
04 OCT 13

Index Number: III-G
Alpha Index: Crowd Control and
Crowd Management

Evaluation Coordinator: BFO Deputy Chief
Automatic Revision Cycle: 3 Years

"Department Training Bulletins shall be used to advise members of current police techniques and procedures and shall constitute official policy."

OPD Crowd Control and Crowd Management Policy

The purpose of this Training Bulletin is to set forth policy and procedures regarding crowd control and crowd management.

I. POLICY

The Oakland Police Department crowd management and crowd control policy is to

- Apply the appropriate level of direction and control to protect life, property, and vital facilities;
- Maintain public peace and order; and
- Uphold constitutional rights of free speech and assembly while relying on the minimum use of physical force and authority required to address a crowd management or crowd control issue.

II. DEFINITIONS

A. Crowd Management

Crowd management is defined as techniques used to manage lawful public assemblies before, during, and after an event for the purpose of maintaining the event's lawful status. Crowd management can be accomplished in part through coordination with event planners and group leaders, permit monitoring, and past event critiques.

B. Crowd Control

Crowd control is defined as those techniques used to address unlawful public assemblies, including a display of formidable numbers of police officers, crowd containment, dispersal tactics, and arrest procedures.

C. First Amendment Activities

First Amendment activities include all forms of speech and expressive conduct used to convey ideas and/or information, express grievances, or otherwise communicate with others and include both verbal and non-verbal expression.

Common First Amendment activities include, but are not limited to, speeches, demonstrations, vigils, picketing, distribution of literature, displaying banners or signs, use of puppets to convey a message, street theater, and other artistic forms of expression.



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All these activities involve the freedom of speech, association, and assembly and the right to petition the government, as guaranteed by the United States Constitution (First Amendment) and the California Constitution (Article 1, Sections 2 & 3.)

All persons have the right to march, demonstrate, protest, rally, or perform other activities protected by the First Amendment of the United States Constitution and the California Constitution.

The government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.

D. Demonstration

Demonstration is used generically in this Training Bulletin to include a wide range of First Amendment activities which require, or which may require, police traffic control, crowd management, crowd control, crowd dispersal, or enforcement actions in a crowd situation.

As used in this Training Bulletin, the term, demonstration, means a public display of a group's or individual's feeling(s) toward a person(s), idea, cause, etc and includes, but is not limited to, marches, protests, student walk-outs, assemblies, and sit-ins. Such events and activities usually attract a crowd of persons including participants, onlookers, observers, media, and other persons who may disagree with the point of view of the activity.

E. Crowd Event or Crowd Situation

This Training Bulletin covers all crowd events or crowd situations, including sporting events, festivals, concerts, celebratory crowds, and demonstrations as defined above.

III. GENERAL PRINCIPLES

The Oakland Police Department's Crowd Management/Crowd Control Policy consists of the general principles discussed below.

A. Planning

1. Command staff shall be notified immediately of large or potentially disruptive demonstrations and/or crowd events.
2. The Incident Commander shall be responsible for the development of a written operations plan.
3. The Incident Command System shall be used for managing crowds and acts of civil disobedience.
4. Internal Affairs personnel and civilian staff shall not be included in any planning, tactical or strategy component of an anticipated crowd control or management scenario, other than to help plan for the specific role of IAD functions such as complaint intake and investigations.



Ensure there are sufficient Criminal Investigation Division (CID) and Internal Affairs Division (IAD) personnel that are not assigned to uniformed field assignments where a reasonable possibility of confrontation, force, or subsequent alleged misconduct or officer involved criminal complaints may occur, so that they are available for investigating such allegations.

5. The Incident Commander shall coordinate with the City Attorney and County District Attorney to solicit and ensure information is current regarding but not limited to:
 - a. Criteria for unlawful assembly.
 - b. Appropriate penal codes for enforcement and arrest criteria.
 - c. Appropriate Oakland Municipal Codes for enforcement and arrest criteria.
 - d. Legal updates regarding force, search and seizure and arrest.
6. OPD shall make every effort to follow the principle of establishing contact and communication with the event or demonstration planners.

Stakeholder involvement is critical to the overall success of managing crowd events and/or civil disobedience during demonstrations. If knowledge exists that a demonstration or crowd event may happen or will happen, OPD shall proactively and repeatedly make every reasonable attempt to establish and to maintain communication and cooperation with representatives or leaders of the demonstration or crowd event, without regard to whether a permit has been applied for or issued.

When planning for and responding to demonstrations, crowd events, and civil disobedience situations, Incident Commanders assigned to these incidents shall facilitate the involvement of stakeholders. If and when communication is established, personnel shall make every effort to identify representatives or leaders of the event and identify a primary police liaison. The primary police liaison should be requested to be in continuous contact with an assigned police representative, preferably the Incident Commander or someone with continuous access to the Incident Commander.

A group's failure to respond to OPD attempts to establish communication and cooperation prior to a demonstration shall not mitigate OPD's efforts to establish liaison and positive communication with the group as early as possible at the scene of the demonstration or crowd event.

7. Spontaneous demonstrations or crowd events, which occur without prior planning and/or without prior notice to the police, present less opportunity for OPD planning and prevention efforts. Nonetheless, the same policies and regulations concerning crowd management, crowd control, crowd dispersal, and police responses to violence and disorder apply to a spontaneous demonstration or crowd event situation as to a planned demonstration or crowd event. Incident Commanders shall involve representatives of demonstrators or crowd events when planning and responding to both planned and spontaneous events.



B. Deployment

1. Decisions about crowd dispersal and general strategies about crowd containment or crowd redirection, multiple simultaneous arrests, planned individual arrests, or planned use of force shall be made at the level of the Incident Commander or higher.
 - a. If such decisions are made by higher ranking off-site OPD officials, it is required that the Incident Commander first be consulted about the state of affairs in the field and the potential consequences of the decision.
 - b. All such decisions shall be documented in writing with regard to time, the identity of the person making the decision, and the precise decision and directions given. Such documentation shall be made at the time of the decision or as soon thereafter as possible and included in an After Action Report.

This directive shall not preclude individual commanders, supervisors, and officers from defending themselves or others from imminent danger when the delay in requesting permission to take action would increase the risk of injury.

2. OPD recognizes that the designated police liaison may change during the course of an event and that leadership of certain groups may not exist nor desire to be identified. No retaliatory practices or adverse action shall be taken by OPD against a group because it has failed or refused to appoint a police liaison or otherwise establish lines of communication with OPD.
3. Communication with the identified police liaison shall continue even if enforcement actions commence.
4. As staffing permits, officers should be deployed to the best available vantage points to observe and report crowd actions.
5. Lines of control should be established, especially in events that involve protesters with opposing views. Whenever possible, hostile factions should be separated.
6. Considering the type of crowd involved is an important factor in responding properly to its behavior.
7. Crowds may vary from cooperative or celebratory to non-compliant, hostile, and combative. Organized demonstrations in which some engage in coordinated, nonviolent civil disobedience should be distinguished, to the extent possible, from crowds in which substantial numbers of people are engaged in other types of unlawful acts.

C. Policing a Crowd

1. Sufficient resources to make multiple simultaneous arrests should be available at demonstrations where such arrests are a reasonable possibility. However, this need must be balanced against the fact that a large and visible police presence may have a chilling effect on the exercise of free speech rights.
2. When possible, officers should be at their posts well in advance of arriving participants. If possible, officers should be positioned at a reasonable distance from the crowd to avoid a perception of intimidation.



3. In general, OPD officers shall work together in squads or platoons when policing a demonstration.
4. Each officer shall wear a badge, nameplate, or other device on the outside of his or her uniform or on his or her helmet which bears the identification number or the name of the officer, as required by Penal Code § 830.10.

The number or name shall be clearly visible at all times. The letters or numerals on helmets, jackets, and vests shall be clearly legible at a distance sufficient to provide a measure of safety for both officers and demonstrators/observers and, in no case, shall be less than two inches in height on helmets.

5. Crowd control and crowd dispersal, as well as a show of force in crowd control situations, should be accomplished whenever possible using specialized units of OPD rather than on-duty patrol officers.
6. Regardless of whether a parade permit has been obtained, OPD officers will try to facilitate demonstrations that may temporarily block traffic and/or otherwise use public streets subject to time, place, and manner of circumstances, by regulating and/or rerouting traffic as much as practical.

For a demonstration without a pre-planned route, the Incident Commander shall evaluate the size of the crowd with regard to whether demonstrators should be required to stay on the sidewalk or whether demonstrators should be allowed to be in one or more lanes of traffic.

This directive does not mean demonstrations must be allowed to deliberately disrupt commuter traffic and/or bridge approaches.

The Incident Commander shall balance the level of disruption to traffic against the OPD policy of facilitating First Amendment activity, the practicality of relegating the crowd to sidewalks or an alternate route, the expected duration of the disruption, and the traffic disruption expected in making a mass arrest if demonstrators refuse to leave the street.

OPD shall seek to communicate with organizers through their police liaison to resolve a problem if possible. Traffic control may also be essential at varying points in a demonstration and may help accomplish crowd containment, crowd isolation, or crowd dispersal.

7. It is essential to recognize that all members of a crowd of demonstrators are not the same.

Even when some members of a crowd engage in violence or destruction of property, other members of the crowd are not participating in those acts. Once some members of a crowd become violent, the situation often turns chaotic, and many individuals in the crowd who do not want to participate in the violent or destructive acts may be blocked from leaving the scene because the crowd is so large or because they are afraid they will move into a position of heightened danger.

This understanding does not mean OPD cannot take enforcement action against the crowd as permitted under this policy, but OPD shall seek to minimize the risk that force and arrests may be directed at innocent persons.



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Verbal abuse against officers shall not constitute a reason for an arrest or for any use of force against such individuals. Officers shall avoid responding to abusive comments

8. Officers must not be affected by the content of the opinions being expressed nor by the race, gender, sexual orientation, physical disabilities, appearances, or affiliation of anyone exercising their lawful rights.
9. Department personnel must maintain professional demeanor and remain neutral in word and deed despite unlawful or anti-social behavior on the part of crowd members. Unprofessional police behavior can inflame a tense situation and make control efforts more difficult and dangerous.

Strong supervision and command are essential to maintaining unified, measured, and effective police response. A response incorporating strong leadership and based upon teamwork is crucial to maintaining control and safety. Impulsive or independent actions by officers are to be avoided.

10. Officers in non-violent crowd situations shall not display weapons before a dispersal order is given or other enforcement action is implemented.
11. OPD officers shall not be sent into an obviously hostile crowd solely for the purpose of communication. OPD officers shall not penetrate a crowd for an individual arrest unless the targeted individual is involved in criminal conduct which endangers persons or property, and the decision to move into the crowd is made by a supervisor or commander.
12. The Incident Commander and supervisors shall make every effort to ensure that the police mission is accomplished as efficiently and unobtrusively as possible with the highest regard for the human dignity and liberty of all persons and with minimal reliance on the use of physical force.

The use of force shall be restricted to circumstances authorized by law and to the degree reasonably necessary in light of the circumstances confronting members. This directive does not preclude police officers from taking appropriate action to direct crowd and vehicular movement; enforce ordinances and statutes; and employ the physical force necessary to maintain the safety of the crowd, the general public, law enforcement personnel, and emergency personnel.

IV. RESPONSES TO CROWD SITUATIONS

A. Spontaneous Event or Incident

1. The Watch Commander shall respond to the scene of spontaneous events, when practical, and take command of the incident as the Incident Commander until relieved by a ranking officer.
2. The Incident Commander shall declare over the police radio that he or she has assumed command of the incident. When practical, a command post shall be established as soon as possible.



3. An immediate assessment of the situation is essential for effective police response. The Incident Commander must ascertain the following information at the earliest possible time:
 - a. The location and type of event.
 - b. First Amendment activities will be evaluated by the Incident Commander to determine lawfulness of the actions by groups and individuals.
 - c. The approximate number of specific individuals engaged in unlawful conduct.
 - d. The likelihood that unlawful behavior will spread to other crowd participants (mimicking).
 - e. Immediate threats to the safety of the public and/or police officers.
 - f. The number of structure(s) or vehicle(s) involved.
 - g. The size of the involved area.
 - h. The number of additional officers and police resources needed as well as requirements for specialized units (Traffic, Tactical Operations Team, Crime Reduction Teams, etc.).
 - i. The appropriate manner of response (Code 2 or 3).
 - j. The staging area.
 - k. The location for a media staging area.
 - l. The ingress and egress routes.
 - m. Additional resources needed (paramedic, fire department, outside agencies, etc.).

B. Planned Event Involving Potentially Large Crowds

1. Upon notification, the Special Operations Division Commander or designee (Incident Commander) shall develop a written operations plan.

The Incident Commander of planned events shall be responsible for the overall coordination of the event as well as for crowd control and management.

Operations plans for large events requiring the redeployment of personnel from regular assignments shall be approved by the Deputy Chief of Field Operations.

2. The following factors shall be considered and addressed in developing the operations plan for a large crowd event, including but not limited to:
 - a. What type of event is to occur?
 - b. Who are the organizers? What is their past record of conduct (peaceful, violent, cooperative, etc.)?



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- c. Will outsiders visibly and/or physically oppose the planned event?
- d. Will the event involve the use or abuse of alcohol or other substances?
- e. Where is the event to occur? Consider the size, location, and ingress and egress points.
- f. What is the optimal site for a command post as well as staging areas?
- g. Have the appropriate permits been issued?
- h. Have other agencies, bureaus, and divisions been notified and included in the planning process (paramedics, fire department, Communications, Intel, etc.)?
- i. Will the EOC be needed? Is Mutual Aid needed?
- j. Will off-duty personnel be involved? Has the commander of any off-duty personnel been made part of the planning process?
- k. Is it possible and appropriate to coordinate with group organizers and explain the Department's mission, preparation, and potential responses?

Information considered sensitive or confidential shall not be released to group organizers if it will jeopardize the safety or effectiveness of police personnel.

- l. Have the proper number of personnel been scheduled to safely handle the event? Should a reserve force be available?
 - m. Has an enforcement policy been formulated and communicated to affected personnel?
3. The OPD Event Coordinator shall perform the following tasks.
- a. Gather and analyze intelligence information about future crowd events, including review of information from both internal and external sources.
 - b. Coordinate with Special Events regarding permits and various Department sections, including bureaus, divisions, and specialized units, to prepare for a planned special event.
 - c. Meet in advance with event sponsors and group leaders to exchange information and to present the Department's philosophy and intent. Details of the department plan and preparation shall not be disclosed except when necessary to ensure success of the operation.
 - d. Coordinate with affected bureaus, divisions, police service areas, and special units to prepare and coordinate the development of an operations plan for a given event that details assignments, traffic and crowd flow, communications, tactics, and training.
 - e. Prepare operations plan as requested.
 - f. Coordinate inspection of protest/event area prior to an event to locate any pre-positioned equipment staged by demonstrators.



- g. Ensure that appropriate equipment and supplies are available.
 - h. Ensure that a video team(s) is established and required video equipment is available (see Part X.)
 - i. Establish protocols and procedures for the processing of arrestees and collection of evidence.
- 4. Personnel creating an operations plan to address a large crowd event should anticipate a variety of scenarios and devise a police response for each. Such scenarios and responses should be made part of the final plan and communicated to the affected personnel.
 - 5. When practical, personnel preparing for a large event with the potential for violence shall be retrained; training to include physically practicing various aspects of crowd management and crowd control.

Topics may include but are not limited to Mobile Field Force (MFF), multiple simultaneous arrest procedures, functioning in a tear gas environment, use of specialty impact munitions, applicable ordinances and statutes, protected speech, etc.

- 6. Personnel shall be briefed on the operations plan and their particular assignments before deployment.

Specific instructions covering topics such as applicable laws, community concerns, appropriate enforcement actions, chain of command, tactics, traffic patterns, etc., shall be clearly presented to personnel. All personnel shall be given a copy of the operations plan.

V. PERMISSIBLE CROWD CONTROL AND CROWD DISPERSAL TECHNIQUES

- A. In the event of a declared unlawful assembly, it is the general policy of the OPD to use multiple simultaneous arrests to deal with a non-violent demonstration that fails to disperse and voluntarily submits to arrest as a form of political protest rather than dispersing the demonstrators by using weapons or force beyond that necessary to make the arrests.
- B. The Incident Commander shall make the final decision as to what control action, if any, will be taken to address a given crowd situation.

Crowd size and available Department resources will also factor into the police response. The following factors will be considered prior to determining what action to take:

- 1. Will police action likely improve the situation?
- 2. Will targeting specific violent or disruptive individuals for arrest be more effective or appropriate than applying control tactics to the entire crowd?
- 3. Are sufficient resources available to effectively manage the incident?



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4. Have clear and secure escape routes been established for both the crowd and the police?
 5. Has the dispersal order been given (loudspeaker, personal contact, etc.)?
 6. Have contingency plans been established in the event initial police efforts are ineffective?
- C. Commanders shall constantly reassess and adjust tactics, as necessary, as the crowd's actions change.
- D. The Incident Commander shall consider and take reasonable and appropriate steps to ensure the safety of bystanders.
- E. When officers take action to move or disperse a crowd, steps should be taken to ensure that the crowd is not moved into a position or place that could be dangerous to persons in the crowd or bystanders, such as pushing them up against glass windows.
- F. When an Unlawful Assembly May Be Declared
1. The definition of an unlawful assembly has been set forth in Penal Code Section 407 and interpreted by court decisions. The terms, "boisterous" and "tumultuous," as written in Penal Code Section 407, have been interpreted as "conduct that poses a clear and present danger of imminent violence" or when the demonstration or crowd event is for the purpose of committing a criminal act.

The police may not disperse a demonstration or crowd event before demonstrators have acted illegally or before the demonstrators pose a clear and present danger of imminent violence.
 2. The mere failure to obtain a permit, such as a parade permit or sound permit is not a sufficient basis to declare an unlawful assembly. There must be criminal activity or a clear and present danger of imminent violence.
 3. The fact that some of the demonstrators or organizing groups have engaged in violent or unlawful acts on prior occasions or demonstrations is not grounds for declaring an assembly unlawful.
 4. Unless emergency or dangerous circumstances prevent negotiation, crowd dispersal techniques shall not be initiated until after attempts have been made through contacts with the police liaisons and demonstration or crowd event leaders to negotiate a resolution of the situation so that the unlawful activity will cease and the First Amendment activity can continue.
 5. If after a crowd disperses pursuant to a declaration of unlawful assembly and subsequently participants assemble at a different geographic location where the participants are engaged in non-violent and lawful First Amendment activity, such an assembly cannot be dispersed unless it has been determined that it is an unlawful assembly and the required official declaration has been adequately given.



G. Declaration of Unlawful Assembly

1. When the only violation present is unlawful assembly, the crowd should be given an opportunity to disperse rather than face arrest.

Crowd dispersal techniques shall not be initiated until OPD has made repeated announcements to the crowd, asking members of the crowd to voluntarily disperse and informing them that, if they do not disperse, they will be subject to arrest.

These announcements must be made using adequate sound amplification equipment in a manner that will ensure that they are audible over a sufficient area. Announcements must be made from different locations when the demonstration is large and noisy. The dispersal orders should be repeated after commencement of the dispersal operation so that persons not present at the original broadcast will understand that they must leave the area. The announcements shall also specify adequate egress or escape routes. Whenever possible, a minimum of two escape/egress routes shall be identified and announced.

It is the responsibility of the on scene OPD commanders to ensure that all such announcements are made in such a way that they are clearly audible to the crowd.

2. Unless an immediate risk to public safety exists or significant property damage is occurring, sufficient time will be allowed for a crowd to comply with police commands before action is taken.
3. Dispersal orders should be given in English and in other languages that are appropriate for the audience.
4. The Incident Commander should ensure that the name of the individual making the dispersal order and the date/time each order was given is recorded.
5. Dispersal orders should not be given until officers are in position to support/direct crowd movement.
6. Personnel shall use the following Departmental dispersal order:

I am (rank/name), a peace officer for the City of Oakland. I hereby declare this to be an unlawful assembly, and in the name of the people of the State of California, command all those assembled at to immediately leave. If you do not do so, you may be arrested or subject to other police action, including the use of force which may result in serious injury.

Section 409 of the Penal Code prohibits remaining present at an unlawful assembly. If you remain in the area just described, regardless of your purpose, you will be in violation of Section 409. The following routes of dispersal are available (routes). You have (specify amount) minutes to leave. If you refuse to move, you will be arrested.

* If you refuse to move, chemical agents will be used. (* Provide the chemical warning only if use is anticipated).



7. When a command decision is made to employ crowd dispersal techniques, attempts to obtain voluntary compliance through announcements and attempts to obtain cooperation through negotiation shall both be continued. At any point at which a crowd is dispersing, whether as a reaction to police dispersal techniques, through voluntary compliance, or as a result of discussion or negotiation with crowd leaders, OPD dispersal techniques shall be suspended and the crowd shall be allowed to disperse voluntarily. This directive does not preclude a command decision by OPD to reinstate dispersal techniques if crowd compliance ceases.

H. Approved Tactics and Weapons to Disperse or Control a Non-Compliant Crowd

If negotiation and verbal announcements to disperse do not result in voluntary movement of the crowd, officers may employ additional crowd dispersal tactics, but only after orders from the Incident Commander or designated supervisory officials.

The permissible tactics to disperse or control a non-compliant crowd include all of the following (not in any specific order of use):

The use of these crowd dispersal tactics shall be consistent with the Department policy of using the minimal police intervention needed to address a crowd management or control issue in accordance with Department General Order K-3, USE OF FORCE.

1. Display of police officers (forceful presence).

A police formation may be moved as a unit to an area within the crowd's view to assist with crowd management. If a display of police officers, motorcycles, police vehicles, and mobile field forces, combined with a dispersal order, is not effective, more forceful actions may be employed.

Generally, officers should be assigned to squads of sufficient size to be effective. At larger events, the crowd can be divided (with a commander in charge of each squad).

2. Encirclement and Arrest

If the crowd has failed to disperse after the required announcements, officers may encircle the crowd or a portion of the crowd for purposes of making multiple simultaneous arrests (see Section VII).

Persons who make it clear (e.g., by sitting down, locking arms) that they seek to be arrested shall be arrested and not subjected to other dispersal techniques, such as the use of batons or chemical agents.

Arrests of non-violent persons shall be accomplished by verbal commands and persuasion, handcuffing, lifting, carrying, the use of dollies and/or stretchers, and/or the use of control holds including the bent-wrist control hold and twist-lock control hold (See Training Bulletin III-I.1, WEAPONLESS DEFENSE, pages 28-31.)

When dealing with non-violent or passive persons, control holds should only be used when a Supervisor or Commander determines that control holds are necessary to accomplish the policing goal after other methods of arrest have failed or are not feasible under the circumstances and when the use of control holds would be a lawful use of force.



In the event control holds are necessary, precautions should be taken to assure that arrestees are not injured or subjected to unnecessary or excessive pain.

A decision to authorize control holds and the reasons for said decision should be documented.

3. Police Formations and Use of Batons

- a. If a crowd refuses to disperse after the required announcements, the police may use squad or platoon formations (skirmish line, wedge, echelons, etc.) to move the crowd along.
- b. Batons shall not be used for crowd control, crowd containment, or crowd dispersal except as specified below.
- c. Batons may be visibly displayed and held in a ready position during squad or platoon formations.
- d. Batons shall only be used as set forth in Department General Order K-3, USE OF FORCE and Department Training Bulletin III-H.2, USE OF THE LONG BATON.

Officers shall not intentionally strike a person with any baton to the head, neck, throat, kidneys, spine, or groin or jab with force to the left armpit except when the person's conduct is creating an immediate threat of serious bodily injury or death to an officer or any other person. Batons shall not be used against a person who is handcuffed.

4. Non Hand-Held Crowd Control Chemical Agents

- a. Crowd control chemical agents are those chemical agents designed and intended to move or stop large numbers of individuals in a crowd situation and administered in the form of a delivery system which emits the chemical agent diffusely without targeting a specific individual or individuals.
- b. Chemical agents can produce serious injuries or even death. The elderly person or infant in the crowd or the individual with asthma or other breathing disorder may have a fatal reaction to chemical agents even when those chemical agents are used in accordance with the manufacturer's recommendations and the Department's training. Thus, crowd control chemical agents shall be used only if other techniques, such as encirclement and multiple simultaneous arrest or police formations have failed or will not accomplish the policing goal as determined by the Incident Commander.
- c. Members shall use the minimum amount of chemical agent necessary to obtain compliance in accordance with Department General Order K-3, USE OF FORCE.
- d. Indirect delivery or crowd dispersal spray and/or discharge of a chemical agent shall not be used in demonstrations or other crowd events without the approval of the Incident Commander. Only under exigent circumstances may a supervisor or commander authorize the immediate use of chemical agents.



The Incident Commander shall be notified immediately when an exigent use of chemical agents has occurred.

- e. Chemical agents shall not be used for crowd control or dispersal without first giving audible warning of their imminent use and giving reasonable time to the crowd, media, and observers to disperse.
- f. If chemical agents are contemplated in crowd situations, OPD shall have medical personnel on site prior to their use and shall make provision for decontamination and medical screening to those persons affected by the chemical agent(s).

5. Hand-thrown chemical agents or pyrotechnic gas dispersal devices

- a. Hand-thrown chemical agents or pyrotechnic gas dispersal devices shall not be used for crowd control or crowd dispersal without the approval of the Incident Commander. Only under exigent circumstances may a supervisor or commander authorize the immediate use of hand-thrown chemical agents or pyrotechnic gas dispersal devices. The Incident Commander shall be immediately notified when an exigent use of hand-thrown chemical agents or pyrotechnic gas dispersal devices has occurred.
- b. The use of hand-thrown chemical agents or pyrotechnic gas dispersal devices may present a risk of permanent loss of hearing or serious bodily injury from shrapnel. Said devices shall be deployed to explode at a safe distance from the crowd to minimize the risk of personal injury and to move the crowd in the direction that will accomplish the policing objective.
- c. Hand-thrown chemical agents or pyrotechnic gas dispersal devices shall not be used for crowd control without first giving audible warnings to the crowd and additional reasonable time to disperse.
- d. Hand-thrown chemical agents or pyrotechnic gas dispersal devices shall be used only if other techniques such as encirclement and mass arrest or police formations have failed or will not accomplish the policing goal as determined by the Incident Commander.

VI. WEAPONS PROHIBITED FOR CROWD CONTROL AND CROWD DISPERSAL PURPOSES

A. Lethal Force

The use of lethal force by OPD members is governed by the Department's Use of Force Policy. Nothing about a crowd control situation eliminates or changes any of the constraints and criteria governing the use of lethal force in the Department's Use of Force Policy.

B. Canines

Canines shall not be used for crowd control, crowd containment, or crowd dispersal.



C. Horses

Horses shall be used only for purposes of crowd control in the event of a riot involving substantial numbers of people actively engaged in violence or serious property destruction. Horses shall never be used to disperse non-violent crowds, including persons who are seated or lying down.

Horses may be used for crowd management during festivals and sporting events.

D. Fire Hoses

Fire hoses shall not be used for crowd control, crowd containment, or crowd dispersal.

E. Motorcycles

The technique referred to as the Basic Use of Motorcycle Push Technique (B.U.M.P.) is prohibited. Motorcycles and police vehicles may not be used for crowd dispersal but may be used for purposes of observation, visible deterrence, traffic control, transportation, and area control during a crowd event.

F. Specialty Impact Less-Lethal Weapons

1. Skip Fired Specialty Impact Less-Lethal Munitions (Wooden Dowels and Stinger Grenades) are prohibited.
 - a. Any and all less-lethal specialty impact weapons designed to be skip fired or otherwise deployed in a non-directional non-target specific manner, including but not limited to the Multiple Wood Baton Shell (264W) manufactured by Armor Holdings, Inc. shall not be used at all by OPD during demonstrations or crowd events.
 - b. The use of the Stinger Grenade containing rubber pellets designed to be deployed in a non-directional non-target specific manner is also prohibited for all crowd control use.
2. Uses of Direct Fired Specialty Impact Less-Lethal Munitions (SIM)

Direct Fired SIM are less-lethal specialty impact weapons that are designed to be direct fired at a specific target, including but not limited to flexible batons ("bean bags"), and shall not be used for crowd management, crowd control or crowd dispersal during demonstrations or crowd events. Direct Fired SIM may never be used indiscriminately against a crowd or group of persons even if some members of the crowd or group are violent or disruptive.

- a. Direct Fired SIM may be used against a specific individual who is engaging in conduct that poses an immediate threat of loss of life or serious bodily injury to him or herself, officers, or the general public or who is engaging in substantial destruction of property which creates an immediate risk to the lives or safety of other persons.

In such instances, Direct Fired SIM shall be used only when other means of arrest are unsafe and when the individual can be targeted without endangering other crowd members or bystanders.



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- b. The use of Direct Fired SIM must cease when the violent or destructive actions cease. These weapons must not be used for the purpose of apprehension or to otherwise prevent escape unless escape would present a substantial risk of continued immediate threat to loss of life or serious bodily injury.
- c. Members shall only deploy Direct Fired SIM during a demonstration or crowd event under the direction of a supervisor.
- d. When circumstances permit, the supervisor on the scene shall make an attempt to accomplish the policing goal without the use of Direct Fired SIM as described above, and, if practical, an audible warning shall be given to the subject before deployment of the weapon.
- e. Any person struck by a round shall be transported to a hospital for observation and any necessary treatment. Ambulance service, if required, shall be ordered per Department General Order I-4, AMBULANCE SERVICE. First aid, when necessary, shall be administered per Training Bulletin III-K, FIRST AID.
- f. No member shall use Direct Fired SIM without formal training.
- g. Direct Fired SIM shall not be used against a person who is under restraint.
- h. Members shall not discharge a Direct Fired SIM at a person's head, neck, throat, face, left armpit, spine, kidneys, or groin unless deadly force would be justified.

G. Electronic Immobilizing Devices (EID)

EID's such as tasers, stun guns, and stun shields shall not be used for crowd management, crowd control, or crowd dispersal during demonstrations or crowd events. Officers are not restricted from using Tasers in accordance with Department General Order K-3, USE OF FORCE.

H. Aerosol Hand-held Chemical Agents

Aerosol, hand-held, pressurized, containerized chemical agents that emit a stream shall not be used for crowd management, crowd control, or crowd dispersal during demonstrations or crowd events. Aerosol hand held chemical agents may not be used indiscriminately against a crowd or group of persons, but only against specific individuals who are engaged in specific acts of serious unlawful conduct or who are actively resisting arrest.

Members shall use the minimum amount of the chemical agent necessary to overcome the subject's resistance in accordance with Department General Order K-3, USE OF FORCE.

Officers must be familiar with OPD Training Bulletin V-F.2, USE OF OLEORESIN CAPSICUM (OC), and, specifically, the risk factors associated with aerosol chemical agents and the treatment for individuals subjected to them.

Aerosol chemical agents shall not be used in a demonstration or crowd situation or other civil disorders without the approval of a supervisor or command officer.



When possible, persons should be removed quickly from any area where hand-held chemical agents have been used. Members shall monitor the subject and pay particular attention to the subject's ability to breathe following the application of OC. As soon as practical, members and employees shall obtain professional medical treatment for all persons who have had OC applied to them. Paramedics in the field may administer treatment if no other medical treatment is required. If paramedics are not available in a timely manner, subjects shall be transported to a hospital for treatment within 45 minutes of the application of OC.

A subject who has been sprayed with hand-held chemical agents shall not be left lying on his/her stomach once handcuffed or restrained with any other device.

I. Munitions Inventory Log

The Training Section shall maintain the munitions inventory log for all less-lethal munitions which are checked out during crowd control events. Officers shall update the munitions inventory log after each event to specify how many munitions were used and by which person. A copy of the inventory log shall be included in the after-action report.

VII. ARRESTS

A. Multiple Simultaneous Arrests

1. When a large-scale event involving possible arrests is to be conducted, OPD planners will estimate the number of potential arrestees and will configure arrest teams capable of managing multiple arrests safely.
2. When arrests are necessary, the Incident Commander shall attempt to ensure that sufficient numbers of police officers are present to effect arrests. This tactic can be effective in dispersing the remaining crowd members wanting to avoid arrest.
3. When multiple arrests are contemplated in advance and it is impracticable for arrestees to be cited at the scene as further discussed below, pre-arrangement of transportation shall be made.
4. The Incident Commander or his/her designee shall make the decisions to engage in selective individual arrests or multiple simultaneous arrests as a crowd control technique with consideration given to the following factors:
 - The likelihood that police action will improve the situation relative to taking no action.
 - The seriousness of the offense(s) as opposed to the potential for the arrest to escalate violence or unlawful activity by crowd members.
 - Whether individual or mass arrests will be more effective in ending the criminal activity at issue.
 - Whether clear and secure escape routes have been established for the crowd and police.
 - Whether communication has been established with crowd representatives.
 - What contingency plans are available?
 - What types of force can be used in effecting the arrests, if necessary.



5. Probable cause for each individual arrest:

Individuals may not be arrested based on their association with a crowd in which unlawful activity has occurred. There must be probable cause for each individual arrest.

This principle means the officer must have objective facts based on his own knowledge or information given him by other officers sufficient to believe that each specific individual being arrested committed the offense.

Thus, the only proper basis for a multiple simultaneous arrest of all the individuals encircled at a demonstration is failure to disperse (Pen. Code §409), when the dispersal was properly ordered based on the existence of an unlawful assembly and adequate notice and opportunity to disperse has been given.

To make arrests for violating Vehicle Code §2800 (non-compliance with lawful police order), the officer must have probable cause to believe that each individual arrested willfully failed or refused to comply with a lawful order.

6. The Incident Commander shall ensure that evidentiary items are recovered and preserved, when possible, to corroborate unlawful acts observed by personnel.

B. Arrests for Civil Disobedience

1. Some demonstrators commit "civil disobedience," by sitting down or otherwise blocking streets, intersections, sidewalks, and/or entranceways or by occupying a targeted office.

The proper response to such actions is to verbally advise the demonstrators that they will be subject to arrest if they choose to remain, allow time for some or all the demonstrators to cease the unlawful activity, and to arrest those who deliberately remain in violation of the law.

When practical, demonstrators committing civil disobedience shall be persuaded into compliance rather than being forcibly removed.

2. Passively resisting arrestees (i.e., arrestees who go limp) shall be arrested by handcuffing and then either by verbal persuasion, lifting, carrying, the use of dollies or stretchers, and/or control holds (See Training Bulletin III-I.1, WEAPONLESS DEFENSE, pages 28 - 31) depending on the circumstances and the decision of the Supervisor.

Control holds should be used only when the Supervisor determines that control holds are necessary to accomplish the policing goal after other methods of arrest have failed or are not feasible under the circumstances and when the use of control holds would be a lawful use of force.

In the event control holds are necessary, precautions must be taken to ensure that arrestees are not injured or subjected to unnecessary or excessive pain.

A Supervisor's decision to authorize control holds and the reasons for said decision should be documented.



Planning for demonstrations where civil disobedience and passive resistance to arrest are a possibility should take into account these different arrest techniques for passive demonstrators.

3. In some cases, demonstrators may lock arms or use lock boxes to slow down the arrest process.

Where such demonstrators have been advised that they will be subject to arrest if they choose to remain and refuse to disperse, a member of the arrest team shall individually advise each demonstrator that he or she is under arrest prior to the application of any force to remove locking devices or to move the demonstrators. The officer shall continue to give verbal directions to give the arrestee a chance to comply before force is used to unlock arms or implements used to remove lock boxes.

4. Although dealing with passive resistance may frustrate officers, civil disobedience is usually a nonviolent means of making a political statement, and officers shall remain neutral, non-antagonistic, and professional at all times in their response.

C. Use of Handcuffs

1. All persons subject to arrest during a demonstration or crowd event shall be handcuffed in accordance with department policy, orders, and Training Bulletins.
2. Officers should be cognizant that flex-cuffs may tighten when arrestees' hands swell or move, sometimes simply in response to pain from the cuffs themselves.

Each unit involved in detention and/or transportation of arrestees with flex-cuffs should have a flex-cuff cutter and adequate supplies of extra flex-cuffs readily available. The officer applying flex-cuffs shall write his serial number in indelible marker on the cuffs whenever used. When arrestees complain of pain from overly tight flex cuffs, members shall examine the cuffs to ensure proper fit

D. Arrest of Juveniles

Juveniles arrested in demonstrations shall be handled consistent with OPD policy on arrest, transportation, and detention of juveniles.

VIII. CITE/RELEASE AND BOOKING PROCEDURES

- A. Individuals arrested for minor offenses may be cited and released in compliance with Penal Code §853.6 and Department General Order M-7, CITATIONS FOR ADULT MISDEMEANORS, Part III, A-N.
- B. When it is impractical to cite arrestees at or near the site of the demonstration because of a substantial risk that this procedure would allow the unlawful activity to continue or because of specific geographic factors, officers may cite and release arrestees from temporary processing stations or police facilities as near the site of the arrest as possible. While detained during the citation and release process, arrestees shall have reasonable access to toilet facilities and to appropriate medical attention.
- C. No fingerprinting will be done as part of the citation and release process. Arrestees may be instructed to appear for booking prior to or after arraignment.



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Commanders shall exercise discretion as to whether property searches are necessary. Property of persons who qualify for citation and release will not be confiscated unless it is found to contain contraband. The intention of this policy is to release citation-eligible arrestees as promptly as possible, and to obviate the need to transfer such arrestees to the Sheriff's custody. Persons for whom a valid warrant is confirmed, or who do not produce valid identification or who are otherwise found ineligible for citation will be transferred to the Sheriff's custody.

- D. An officer seeking to book a misdemeanor arrestee into jail must have an articulable basis to believe that one of the specified statutory exceptions to mandatory cite and release applies to that individual. This basis must be documented in the police report.
- E. The mere fact that further demonstrations are likely to be held in the near future is not a proper basis to apply subdivision (7) of P.C. 853.6 ("reasonable likelihood that the offense may continue or resume") to individual demonstrators.
- F. There must be an articulable objective basis to believe that, if cited out, those specific individuals would continue the same illegal activity for which they were arrested.
- G. Individuals may not be booked into jail on the sole basis of a felony charge consisting of conspiracy to commit a misdemeanor.

IX. MUTUAL AID & MULTI-AGENCY COORDINATION

For large demonstrations and mass gatherings, OPD may be required to rely on Mutual Aid agencies for assistance (see DGO L-3, ASSISTANCE TO OUTSIDE JURISDICTIONS AND MUTUAL AID.) The Department is responsible for following the protocols of the Mutual Aid Plan in accordance with the California Emergency Services Act, commencing at Government Code Section 8550, for contacting law enforcement partners for assistance. Department leaders and commanders should be familiar with the process and responsibilities of requesting and receiving law enforcement mutual aid. See, the Law Enforcement Mutual Aid Plan and its companion document, Law Enforcement Guide for Emergency Operations, at www.calema.ca.gov. In addition, the IC shall be responsible for ensuring to the extent possible that mutual aid agencies:

- 1. Are briefed and in agreement with OPD's Unity of Command structure under which only OPD Commanders may authorize the use of less lethal munitions for crowd control and dispersal;
- 2. Are briefed on OPD's policy on prohibited weapons and force;
- 3. Do not bring or use any weapons or force that is prohibited under OPD's policy;
- 4. Are provided a copy of OPD's Crowd Control Policy and Use of Force policies;
- 5. Are not assigned to front-line positions or used for crowd intervention, control or dispersal unless there is a public safety emergency;
- 6. Complete required reports prior to being released from duty. Agencies should provide the following documents/reports when they are applicable: Use of force report, arrest report, crime report, injury report, equipment damage report and list of responding personnel; and



7. These provisions do not affect an OPD or mutual aid officer from taking action or using force against an individual in self-defense or in defense of another person or officer.

X. DOCUMENTATION

A. Video and Photographic Recording

1. It is the policy of the Department to videotape and photograph in a manner that minimizes interference with people lawfully participating in First Amendment activities.

Videotaping and photographing of First Amendment activities shall take place only when authorized by the Incident Commander or other supervisory officer.

Officers shall utilize their Personal Digital Recording Device (PDRD) in accordance with DGO I-15.1, PORTABLE VIDEO MANAGEMENT SYSTEM. In addition, officers shall activate their PDRDs whenever taking any enforcement action during a crowd control situation or when ordered to activate their PDRD by a supervisor or commander.

2. Individuals should not be singled out for photographing or recording simply because they appear to be leaders, organizers, or speakers.
3. Each camcorder operator shall write a supplemental report at the end of his/her duty assignment documenting the camcorder operations.
4. Unless they provide evidence of criminal activity, videos or photographs of demonstrations shall not be disseminated to other government agencies, including federal, state, and local law enforcement agencies. If videos or photographs are disseminated or shared with another law enforcement agency, a record should be created and maintained noting the date and recipient of the information.
5. If there are no pending criminal prosecutions arising from the demonstration or if the video recording or photographing is not relevant to an Internal Affairs or citizen complaint investigation or proceedings or to civil litigation arising from police conduct at the demonstration, the video recording and/or photographs shall be destroyed in accordance with Department and city policies.

This directive shall not prohibit the OPD from using these videos or footage from such videos as part of training materials for OPD officers in crowd control and crowd dispersal techniques and procedures. The destruction of any such videos or photographs shall be documented in writing with regard to the date of the destruction and the identity of the person who carried it out.

6. Nothing in this section is intended to alter the disclosure requirements of the California Public Records Act (Government Code §6250 et seq.) or the City of Oakland's Sunshine Ordinance (O.M.C. §2.20 et seq.).



XI. REPORTING

- A. The Incident Commander shall ensure that the Deputy Chief of the Bureau of Field Operations is notified of the incident in a timely manner.
- B. The Incident Commander shall ensure that a debrief is conducted within 72 hours of the critical incident.
- C. The IC shall evaluate the need for an After-Action report which outlines the lessons learned and training opportunities, as well as an assessment of the effectiveness and quality of the Operations Plans. An After Action Report will be completed within 30 days of the event if one of the following events occurs:
 - 1. Mutual Aid is requested;
 - 2. An unlawful assembly is declared;
 - 3. Arrests are made for acts of civil disobedience;
 - 4. Significant police resources are used to control the event; or
 - 5. Chemical agents or SIMS are used

The Operations Plan and After Action Report shall be reviewed by the chain of command and forwarded to the Bureau of Risk Management and the Crowd Control Coordinator for retention.

XII. PUBLIC INFORMATION AND THE MEDIA

- A. The media have a right to cover demonstrations, including the right to record the event on video, film, or in photographs.
- B. OPD members shall accommodate the media in accordance with Department policy.
- C. The media shall be permitted to observe and shall be permitted close enough access to the arrestees to record their names. Even after a dispersal order has been given, clearly identified media shall be permitted to carry out their professional duties in any area where arrests are being made unless their presence would unduly interfere with the enforcement action.
- D. Self-identified legal observers and crowd monitors do not have the same legal status as the professional media and are, therefore, subject to all laws and orders similar to any other person or citizen.
- E. Said personnel must comply with all dispersal orders similar to any other person or citizen. A supervisor or commander may allow a person who self-identifies as a legal observer or crowd monitor to remain in an area after a dispersal order if circumstances permit and if the person's presence would not unduly interfere with the enforcement action.



- F. On request, the Incident Commander or a supervisor may inform the media, legal observers, crowd monitors, police liaison, and/or organizers about the nature of any criminal charges to be filed against arrestees, the location where arrestees are being taken, and the Department's intent for arrestees to be cited out or booked at a custodial facility.
- G. The media, legal observers, crowd monitors, police liaison, and/or organizers shall never be targeted for dispersal or enforcement action because of their status.

XIII. TRAINING

- A. All OPD crowd control policies and procedures shall be set forth in a Crowd Control Training Bulletin.

All other OPD orders and Training Bulletins will be reviewed to ensure consistency with the new policy and Training Bulletin.

- B. All officers must receive training consistent with these new policies and procedures.

All training on crowd control shall include substantial coverage of these Department policies. No officers shall use less-lethal weapons unless they have received the training required by Department policies.

- C. Every OPD officer shall receive this training.

Either independently or in conjunction with other scheduled training, each officer shall receive periodic instruction regarding the key elements of this policy. The Department will seek to improve its ability to manage crowd control events through study and evaluation of past incidents occurring in Oakland and other jurisdictions. Training in crowd management is crucial and shall be an ongoing process. All members of OPD shall be trained in these crowd control policies and procedures and shall then receive additional periodic crowd control refresher training thereafter. Crowd control training shall also become an integral part of the recruit academy curriculum.

- D. All training called for in this section shall be documented with regard to individual officer attendance, dates of training, test scores or other evidence of successful completion of training, and identity of each instructor, and copies of both student curriculum materials and instructor curriculum materials shall be archived.

XIV. CROWD MANAGEMENT COORDINATOR (CMC)

- A. The Chief of Police shall designate a Departmental Crowd Management Coordinator whose responsibilities will include:
 - 1. Coordinating the training of personnel on crowd control, planning, operations and after-action reporting.
 - 2. Conducting reviews of crowd control policies and case law.



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3. Conducting quarterly reviews of all crowd control incidents and their respective operation plans and after action reports and providing a quarterly report to the Chief of Police. In the course of the producing the quarterly reports, the Crowd Management Coordinator shall:
 - a. Look to identify training points for publication in Training Bulletins;
 - b. Look to identify Departmental training needs;
 - c. Ensure Departmental policy and training comports with new case law and industry standards;
 - d. Ensure that the City Attorney and District Attorney are consulted when revising Departmental policy and planning Departmental training on crowd control and management and related topics; and
 - e. Produce a non-classified public quarterly crowd control report

CROWD CONTROL

This order establishes general policies and procedures regarding the Department's response to demonstrations and other First Amendment activities, and specifies acceptable crowd control techniques and levels of force.

I. POLICY

A. PROTECTION OF RIGHTS. It is the policy of the San Francisco Police Department to ensure that rights guaranteed by the constitutions of the United States and the State of California are protected for all individuals. A primary mission of police at events involving free speech activity is to protect and respect First Amendment rights to freedom of expression and assembly.

B. RESTRICTIONS

1. LIMITS. The San Francisco Police Department will not attempt to limit the size, location, time or activity at any demonstration, march, protest or picket unless there are articulable facts or circumstances causing reasonable concern for public safety, public health or the safe movement of persons in the area.

2. RESTRICTIONS/CONTROL. The San Francisco Police Department will not seek to restrict or control the content of opinions being expressed, nor shall members let their own personal, political or religious views affect their actions.

C. CROWD CONTROL TACTICS. Crowd control tactics shall not be affected by the content of opinions alone being expressed, nor by the race, sex, sexual orientation, physical disabilities, appearance or affiliations of the participants.

D. ANNOUNCEMENTS. To ensure that the participants can hear and understand the order to disperse, equipment appropriate to the size and noise of the crowd shall be used. The order to disperse shall be given repeatedly over a period of time and, if necessary, from a variety of locations.

- E. DISPERSAL.** Crowds shall not be dispersed or ordered to move unless there are reasonable and articulable factors justifying the order in accordance with law. Before giving the order to disperse, the event commander must consider whether a dispersal endangers the public or participants in the crowd. If the event commander directs a crowd be moved by any means, including the use of force, time to disperse and a safe and clear route for individuals must be provided and announced in the same manner as the order to disperse.
- F. ARRESTS.** A proper response to criminal conduct during a free speech activity is to cite or book those individuals engaged in criminal conduct (see DGO 5.06, Citation Release).

G. USE OF FORCE

- 1. REASONABLE FORCE.** When the use of force is justified, the minimum degree of force necessary to accomplish an arrest or dispersal shall be employed. Officers are permitted to use reasonable and necessary force to protect themselves or others from bodily harm, but no more (see DGO 5.01, Use of Force).
 - 2. HORSES, MOTORCYCLES, MOTOR BIKES.** Horses shall not be used to move or disperse passive individuals who are sitting or lying down. Motor bikes or motorcycles shall not be driven into a crowd or used to make physical contact with persons.
- H. USE OF NON-UNIFORMED OFFICERS.** See DGO 5.08, Non-Uniformed Officers.

II. PROCEDURES

For detailed policies and procedures concerning crowd control and event planning, see SFPD "Crowd Control Manual" and "Event Management Manual."

References

DGO 8.10, Guidelines for First Amendment Activities
Event Management Manual, SFPD
Crowd Control Manual, SFPD

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GENERAL ORDER C-64

SUBJECT: CROWD MANAGEMENT AND CONTROL

PURPOSE

- 1 - The purpose of this Order is to provide policy and procedural guidance to Berkeley Police Department personnel involved in the planning, response, and/or deployment of police personnel for crowd situations.

Mission Statement

- 2 - The mission of the Berkeley Police Department in all crowd situations is to appropriately manage events with the overall goal of ensuring public safety and protecting First Amendment rights of free speech and assembly.
 - (a) Appropriate action will be determined by the Incident Commander in the field, and will be based on the behavior of the people in the crowd.
 - (b) Police action shall be reasonable, intended to prevent lawlessness or restore order, and may include responses ranging from no police action to full crowd control tactics.

POLICY

- 3 - In the event a crowd situation is determined to be a peaceful protest or demonstration, wherein participants are exercising their rights to free speech in a lawful manner, the policy of the Berkeley Police Department shall be to facilitate the event to the extent possible.
- 4 - In the event that a crowd situation is unlawful, and lack of immediate police action to may lead to the escalation of criminal behavior and violence, the Berkeley Police Department will take steps to restore order.
 - (a) Steps to restore order may include monitoring with minimal police presence, a strong police presence, selective arrest of those committing crimes, or a dispersal order, if the assembly is unlawful.

Use of Force

- 5 - Employees who employ force in a crowd control situation shall do so in conformance with policy set forth in General Order U-2.
 - (a) Pain compliance techniques (e.g., gum nerve, buckle nerve pressure, etc.), impact weapons, and chemical agents should not be used on persons participating in a crowd situation who are committing an unlawful act with passive resistance (e.g., sitting or lying down to block a doorway) solely to effectuate a custodial arrest.

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- (1) Verbal commands to stand followed by control holds (e.g. wrist lock, twist lock, etc.) with reasonable pressure may be utilized to attempt to require an arrestee who is sitting or lying down to stand up to effectuate a custodial arrest.
 - (2) If an arrestee who is sitting or lying down continues to refuse to stand up in response to verbal commands followed by pressure applied from a control hold, the officer should use drag, carry, or roll techniques to effectuate the custodial arrest.
 - (3) Once an arrestee is standing in a self-supporting manner, the officer may counter an arrestee's lapse into passive resistance (e.g., attempting to fall or sit down) with control holds that would likely prevent such a movement.
 - (b) Officers attempting to move a crowd or individual should not strike anyone who is unable to move back for reasons out of their control (i.e., physical disability, crowd surge, being pinned against a fixed object, etc.)
 - (c) Sworn officers should employ particular applications of force (e.g., a specific baton strike, such as a "rake" or "jab") as may be directed by their chain of command, when its use is intended to accomplish a desired crowd control objective.
 - (d) Officers are not precluded from using authorized force, as appropriate, to address the actions of a particular person(s).
- 6 - If physical force becomes necessary to disperse the crowd, make arrests, or move a crowd from an area, only reasonable force shall be used to accomplish the mission.
 - 7 - In squad or team movement, the type and scope of force used shall be at the discretion of the Incident Commander, Field Commander, Squad or Team Leader.
 - 8 - Less-than-lethal munitions, chemical agents (excluding OC spray), and/or smoke shall only be deployed in crowd situations as outlined in General Order U-2.

Use of Vehicles

- 9 - Patrol vehicles may be used in crowd control situations by trained officers to employ authorized Mobile Field Force (MFF) tactics at the direction of the Incident Commander.
- 10 - Specialized police vehicles (e.g., police motorcycles, off-road motorcycles, parking enforcement vehicles, mobile command vehicles, etc.) may be used in crowd situations at the discretion of the Incident Commander.

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- (a) Specialized police vehicles shall not be used to contact demonstrators for the purpose of physically pushing people back or forcibly dispersing them from an area.
 - (b) Specialized police vehicles may be in a MFF line with other marked vehicles as a visual deterrent.
- 11 - Police bicycles employed by specifically trained officers may be used in crowd control situations to physically control or disperse an unlawful assembly.
- (a) The use of police bicycles in crowd control situations should only occur when reasonable and until other officers arrive to assist.

DEFINITIONS

- 12 Control Hold: Any Department approved hold, designed to allow an officer to control the movement of a subject (e.g., twist lock, rear wrist lock, finger lock, etc.).
- 13 - Counter Demonstration: An assembly of persons in conflict with a different demonstration at the same location.
- 14 - Crowd Control: Any tactic indicating force may be used to dictate crowd movement or actions. Options include, but are not limited to: show of force (large numbers of officers in riot gear); crowd dispersal; crowd containment; and/or, physical arrest of persons in the crowd.
- 15 - Crowd Management: Tactics used to manage a crowd or event that do not indicate force may be used. Options include, but are not limited to: active involvement in the permit process; communication with crowd monitors; visible monitoring of the crowd; and/or re-direction of pedestrian or vehicular traffic.
- 16 - Crowd Management Team (CMT): Sworn officers who have received special training to deal with crowd management and crowd control situations, and are available for callout at the discretion of the Patrol Division Captain with approval from the Chief of Police.
- 17 - Demonstration: A public assembly of persons to exhibit thoughts, ideas, or opinion.
- 18 - Incident Commander: A sworn officer, usually a lieutenant or captain, responsible for all personnel assigned to an event.
- (a) During the initial stages of a spontaneous event, the Incident Commander will be the highest ranking or senior officer available to take charge, until relieved of responsibilities by a higher ranking officer.

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- 19 - Mobile Field Force (MFF): a statewide tactical concept that utilizes groups of trained officers with standard marked police vehicles and equipment, who have the capability to respond to crowd events that are highly mobile or that break up and quickly reform in other locations.
- 20 - Non-Permitted Event: Any demonstration, whether spontaneous or planned, wherein organizers have not obtained permits or licenses that are lawfully required under the circumstances.
- 21 - Operations Commander: A sworn officer, usually a lieutenant or sergeant, responsible for the movement and actions of a platoon, squad, or other identified group of officers at the scene of an event.
- 22 - Pain Compliance Technique: Any technique designed to inflict pain for the purpose of motivating a person to comply with verbal commands (e.g., buckle nerve, gum nerve, sternum rub).
- 23 - Passive Resistance: When an individual does not follow the lawful verbal commands of a police officer, but does not physically resist in any way (i.e., a person who goes completely limp, sits down and refuses to stand or walk, or who may stand with arms at their sides without attempting to strike at or physically resist officers.)
 - (a) Persons who lock arms, use lockdown devices, or physically resist officers in any other way are not considered "passive".
- 24 - Permitted Event: Any demonstration or event wherein organizers have obtained all applicable permits or licenses.
- 25 - Platoon: Any group of officers, usually 36 or more in number, organized into 3 or more squads. Each platoon will have a commander, usually a lieutenant, who is responsible for the actions of the platoon in the field.
- 26 - Protected First Amendment Activity: Various forms of expression including, but not limited to, speech, assembly, marching, holding signs, street theater, distribution of literature, or displaying banners.
 - (a) Freedom of speech and assembly are rights protected by the First Amendment of the United States Constitution, and Article 1 Sections 2 & 3 of the California Constitution subject to reasonable time, place and manner regulations, such as, compliance with lawful permit requirements and traffic regulations (ref. paragraph 34 of this Order).
- 27 - Riot: Any group of two or more people, acting together, who use force, violence, or the threat of force or violence, to disturb the public peace. (ref. Penal Code §405)

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- 28 - Riot Gear: Police equipment visible to the public and generally associated with crowd control, such as, helmets, batons, flex-cuffs, special uniforms, specialized vehicles, etc.
- 29 - Spontaneous Event: Any unplanned event that develops, usually as a result of some catalyst, such as sporting events, parties, concerts, court rulings, festivals, major political events, major news events, or any combination thereof.
- 30 - Squad: A group of sworn officers, usually 12 in number, with an identified squad leader responsible for the actions of the squad.
- 31 - Squad Leader: A sworn officer, usually a sergeant, responsible for the movement and actions of a squad.
- 32 - Team: A group of four sworn officers within a squad, inclusive of an identified leader responsible for the actions of the team.
- 33 - Team Leader: A sworn officer, sometimes a sergeant, responsible for the movement and actions of a team of officers within a squad.
- 34 - Time, Place, or Manner Restrictions: Reasonable restrictions on protected activity imposed by law (e.g., an applicable permit) intended to serve a specific governmental interest (e.g., public safety), with regard to the time, location, or manner in which protected activity is to be conducted.
- 35 - Unlawful assembly: Two or more persons, assembled together to commit an unlawful act, or do a lawful act in a violent, boisterous, or tumultuous manner. (ref. PC §407)
 - (a) The prohibition in PC §407 against persons in an assembly doing a lawful act in a violent, boisterous or tumultuous manner is limited only to situations where the conduct poses a clear and present danger of imminent violence. (ref. *In re Brown* (1973) 9 Cal. 3d 612, 623)

PROCEDURE

Planned Events

- 36 - At such time as a special event or crowd situation comes to the attention of police department personnel, the Patrol Division Captain or Patrol Watch Commander shall be notified, and forwarded all information regarding the event.
- 37 - The Patrol Division Captain or Acting Captain will review the information and determine whether or not a request to call out CMT is warranted.
- 38 - The Incident Command System shall be used for managing all crowd situations.

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- (a) The command structure should include the appointment of an Incident Commander, and be structured to sufficiently distribute responsibilities allowing for all necessary tasks to be accomplished with a manageable span of control.
 - (b) If CMT is called out for an event, the CMT Commander may be assigned as the Incident Commander.
- 39 - The Incident Commander shall, whenever possible, establish a liaison with the group or groups involved, and other potential stakeholders.
 - (a) Stakeholders may include event organizers, business owners or their employees, or private residents that may be affected by an event.
 - (1) Stakeholder involvement is critical to the overall success of managing any crowd event, but may be especially helpful during planned demonstrations where civil disobedience is expected.
 - (2) If a leader or cooperative event organizer is not identified, the Incident Commander shall ensure that attempts to communicate with the group and establish a liaison will continue to the extent reasonable.
- 40 - Once assigned to a preplanned event, the Incident Commander shall make an initial assessment of the personnel needed to appropriately manage the event based on the information available at the time.
 - (a) Initial assessment may include on-duty personnel in the Patrol Division and other divisions within the department.
 - (b) If available on-duty personnel will not be sufficient to manage an event, consideration should be given to calling in off duty personnel and requesting mutual aid resources from surrounding police agencies. (ref paragraphs 67-71 of this Order)
- 41 - Once sufficient details of the event are known to accurately estimate the scope of response, and required personnel are identified, the Incident Commander shall work with Division Commanders to secure their participation.
- 42 - Once all personnel required to work the event are identified and committed to an event, the Incident Commander shall ensure a written Operations Plan is completed, time and circumstances permitting.
 - (a) An Operations Plan shall contain sufficient detail to allow an uninvolved party who reads it to understand the nature of the event, department policy involved, planned response, and the department resources dedicated to it. (ref. General Order P-23)

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- (b) Upon approval by the Patrol Captain and signed by the Chief of Police, the original Operations Plan shall be routed to the Bureau of Internal Controls in the Office of the Chief, and copies distributed to all appropriate personnel.

Spontaneous Events

- 43 - Sworn officers shall respond to a reported spontaneous crowd situation to assess immediate hazards to public safety.
- 44 - The ranking sworn officer, or senior officer, shall assume the role and responsibilities of Incident Commander, and take the following immediate actions:
 - (a) Broadcast the type of event, if known, and estimated number of participants.
 - (b) Report known or imminent public safety hazards.
 - (c) Request sufficient on-duty personnel resources to address life-threatening public safety emergencies.
- 45 - The on-duty Patrol Division Watch Commander, or if absent or unavailable, the senior Patrol Division Sergeant, shall respond to the event scene and take the following actions:
 - (a) Assume the role and responsibilities of Incident Commander.
 - (b) Assess the potential risks to public safety.
 - (c) Assess whether or not a static event has the potential to go mobile, either on foot in the form of a march, or in vehicles.
 - (d) Assess the number of officers and type of equipment required to maintain order and their manner of response.
 - (e) Assess the potential need for outside resources:
 - (1) On-duty personnel from other police agencies.
 - (2) Fire Department personnel and resources.
 - (3) Media relations personnel.
 - (f) Identify and broadcast the location of the Incident Command Post, operational staging areas, and routes to and from.

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- 46 - The Incident Commander should consider the following factors when making decisions regarding the police response:
 - (a) The number of people involved in the event and their behavior.
 - (b) The level of vehicular traffic.
 - (c) The level of disruption to those not involved in, but impacted by the event.
 - (d) The overall level of risk to both participants and the general public who may be inadvertently caught up in the event.
 - (e) The personnel and equipment available for the task.
- 47 - The Incident Commander may use on-duty personnel from other Divisions or units to assist in the police response to a spontaneous event.
- 48 - The Incident Commander shall direct necessary on-duty personnel to a static event and make response assignments as required, which may include, but are not limited to:
 - (a) Assign personnel to monitor the event only.
 - (b) Use personnel to maintain order at the event and/or divert uninvolved, effected traffic away from the area.
- 49 - If the event is mobile, the Incident Commander should consider response actions appropriate to manage or control the behavior and activities of the crowd, options including, but not limited to:
 - (a) Let the group proceed with no police presence.
 - (b) Assign officers to facilitate the mobile event by providing traffic control.
 - (c) Attempt to direct the path of the mobile event by denying access to certain roadways.
 - (d) Allow the mobile event to proceed, but deny access to certain locations that would create a public safety hazard, such as, roadways to bridge approaches and roadways in busy commercial districts.
 - (e) Declare the event an unlawful assembly if circumstances qualify, and allow the group to disperse, make arrests, or use force to disperse the group for the purpose of restoring public order.
- 50 - There is no required order of response; the Incident Commander shall be responsible for continually accessing the event and adjusting the response strategies and tactics accordingly.

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51 - The Incident Commander shall remain responsible for the police response to a planned or spontaneous crowd event until relieved by a higher ranking officer, or the position is relinquished another officer who officially assumes the responsibility.

- (a) Any change of command shall be broadcast on the radio frequency used to manage the police response.

General Event Procedures

52 - Employees dispatched or pre-assigned to a crowd situation shall be in a department-approved uniform appropriate for their assignment.

- (a) CMT members shall be in approved CMT uniform when assigned to CMT operations.
- (b) Employees shall ensure their name and badge number are visible upon their uniform, and badge number is visible on their helmet, if worn.

53 - Officers dispatched or pre-assigned to a crowd situation shall have immediately available relevant department-issued safety equipment. (i.e., helmet, chemical agent mask, etc.)

54 - Specialized weapons and equipment (i.e., patrol rifles, less-than-lethal munition launchers, chemical agent masks, etc.) shall be deployed at the discretion of the Incident Commander.

55 - The Incident Commander shall ensure personnel receive an operational briefing, whether in person or via radio, prior to their deployment.

- (a) Information communicated in an operational briefing shall include, at minimum:
 - (1) The nature of the event.
 - (2) The mission and operational goal(s) of the department.
 - (3) The chain of command managing the event.
 - (4) The individual's assignment and any special equipment he/she may require to accomplish it.
 - (5) When possible, the identity and appearance of all undercover personnel involved in the police response.
 - (i) Undercover personnel should be present at operational briefings for planned events.

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- 56 - Undercover personnel shall adhere to laws and policies governing information gathering by law enforcement.
- 57 - Verbal requests or commands should be used before and when advancing on a crowd.
 - (a) Commands should be simple and stated clearly, giving members of the crowd an opportunity to comply before force is used. (Examples: "Step back!" or "Move onto the sidewalk!")
- 58 - Employees shall not engage members of a crowd in debate or unnecessary dialogue.
- 59 - When practical, as part of an implemented crowd control plan, police personnel should attempt to identify and separate from the crowd individuals who are violating law.
 - (a) Efforts to take an offender into custody in a crowd situation should strive to minimize the risk to uninvolved persons, to the extent reasonably possible.
- 60 - In conformance with procedures set forth in General Order V-10, visual recording devices should be used to document the activities of police personnel and the people involved in a crowd situation.
 - (a) Activities that should be documented via visual recording device include, but are not limited to:
 - (1) Criminal activity (misdemeanor or felony);
 - (2) Violation of a Permit condition, City Ordinance, or traffic violation.
 - (3) Use of force by officers.
 - (4) Arrests by officers.
 - (5) Any person who, by words or action, is inciting violence.
 - (6) Dispersal orders issued by police.
- 61 - Employees shall adhere to information release and media liaison protocols set forth in General Orders R-23 and P-29, respectively.
 - (a) The Incident Commander shall ensure legitimate "credentialed" members of the media are provided access to areas available to them by law.
 - (b) A person who claims to be a member of the media, but who does not possess a bona fide media credential, has no special privilege and shall be treated like any other citizen with regard to event area access.

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Dispersal Orders

- 62 - The Incident Commander at any crowd situation shall make the determination as to when or if a crowd, whose behavior poses a clear and present danger of imminent violence, will be declared an unlawful assembly.
- 63 - Unless otherwise directed or required, the following dispersal order text shall be used by Berkeley Police Department personnel in crowd control situations:
 - (a) "I am (*rank*) (*name*) with the Berkeley Police Department. I hereby declare this to be an unlawful assembly, and in the name of the people of the State of California, command all those assembled at (*location*) to leave the area immediately. If you do not leave, you are in violation of section 409 of the California Penal Code, and may be arrested or subject to other police action. Other police action may include the use of less lethal munitions, which may pose a risk of serious injury. The following routes of dispersal are available: (*state options available*) You have (*state time expectation*) to leave the area."
- 64 - Except when exigent circumstances exist and doing so would place officers or the public at risk, a dispersal order shall be issued prior to forcibly dispersing a crowd.
- 65 - The Incident Commander, or his/her designee, shall issue a dispersal order:
 - (a) As close to the crowd as practical;
 - (b) In a manner clearly audible to persons in the crowd;
 - (1) Use sound amplification systems when necessary;
 - (2) When practical, employ officers stationed around the perimeter of the crowd to ensure the dispersal order is clearly audible.
 - (c) In more than one language, depending on the needs of the crowd; and,
 - (d) A second time, following a reasonable period of time to allow for crowd dispersal.

Mass Arrests

- 66 - When considering the arrest of multiple people at a crowd control event, the Incident Commander should evaluate preparedness of the following operational elements:
 - (a) Resource Availability: Sufficient personnel should be available to maintain order, accomplish intended arrests and subsequent processing, and maintain control of the arrestees through a booking process, if necessary.

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- (b) In-Field Arrest Processing: Equipment and logistics should be available to facilitate in-field processing of mass arrests.
- (c) Transportation: In the event arrestees are not released in-field on citation, vehicles should be available to facilitate necessary transportation to a custodial facility.
- (d) Booking/Jail Capacity: The custodial facility to which arrestees are transported should have the capacity to receive and maintain custody of persons not released on citation.
- (e) Documentation: Arresting personnel must ensure arrestees are identified and photographed, arrests are effectively documented, and associated paperwork is properly directed for administrative processing.

Mutual Aid

- 67 - An official request for mutual aid resources shall adhere to procedures set forth in General Order M-2.
 - (a) Emergency requests for immediate assistance may be made directly to local agencies.
- 68 - The Chief of Police or his/her designee shall contact the liaison from the Alameda County Sheriff's Department to coordinate a plan for mutual aid resources and response.
 - (a) This plan should include the number of officers potentially needed, any special equipment requested, and an expected response time if called out.
- 69 - In preparation for mutual aid forces, the Incident Commander shall ensure that liaison officers from BPD are assigned to work with the outside agency to assist with response routes into the staging area, parking vehicles, checking in with the staging area supervisor, communications, and response to event location.
- 70 - MFF organization should be employed when integrating mutual aid personnel into local crowd event response, or when responding to another jurisdiction as a mutual aid unit.
 - (a) Personnel should be formed into squads or teams that are easily integrated into squads and platoons.
- 71 - When responding to another jurisdiction as a mutual aid unit, personnel will have with them enough vehicles and equipment to allow the deployed team or squad to patrol a designated area, use less-than-lethal munitions or authorized chemical agents, if necessary, and have enough food and water to last for a reasonable operational period until relieved.

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Post-Event

- 72 - At the conclusion of an event the Incident Commander shall ensure that an After Action Report is prepared.
- (a) An After Action Report shall document arrests, injuries, and property damage, personnel costs, and a critique of the police preparation and response.
 - (b) An After Action Report should include information in sufficient detail to help others prepare for the event if it, or a similar event, should occur in the future.

Training

- 73 - When possible, training in crowd management and crowd control shall be incorporated into general departmental in-service training.
- 74 - When possible prior to a major pre-planned event, update training should be provided to all assigned officers.
- 75 - The CMT will train regularly, and incorporate as appropriate, all General Orders and Training Bulletins related to crowd management and crowd control into their sessions.
- 76 - All newly hired police officers will receive supplementary training on crowd management and crowd control by attending a CMT training session as part of their Field Training Program.

References: *In re Brown* (1973) 9 Cal. 3d 612, 623
Penal Code §§405, 407, 409 and 830.10
General Orders C-1, C-10, M-2, P-23, P-29, R-23, U-2, V-10 and X-1
Police Regulations 225, 226, 249 and 250

BERKELEY POLICE DEPARTMENT

DATE ISSUED: September 18, 2012

GENERAL ORDER M-2

SUBJECT: MUTUAL AID AND AGREEMENTS WITH LAW ENFORCEMENT AGENCIES

PURPOSE

- 1 - The purpose of this General Order is to describe Mutual Aid procedures and written agreements that the Berkeley Police Department has with other law enforcement agencies. **It is also to provide guidance to the Command Staff members regarding the philosophy of Mutual Aid application.**

POLICY

- 2 - Berkeley Police Department employees are expected to follow the procedures of the California Law Enforcement Mutual Aid Plan as well as the written agreements made with other law enforcement agencies. **The Berkeley Police Department is also expected to take an event management approach to crowd control situations, and to evaluate the threat to public safety posed by each group prior to responding to, or requesting Mutual Aid.**

MUTUAL AID

- 3 - California's Law Enforcement Mutual Aid Plan was formulated in the early 1950's and enacted into law as part of the Government Code in 1970. The authority of the State of California Law Enforcement Mutual Aid Plan is granted under California Government Code Sections 8550, 8569, 8616, and 8668. The Berkeley City Council grants authority to the Police Department for mutual aid participation in accordance with Berkeley Municipal Code Sections 2.04.150 - 2.04.210 (Ordinance 4640-NS, 1973).
 - (a) The California Law Enforcement Mutual Aid Plan is contained in a **compendium** titled, "Agreements, Understandings and Policies Existing between the Berkeley Police Department and Other Law Enforcement Agencies".
 - (1) **Copies are publically available on line through the City of Berkeley website.**

PROCEDURES

- 4 - All requests for mutual aid will be made via the Alameda County Sheriff, and all responses to mutual aid will result from mutual aid notification from the Alameda County Sheriff.
 - (a) When the Chief of Police determines that an emergency situation may become or is already beyond the control of Departmental resources, it is the Chief of Police's responsibility to request mutual aid from the Alameda County

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Sheriff. Generally, this process will be authorized by the Chief of Police in conjunction with notification of and approval by the City Manager.

I. The Chief or his/her designee will also attempt to determine if the only crimes being committed are civil disobedience offenses, and whether these offenses pose a threat to public safety.

II. If individuals are committing crimes that do not present a threat to public safety the Chief or his/her designee should seriously evaluate whether or not the Berkeley Police Department should request or participate in Mutual Aid. Crimes which do present a threat to public safety include property damage, utilizing weapons, creating physical hazards, or threats to community members or public safety personnel.

- (b) It is the responsibility of the Alameda County Sheriff to provide assistance and coordination to control the problem (California Government Code Section 26602).
- (1) It is also possible to obtain other services from the Alameda County Sheriff (such as a bus for prisoner transportation at a small demonstration) without invoking mutual aid.

5 - To request Mutual Aid from the Alameda County Sheriff, the Berkeley Police Department must:

- (a) Place all Berkeley Police Department sworn personnel on the following shifts: 12 hours on and 12 hours off.
- (b) Contact the Alameda County Sheriff Emergency Services Unit, 667-7755, and verbally request mutual aid.
- (c) Send a*written message to the Alameda County Sheriff's Department. (FAX is acceptable.)*
- (d) Meet with Alameda County Sheriff's Department Mutual Aid personnel to discuss, plan, and coordinate the use of outside personnel regarding:
 - (1) The dates and times that mutual aid personnel are required.
 - (2) The number of personnel needed to assist.
 - (3) The staging area for responding personnel to meet.

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- (4) Mass processing procedures for persons arrested.
 - (5) Transportation plans for persons arrested.
 - (6) Operation of temporary detention facilities, if needed.
 - (e) An estimate of the number of available personnel in each agency is maintained by the Alameda County Sheriff's Department. The Alameda County Sheriff's Department will poll local agencies to obtain the necessary number of officers requested at the time of each incident.
- 6 - Costs for mutual aid are the responsibility of each agency participating. In the case of State or Federal involvement, mutual aid costs will be paid for by the State/Federal government.

REQUESTING STATE MUTUAL AID ASSISTANCE

- 7 - The Law Enforcement Division of the State of California Office of Emergency Services (OES) is responsible for coordination of State resources in support of local law enforcement during "unusual occurrences" such as disorders, demonstrations, riots, and natural or war caused disturbances. Authority is granted to OES under Article 5, Chapter 7, of the California Government Code. A 24-hour communications center is maintained at the Office of Emergency Services in Sacramento. A representative of the Law Enforcement Division can be reached at any hour of the day or night by calling (1-916) 427-4235 or 427-4341.
- (a) Five State agencies have specific responsibilities to support local law enforcement during emergency situations:
 - (1) The California Highway Patrol: Provide traffic control and maintenance of law and order.
 - (2) The State Military Department, which includes the California Army and Air National Guard, the State Military Reserve and the Naval Militia: Provide military support to local jurisdictions only after a request for same is made by the Chief Executive (City Manager) of a City or County Sheriff, and only after the disturbance is beyond the capabilities of local law enforcement mutual aid forces.
 - (3) The Department of Justice: Provide legal advice and intelligence.
 - (4) The Department of Corrections: Provide support for local law enforcement (with resources).
 - (5) Office of the California State Police: Provide personnel who remain

BERKELEY POLICE DEPARTMENT

DATE ISSUED: September 18, 2012

GENERAL ORDER M-2

under the command of the State Police.

REQUESTING FEDERAL MUTUAL AID ASSISTANCE

- 8 - Only State government may make the request to the President to provide Federal resources to assist in restoring or maintaining law and order. State government may only make such requests after all of its available forces, including the State military, are unable to control the emergency. The Department of the Army has the responsibility for the temporary loan of Federal military resources to National Guard units and local civil authorities in anticipation of or during disturbances.
- 9 - The Berkeley City Council reviews and approves agreements with other law enforcement agencies pursuant to California Government Code Section 8617, and in accordance with Berkeley Municipal Code (BMC) Sections 2.04.150 - 2.04.210 (Ordinance 4640-NS 1973).
 - (a) Written agreements are maintained with agencies who have concurrent jurisdictions in Berkeley, as well as agencies who have "understandings" with the Berkeley Police Department.
 - (1) The agreements are maintained in a **compendium** entitled: "Agreements, Understandings and Policies Existing between the Berkeley Police Department and Other Law Enforcement Agencies".
 - (a) **The compendium is publically available from the City of Berkeley website.**
 - (b) A list of the agreements with other agencies is listed in the table of contents.
 - (b) **The Berkeley Police Department will provide a report to Berkeley City Council summarizing all requests, responses, and denials of requests for Mutual Aid that involve civil disobedience offenses and First Amendment activity -- submitted in conjunction with the agreements contained in the above referenced compendium which is submitted annually as per BMC Sections 2.04.150 - 2.04.210**

BERKELEY POLICE DEPARTMENT

DATE ISSUED: May 4, 2009

GENERAL ORDER U-2

SUBJECT: USE OF FORCE

PURPOSE

- 1 - The purpose of this General Order is to provide Departmental standards on the reporting and use of force. This General Order supersedes all other Orders, Regulations, and training information to the extent that they are inconsistent with this Order.

POLICY

- 2 - Police officers may use reasonable force to (1) make an arrest, (2) prevent an escape of a suspect, (3) overcome resistance, or (4) maintain order.
 - (a) Under the Fourth Amendment of the United States Constitution, an officer can use reasonable force when doing so is reasonable under the totality of the circumstances as they appear through the eyes of the officer. Circumstances to be considered include the immediacy and severity of a threat to the safety of the officer or others, the severity of the crime involved, and whether a suspect is fleeing or resisting.
- 3 - In deciding what type of reasonable force to use, officers and employees must use sound judgment and their training to assess the degree of threat in a given situation, and to determine what Departmentally authorized force techniques or weapons will bring the situation under control in a reasonable manner.
 - (a) The Department uses a "use of force continuum" that refers to the concept that there are reasonable responses for every threat an officer faces in a hostile situation. The "spoked wheel" is one visual concept of the various options that an officer should consider in a threatening situation.
 - (b) The force utilized need not be sequential (e.g., gradual or preceded by attempts at lower levels of force) if those lower levels are not appropriate to the threat.

DEFINITIONS

- 4 - Lethal Force: Any use of force that creates a substantial risk of causing death or serious bodily injury.
- 5 - Less-Than-Lethal Force: **Any use of force which, due to possible physiological effects of application, presents less potential for causing death or serious injury than conventional lethal force options.**

BERKELEY POLICE DEPARTMENT

DATE ISSUED: May 4, 2009

GENERAL ORDER U-2

- (a) **Less-than-lethal force options include, but are not limited to, a specialized launcher, or other authorized device that can discharge, fire, launch or otherwise propel single or multiple flexible or non-flexible projectiles designed to cause physiological effects consistent with blunt force impact.**
- 6 - Non-Lethal Force: Any use of force other than lethal force or less-than-lethal force.
- 7 - Officer (or) Police Officer: Any sworn peace officer.
- 8 - Authorized Employee: Any non-sworn employee who has received defensive tactics training and has been authorized by the Chief of Police to use non-lethal force.
- 9 - Employee: Any non-sworn employee of the Berkeley Police Department, including those deemed "authorized employees."
- 10 - Deploy:
 - (a) With respect to less-than-lethal munitions, removal of a launcher, projectile or other device from its storage container for the purpose of operational use.
 - (b) With respect to chemical agents and smoke, removal of a canister or delivery device from its storage container for the purpose of operational use.
- 11 - Use:
 - (a) With respect to less-than-lethal munitions, to discharge a less-than-lethal munition.
 - (b) With respect to chemical agents and smoke, to discharge the contents of a canister or delivery device.

PROCEDURES

Use of Lethal Force

- 12 - Officers shall not discharge firearms or use other lethal force in connection with police duty, except in the following circumstances:
 - (a) When the officer reasonably believes that doing so is necessary to protect the officer or others from death or serious bodily injury, and, where feasible, some warning has been given.

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DATE ISSUED: May 4, 2009

GENERAL ORDER U-2

- (b) To apprehend a suspected fleeing felon:
 - (1) When necessary to prevent escape, and
 - (2) When the officer has probable cause to believe that the suspected fleeing felon poses a significant threat of death or serious bodily injury to the officer or others, and
 - (3) Where feasible, some warning has been given.
- (c) During other police duty:
 - (1) In supervised Department training sessions at an approved range, or other site.
 - (2) To destroy an animal that represents a threat to public safety, or as a humanitarian measure where the animal is seriously injured. If possible, supervisory approval should be obtained prior to using lethal force to destroy an animal.

Use Of Vehicles

- 13 - Officers shall not use police vehicles to ram or block other vehicles, persons, or moving objects in a manner that reasonably appears to constitute the use of lethal force, except in the following circumstances:
- (a) When the officer reasonably believes that doing so is necessary to protect the officer or others from death or serious bodily injury, and, where feasible, some warning has been given.
 - (b) To apprehend a suspected fleeing felon:
 - (1) When necessary to prevent escape, and
 - (2) When the officer has probable cause to believe that the suspected fleeing felon poses a significant threat of death or serious bodily injury to the officer or others, and
 - (3) Where feasible, some warning has been given.

Deployment and Use of Less-Than-Lethal Force

- 14 - Less-than-lethal munitions shall only be deployed and used by trained officers authorized by the Chief of Police.
- 15 - Except during authorized training programs, less-than-lethal **force** shall be deployed only at the direction of a sergeant or command officer, **or the Incident Commander in a crowd situation.**

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DATE ISSUED: May 4, 2009

GENERAL ORDER U-2

- 16 - Less-than-lethal **force** shall only be used in the following situations, and, where feasible, **after** some warning has been given:
- (a) When an act of violence is occurring, or is about to occur;
 - (b) To overcome the resistance of a physically combative person, or to gain compliance from a non-compliant person reasonably believed to be armed;
 - (c) To deter a person who is reasonably believed to be armed and is threatening to harm him-/herself, another person, or an officer; or,
 - (d) To resolve a potentially violent incident not otherwise described above, when deemed reasonable by the authorizing sergeant or commander.
- 17 - When practical, approval for the deployment and use of less-than-lethal **force** will be obtained from the Patrol Division Watch Commander. If there is no Watch Commander on duty, deployment authorization will be requested from the Duty Command Officer (DCO).
- (a) **Prior to deployment, efforts should be made to ensure an appropriate medical response is available.**
 - (b) In the event exigent circumstances preclude prior command approval, the supervisor authorizing less-than-lethal **force** deployment shall notify the Watch Commander, or in his/her absence the DCO, as soon as practical.
- 18 - **In crowd situations, less-than-lethal force and/or chemical agents shall not be used without the prior approval of the Chief of Police, or his/her designee, unless exigent circumstances prevent the request from being made and the delay would likely risk injury to citizens or police personnel (e.g., rocks, bottles, or other projectiles are being thrown and immediate crowd dispersal is necessary).**
- (a) **In the event immediate use is necessary, notification to the Chief of Police, or his/her designee, should be made as soon as possible after the deployment.**

Use of Non-Lethal Force

- 19 - When lethal force and less-than-lethal **force** are not authorized, officers and authorized employees may use reasonable **approved** non-lethal force techniques and weapons in the following circumstances:
- (a) To protect themselves or another person from physical injury;
 - (b) To restrain or subdue a resistant individual; or

BERKELEY POLICE DEPARTMENT

DATE ISSUED: May 4, 2009

GENERAL ORDER U-2

- (c) To bring an unlawful situation safely and effectively under control.

Prohibited Uses of Force

20 - The following uses of force are prohibited:

- (a) Carotid Restraint Hold: Council Resolution No. 52,605 - N.S., dated February 14, 1985, "Prohibiting use of 'chokehold' for law enforcement purposes in the City of Berkeley" states: "Be it resolved by the Council of the City of Berkeley as follows: That the chokehold, including but not limited to the carotid restraint and the bar-arm hold, is hereby banned from use for law enforcement purposes in the City of Berkeley."
 - (1) The term bar-arm refers to a variety of techniques. As defined in the City Council Resolution, "bar-arm hold" refers to *any* use of the forearm to exert pressure against the front of the neck. However, other types of arm hold techniques (e.g., those that involve control of the arm, wrist or elbow) remain authorized.
- (b) Oleoresin Capsicum (pepper spray) for use as a crowd control technique is prohibited. On September 16, 1997, the City Council passed a policy recommendation that says, in part, "no pepper spray will be used for crowd control by the Berkeley Police Department."
- (c) **Deployment of less-than-lethal munitions from a shotgun is prohibited.**

Provision of Medical Attention

21 - When an officer or employee uses force that results in injury, or when a subject complains that an injury has been inflicted, the officer or employee shall ensure that the subject receives appropriate medical care. (See also General Order A-17)

Unauthorized Use of Force / Intervention and Reporting

- 22 - When an officer or employee witnesses any other officer or employee of this Department, or of any other law enforcement agency, use force that he or she believes is unauthorized, he or she shall do the following:
- (a) If the witness employee is a sworn officer, he or she shall immediately take reasonable action to attempt to mitigate such use of force. This may include verbal intervention or, if appropriate, physical intervention.
 - (1) A sworn officer's failure to act may potentially expose him/her to criminal charges and/or civil liability.

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GENERAL ORDER U-2

- (b) Any officer or employee who observes a potentially unauthorized use of force shall make an oral report to an on-duty sergeant or a command officer at the first opportunity.

Use of Force / Reporting Requirements

- 23 - Any officer or employee who uses force shall, as soon as practical, make an oral report to an on-duty sergeant or command officer in the following four situations:
 - (a) When an officer discharges a firearm (intentional or unintentional) while on duty, except during a supervised training session.
 - (b) When an officer discharges a firearm while off-duty pursuant to his or her authority as a law enforcement officer.
 - (c) When an officer or employee uses force that results in death or injury, or when a subject complains that an injury has been inflicted. (See also General Order C-16)
 - (d) When an officer or employee uses a non-lethal *weapon* (e.g., Oleoresin Capsicum or baton) on a person, whether or not an injury is sustained, except in those situations deemed "Unusual Occurrences" as set forth in General Order U-4 and the Event Management Manual, in which case, the After Action Report will serve as the police report. (See also General Order U-4)
- 24 - The officer or employee must also complete a police or incident report in any of the above four situations.
- 25 - Whenever an officer or employee uses Oleoresin Capsicum (pepper spray), he or she must also complete a "Use of Pepper Spray Report" form. (See Training and Information Bulletin #216 for detailed instructions in completing this form)

Use of Force / Supervisor Responsibilities

- 26 - A sergeant shall immediately be assigned and shall respond to the scene in the following four situations:
 - (a) When an officer discharges a firearm (intentional or unintentional) while on duty, except during a supervised training session.
 - (b) When an officer discharges a firearm while off-duty pursuant to his or her authority as a law enforcement officer.
 - (c) When an officer or employee uses force (including, but not limited to, a non-lethal weapon) that results in death or injury, or when a subject complains that an injury has been inflicted. (See also General Order C-16)

*Highlighted text is new.

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GENERAL ORDER U-2

- (d) When an officer or employee reports a use of force by another officer or employee of the Department, or of any other law enforcement agency, that he or she believes is unauthorized.
- 27 -** A supervisor shall complete a Use of Force Report in any of the above four situations.
 - (a) A supervisor shall complete a Use of Force Report whenever an officer or employee uses a non-lethal weapon on a person, even if no injury results.
 - (b) The supervisor shall attach copies of all police reports relating to the incident to the Use of Force Report. (See Use of Force Report form at the end of this General Order)
- 28 -** The supervisor who completes the Use of Force Report shall route the Use of Force Report (with attached police reports) and/or Use of Pepper Spray Report forms to the Division Commander through the chain of command.

Use of Force / Administrative Review

- 29 -** The Division Commander shall review the Use of Force Report (and when applicable, Use of Pepper Spray Report) and route the report to the Chief of Police with a recommendation of findings.
 - (a) The Chief of Police may convene a Review Board (as outlined in General Order R-3) instead of utilizing Division Commander Review.
- 30 -** The Chief of Police will make a finding that the use of force was either within policy or initiate additional administrative review/investigation as may be appropriate.
- 31 -** Any determination concerning the propriety of force used will be based on facts and the information available to the officer at the time the force was employed, and not upon information gained after the fact.
- 32 -** All Use Of Force Reports will be reviewed to determine whether Departmental use of force regulations, policies, or procedures were: 1) violated or followed; 2) clearly understood, effective, and relevant to the situation; and/or, 3) require revision or additional training.
- 33 -** Use of Force Reports will be held in file for five (5) years and then purged, unless needed for additional administrative action.

SPECIAL PROCEDURES / DEATHS AND SERIOUS BODILY INJURY

- 34 -** In addition to the above, the Departmental response to incidents in which an officer uses force that results in death or a serious bodily injury shall be as follows:

***Highlighted text is new.**

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DATE ISSUED: May 4, 2009

GENERAL ORDER U-2

- (a) The officer shall be placed on administrative leave as outlined in Police Regulation 325: " ... If any person is seriously injured or killed as a result of an officer's actions, including the discharging of a firearm, such officer shall be placed on administrative leave for a period of time, as determined by the Chief of Police, depending upon the circumstances of the situation. The officer(s) shall not return to regular duties until he/she meets with a mental health professional."
- (b) The Department shall conduct both an administrative and criminal investigation of the incident as outlined in General Order P-12 (Police-Involved Shootings And Fatal or Serious Injury Incidents); and a Review Board shall be convened as described in General Order R-3.

References: *Tennessee v. Garner* (1986) 471 U.S. 1
Graham v. Connor (1989) 490 U.S. 386
Doerle v. Rutherford (9th Cir. 2001) 272 F.3d 1272
California Penal Code §§196, 197, 835, 835(a), 836, 836.5, and 843
General Orders A-17, C-16, **C-64**, F-2, P-12, **P-26**, R-3 and U-4
Police Regulations 202, 318, 321, 322, 323, 324, 325 and 332
Training and Information Bulletin 216
Lethal and Non-Lethal Force Manual
Uniform and Equipment Manual
City of Berkeley Council Resolution No. 52,605 – N.S. (2/14/85),
 "Prohibiting use of 'chokehold' for law enforcement
 purposes in the City of Berkeley"
National Tactical Officers Association, General Policy Statement
 for Less-Than-Lethal Impact Projectiles (11/22/2002)

BERKELEY POLICE DEPARTMENT

DATE ISSUED: May 4, 2009

GENERAL ORDER U-2

EXEMPLAR

**BERKELEY POLICE DEPARTMENT
USE OF FORCE REPORT**

This report is to be completed by an on-duty supervisor per General Order U-2 if: (1) Use of any force results in injury or death to a person; (2) Non-lethal weapons (OC/baton) or less-than-lethal munitions are used on a person; or (3) An officer discharges a firearm intentionally or unintentionally on duty (other than during training), or off-duty while acting in the capacity of a police officer.

Date: _____

To: Chief of Police via Chain of Command

From: _____

Subject: USE OF FORCE REVIEW

Refer to Case Number(s): _____

Date / Time of Incident: _____

Location of Incident: _____

Nature of Incident: _____

Officer(s)/Employee(s) Involved: _____

Type of Force used: ☐ Physical ☐ Baton ☐ O.C.
 ☐ Firearm ☐ Less-than-lethal ☐ Other

Was Officer or Police Employee injured? ☐ Yes ☐ No

If yes, nature of injuries: _____

Medical treatment required: BFD Response - ☐ Yes ☐ No

BERKELEY POLICE DEPARTMENT

DATE ISSUED: May 4, 2009

GENERAL ORDER U-2

Was a citizen(s) injured during this incident? ☐ Yes ☐ No

If "yes," nature of injuries: _____

Medical treatment required: BFD Response - ☐ Yes ☐ No

Investigator(s) and Identification Technician who responded, if any:

Were photographs taken? ☐ Yes ☐ No

Summary of actions of Officer(s) involved: _____

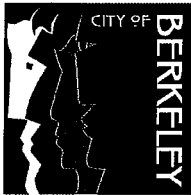
Supervisor's Comments:

Division Commander Recommendation:

Chief of Police (*Signature*)

Findings: ☐ Within Policy
☐ Referred for Administrative
Action/Investigation

(*Date*)



Police Review Commission (PRC)

December 12, 2014

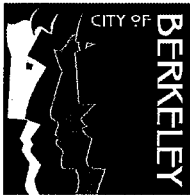
To: Honorable Mayor and Members of the City Council
From: Michael Sherman, Chairperson, Police Review Commission
Re: Request to temporarily ban the use of tear gas for crowd control
pending an investigation

The Police Review Commission (PRC) is deeply concerned about the Berkeley Police Department's (BPD) use of tear gas to disperse crowds, and requests that tear gas be banned for crowd control purposes until the PRC completes an investigation.

During the December 6, 2014 protests in Berkeley against recent events in Ferguson, MO and Staten Island, NY, the BPD employed tear gas as one means of forcing the protesters to disperse. At its December 10, 2014 meeting, the PRC heard from several speakers during public comment about how the tear gas affected them physically; one speaker, whose apartment windows on Telegraph Avenue were open the night of December 6, spoke of having to toss out food and wash clothing contaminated with the tear gas. These speakers amplified what many have seen in online videos and read or heard in media accounts about the police response to the December 6 protests. All this raises the question of whether the use tear gas was necessary.

Therefore, the PRC passed the following motion at its December 10, 2014 meeting (M/S/C Bernstein/Perezvelez): In accordance with the mission statement of General Order C-64, request that the City Council temporarily ban the Berkeley Police Department's use of tear gas for crowd control until the Police Review Commission conducts a full investigation into the improper use of tear gas on December 6, 2014, and to empower the PRC to produce documents and witnesses for the purposes of this investigation. Ayes – Bernstein, Cardoza, Perezvelez, Rogers, Sherman; Noes – None; Abstain – None; Absent: Allen, Lowhurst, Zerrudo.

cc: Christine Daniel, City Manager
Michael Meehan, Chief of Police



Police Review Commission (PRC)

December 12, 2014

To: Honorable Mayor and Members of the City Council
From: Michael Sherman, *MS* Chairperson, Police Review Commission
Re: Request to ban the use of projectiles and over-the-shoulder baton strikes pending a review of General Order C-64

The Police Review Commission (PRC) is deeply concerned about the Berkeley Police Department's (BPD) use of projectiles and over-the-shoulder baton strikes to disperse crowds, and requests that these methods be banned for crowd control purposes until General Order C-64, Crowd Management and Control, is reviewed.

During the December 6, 2014 protests in Berkeley against recent events in Ferguson, MO and Staten Island, NY, the BPD swung batons over their shoulder level to strike demonstrators, and used projectiles to control the crowd. At its December 10, 2014 meeting, the PRC heard from several speakers during public comment who witnessed these acts; such methods of crowd control were also seen in online videos and read or heard in media accounts, raising the question of whether the use of these methods was necessary.

Therefore, the PRC passed the following motion at its December 10, 2014 meeting (M/S/C Bernstein/Rogers): Urge the City Council to prohibit the Berkeley Police Department's use of projectiles and over-the-shoulder baton strikes for crowd control purposes until such time that a complete review of General Order C-64 (Crowd Management and Control) is conducted. Ayes – Bernstein, Cardoza, Perezvelez, Rogers, Sherman; Noes – None; Abstain – None; Absent: Allen, Lowhurst, Zerrudo.

cc: Christine Daniel, City Manager
Michael Meehan, Chief of Police



Jesse Arreguín
City Councilmember, District 4

ACTION CALENDAR

January 27, 2015

(Continued from January 20, 2015)

To: Honorable Mayor and Members of the City Council

From: Councilmember Jesse Arreguín

Subject: Amendments to BPD General Orders C-64 (Crowd Control), M-2 (Mutual Aid) and U-2 (Use of Force)

RECOMMENDATION

1. Refer to the Police Review Commission (PRC) and City Manager the attached changes to BPD General Orders C-64, M-2, U-2, and request that they return to the City Council with recommended revisions to the General Orders.

The proposed changes (**Attachments 1-3**) are modeled after the Oakland Police Department's recent amendments to their Crowd Control Policy and address issues raised with the police response to the December 6, 2014 Ferguson protests.

2. Adopt a motion declaring as a temporary City of Berkeley policy that the use of chemical agents (tear gas etc.), Specialty Impact Less-Lethal Weapons ("projectiles" or rubber bullets, wooden dowels, stinger grenades, rubber bullets) and over the shoulder baton strikes, are prohibited uses of force in responding to crowd situations, until such time as an investigation is conducted as to the Police response to the December 6, 2014 protests, and a review of General Orders C-64, M-2, and U-2 is completed.

FINANCIAL IMPLICATIONS

Unknown

BACKGROUND

The police response to the protests on December 6, 2014 and the use of less lethal force including tear gas, baton strikes and projectiles in dispersing crowds have raised issues regarding whether BPD complied fully with its policies and whether policy changes are warranted to adapt police response to demonstrations, planned or spontaneous events and large crowds.

In response to public criticism and lawsuits over the police response to the Occupy protest on October 25, 2011, the City of Oakland initiated an independent investigation that resulted in recommended changes in departmental procedures on crowd control. In reviewing the Oakland Police Department's (OPD) Crowd Control Policy (Index Number III-G) a number of policies differ from BPD's, namely: tactical approaches, permitted

uses of force, and policies on media access and maintaining public safety while protecting non violent protesters and bystanders.

Since OPD revised its crowd procedures, the number of police complaints has decreased and it has resulted in a more targeted response that facilitates First Amendment activity while protecting public safety. These policies and tactics should be specified in BPD's crowd control policy.

BPD General Order C-64

One of the biggest concerns raised over the December 6, 2014 protests were the allegations of excessive force when dispersing crowds. Section 5 of BPD General Order C-64 provides some guidelines into use of force for crowd management and control, but more can be done to make the policies clearer as to what constitutes as excessive force. BPD's policy allows for greater use of force than Oakland's policy, and allows certain weapons that are prohibited in Oakland's policy (projectiles).

The Oakland Police Department's policies on crowd control (Index Number III-G, see **Attachment 4**) are explicitly written to protect First Amendment rights and minimize the risk of using excessive force. Examples which are not included in the language of BPD's policy include, but are not limited to: suspending dispersal techniques while a crowd is dispersing, only using batons at physically aggressive persons and banning baton strikes to the head, neck, throat, kidneys, spine, and groin, banning the indiscriminate use of Direct Fired Specialty Impact Less-Lethal Munitions (SIM) such as bean bags, and providing accommodations to the media. The OPD policy also reiterates Penal Code Section 830.10, which mandates officers to clearly and visibly wear a badge or nameplate with their name and identification number, which was allegedly violated during the December 6 protests. OPD policies also point out the importance of remaining professional and not resorting to impulsive or independent actions. To quote Section 12 of Index Number III-G, "the Incident Commander and supervisors shall make every effort to ensure that the police mission is accomplished as efficiently and unobtrusively as possible with the highest regard for the human dignity and liberty of all persons and with minimal reliance on the use of physical force". In amending General Order C-64, policies presented in OPD's Crowd Control and Management should be examined.

BPD General Order M-2

The Berkeley Police Department has multiple agreements with regional law enforcement agencies for mutual aid. However, these police agencies are currently free to use whatever tactics, equipment, and techniques their departments use, even if it differs from Berkeley's policies. For example, the Hayward Police Department used an armored vehicle over multiple days in the Berkeley protests, despite public and City Council opposition to the use of such vehicles by the BPD.

As seen during the December 6th protests, outside police agencies allegedly used tactics and equipment not used by BPD and in some cases in violation of BPD policies/procedures, resulting in poor crowd controlling and likely increased allegations of excessive force. Having other police agencies follow the standards and regulations of the BPD while within Berkeley City limits will allow for better transparency and cooperation.

In 2012, in the wake of the police response to the Occupy protests in Oakland and on UC campuses, the Berkeley City Council referred the issue of modifying General Order M-2 to the PRC. The Commission proposed amendments to require that BPD follow its policies and procedures in mutual aid incidents, and to require that the Department seriously evaluate whether to call for mutual aid or respond if the request involves civil disobedience or First Amendment activity and not a threat to public safety. The Council adopted this policy in September 2012. Arguably, the police response on December 6, 2014 did not meet the spirit if not the letter of this policy. In trying to protect officers from threats to physical safety and maintain order, some non-violent protesters (including press) were the subject of unnecessary force including chemical agents, baton strikes and projectiles. While there were some individuals who were engaging in property damage or violence, the widespread use of these tactics against the larger crowd of non-violent protesters is questionable not only in their effectiveness but in their appropriateness.

BPD General Order U-2

The BPD's policy over use of force supersedes all other policies. Section 20 of General Order U-2 provides a list of prohibited uses of force. On September 16, 1997, the City Council passed a policy banning the use of Oleoresin Capsicum (pepper spray) as a crowd control technique. Because of the indiscriminant nature of tear gas, innocent bystanders are often exposed to its harmful effects. Additionally, people with asthma or other respiratory ailments, infants, and the elderly could have a serious or potentially fatal reaction. Therefore, tear gas should also be prohibited for use as a crowd control technique.

Another potentially fatal use of force due to potential head injuries are the use of projectiles and baton strikes above the shoulder. Indiscriminate use of projectiles against crowds can result in innocent persons getting hit or cause property damage and may result in serious injuries. Use of projectiles in crowd control situations should be prohibited. Above the shoulder baton strikes should be banned in any case due to the high risk of potentially fatal head injuries.

PRC Recommendations

At its meeting on December 10, 2014, the Berkeley Police Review Commission on a 5-0-3 (three Commissioners absent) passed two urgency items relating to the police response on December 6, 2014.

The first motion (**Attachment 5**) called on the Council to suspend the use of tear gas for crowd control until an investigation is conducted regarding the use of tear gas to disperse the crowd on December 6, 2014. This item recommends that the Council set a temporary City policy to prohibit the use of tear gas for solely crowd situations, as the PRC suggested.

The second motion (**Attachment 6**) called on the Council to prohibit the use projectiles and over the shoulder baton strikes by BPD until a complete review of General Order C-64 is conducted. This item also recommends that Council set a temporary City policy to prohibit the use of projectiles and over the shoulder baton strikes by BPD until a review of General Order C-64 is completed.

These temporary prohibitions for crowd control situations only will allow the City time to conduct a review into the events of December 6, 2014 and a through review of department policy on crowd control, use of force, and mutual aid, before such tactics are deployed in the future.

The proposed policy would not prohibit use of these non-lethal tactics for non-crowd control situations, such as dealing with armed suspects.

ENVIRONMENTAL SUSTAINABILITY

No adverse affects to the environment.

CONTACT PERSON

Jesse Arreguin, Councilmember, District 4 510-981-7140

Attachments:

1. Proposed changes to General Order C-64 (Crowd Control)
2. Proposed changes to General Order M-2 (Mutual Aid)
3. Proposed changes to General Order U-2 (Use of Force)
4. Oakland Police Department Training Bulletin III-G (Crowd Control)
5. and 6. December 10, 2014 PRC recommendations on Tear Gas and Projectiles

BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 11, 2009

GENERAL ORDER C-64

SUBJECT: CROWD MANAGEMENT AND CONTROL

PURPOSE

1- The purpose of this Order is to provide policy and procedural guidance to Berkeley Police Department personnel involved in the planning, response, and/or deployment of police personnel for crowd situations.

Mission Statement

2- The mission of the Berkeley Police Department in all crowd situations is to appropriately manage events with the overall goal of ensuring public safety and protecting First Amendment rights of free speech and assembly, while relying on the minimum use of physical force and authority required to address a crowd management or crowd control issue.

- (a) Appropriate action will be determined by the Incident Commander in the field, and will be based on the behavior of the people in the crowd.
- (b) Police action shall be reasonable, intended to prevent lawlessness or restore order, and may include responses ranging from no police action to full crowd control tactics.

POLICY

3- In the event a crowd situation is determined to be a peaceful protest or demonstration, wherein participants are exercising their rights to free speech in a lawful manner, the policy of the Berkeley Police Department shall be to facilitate the event to the extent possible.

4- In the event that a crowd situation is unlawful, and lack of immediate police action to may lead to the escalation of ~~criminal behavior and violence~~ and threats

to public safety, the Berkeley Police Department will take steps to restore order.

- ~~(a) Steps to restore order may include monitoring with minimal police presence, a strong police presence, selective arrest of those committing crimes, or a dispersal order, if the assembly is unlawful.~~

Use of Force

5- Employees who employ force in a crowd control situation shall do so in conformance with policy set forth in General Order U-2.

- (a) Pain compliance techniques (e.g., gum nerve, buckle nerve pressure, etc.), ~~impact weapons, and chemical agents~~ should not be used on persons participating in a crowd situation who are committing an unlawful act with passive resistance (e.g., sitting or lying down to block a doorway) solely to effectuate a custodial arrest.

(1) Verbal commands to stand followed by control holds (e.g. wrist lock, twist lock, etc.) with reasonable pressure may be utilized to attempt to require an arrestee who is sitting or lying down to stand up to effectuate a custodial arrest.

(2) If an arrestee who is sitting or lying down continues to refuse to stand up in response to verbal commands followed by pressure applied from a control hold, the officer should use drag, carry, or roll techniques to effectuate the custodial arrest.

(3) Once an arrestee is standing in a self-supporting manner, the officer may counter an arrestee's lapse into passive resistance (e.g., attempting to fall or sit down) with control holds that would likely prevent such a movement.

- (b) Officers attempting to move a crowd or individual should not strike

anyone who is unable to move back for reasons out of their control (i.e., physical disability, crowd surge, being pinned against a fixed object, etc.)

- (c) Sworn officers should employ particular applications of force (e.g., a specific baton strike, such as a “rake” or “jab”) as may be directed by their chain of command, when its use is intended to accomplish a desired crowd control objective.
- (d) Officers are not precluded from using authorized force, as appropriate, to address the actions of a particular person(s).

6- If physical force becomes necessary to disperse the crowd, make arrests, or move a crowd from an area, only reasonable force shall be used to accomplish the mission.

7- In squad or team movement, the type and scope of force used shall be at the discretion of the Incident Commander, Field Commander, Squad or Team Leader.

~~8- Less than lethal munitions, chemical agents (excluding OC spray), and/or smoke shall only be deployed in crowd situations as outlined in General Order U-2.~~

Approved Tactics and Weapons to Disperse or Control a Non-Compliant Crowd

If negotiation and verbal announcements to disperse do not result in voluntary movement of the crowd, officers may employ additional crowd dispersal tactics, but only after orders from the Incident Commander or designated supervisory officials.

The permissible tactics to disperse or control a non-compliant crowd include all of the following:

The use of these crowd dispersal tactics shall be consistent with the Department policy of using minimal police intervention to address a crowd management of control issue in accordance with Department General Order U-2.

1. Display of police officers (forceful presence)

A police formation may be moved as a unit to an area within the crowd's view to assist with crowd management. If a display of police officers, motorcycles, police vehicles, and mobile field forces, combined with a dispersal order, is not effective, more forceful actions may be employed.

Generally, officers should be assigned to squads of sufficient size to be effective. At larger events, the crowd can be divided.

2. Encirclement and Arrest

If the crowd has failed to disperse after the requirement announcements, officers may encircle the crowd or a portion of the crowd for purposes of making multiple simultaneous arrests.

Persons who make it clear (e.g. by sitting down, locking arms) that they seek to be arrested, shall be arrested and not subjected to other dispersal techniques.

3. Police Formations and Use of Batons

a. If a crowd refuses to disperse after the required announcements, the

- police may use squad or platoon formations (skirmish line, wedge, echelons, etc.) to move the crowd along.
- b. Batons shall not be used for crowd control, crowd containment, or crowd dispersal except as specified below.
 - c. Batons may be visibly displayed and held in a ready position during squad or platoon formations.
 - d. Batons shall only be used as set forth in Department General Order U-2 and other departmental policies.

Officers shall not intentionally strike a person with any baton to the head, neck, throat, kidneys, spine, or groin or jab with force to the left armpit except when the person's conduct is creating an immediate threat of serious bodily injury or death to an officer or any other person. Batons shall not be used against a person who is handcuffed.

Weapons Prohibited for Crowd Control and Crowd Dispersal Purposes

A. Lethal Force

The use of lethal force by BPD members is governed by the Department's Use of Force policy. Nothing about a crowd control situation eliminates or changes any of the constraints and criteria governing the use of lethal force in the Department's Use of Force policy.

B. Canines

Canines shall not be used for crowd control, crowd containment, or crowd dispersal.

C. Fire Hoses

Fire hoses shall not be used for crowd control, crowd containment, or crowd dispersal.

D. Motorcycles

The technique referred to as the Basic Use of Motorcycle Push Technique (B.U.M.P.) is prohibited. Motorcycles and police vehicles may not be used for crowd dispersal but may be used for purposes of observation, visible deterrence, traffic control, transportation and area control during a crowd event.

E. Specialty Impact Less-Lethal Weapons and Directly Fired Specialty Impact Less-Lethal Munitions

F. Chemical agents

G. Electronic Immobilizing Devices (Tasers)

Use of Vehicles

9 - Patrol vehicles may be used in crowd control situations by trained officers to employ authorized Mobile Field Force (MFF) tactics at the direction of the Incident Commander.

10- Specialized police vehicles (e.g., police motorcycles, off-road motorcycles, parking enforcement vehicles, mobile command vehicles, etc.) may be used in crowd situations at the discretion of the Incident Commander.

- (a) Specialized police vehicles shall not be used to contact demonstrators

for the purpose of physically pushing people back or forcibly dispersing them from an area.

(b) Specialized police vehicles may be in a MFF line with other marked vehicles as a visual deterrent.

11- Police bicycles employed by specifically trained officers may be used in crowd control situations to physically control or disperse an unlawful assembly.

(a) The use of police bicycles in crowd control situations should only occur when reasonable and until other officers arrive to assist.

XX – The use of armored vehicles either by the Department or by a responding mutual aid agency is prohibited, unless absolutely necessary to respond to an immediate threat of serious bodily injury or death to an officer or any other person.

DEFINITIONS

12- Control Hold: Any Department approved hold, designed to allow an officer to control the movement of a subject (e.g., twist lock, rear wrist lock, finger lock, etc.).

13- Counter Demonstration: An assembly of persons in conflict with a different demonstration at the same location.

14- Crowd Control: Any tactic indicating force may be used to dictate crowd movement or actions. Options include, but are not limited to: show of force (large numbers of officers in riot gear); crowd dispersal; crowd containment; and/or, physical arrest of persons in the crowd.

15- Crowd Management: Tactics used to manage a crowd or event that do not indicate force may be used. Options include, but are not limited to: active involvement in the permit process; communication with crowd monitors; visible monitoring of the crowd; and/or re-direction of pedestrian or vehicular traffic.

16- Crowd Management Team (CMT): Sworn officers who have received

special training to deal with crowd management and crowd control situations, and are available for callout at the discretion of the Patrol Division Captain with approval from the Chief of Police.

17- Demonstration: A public assembly of persons to exhibit thoughts, ideas, or opinion.

18- Incident Commander: A sworn officer, usually a lieutenant or captain, responsible for all personnel assigned to an event.

(a) During the initial stages of a spontaneous event, the Incident Commander will be the highest ranking or senior officer available to take charge, until relieved of responsibilities by a higher ranking officer.

19- Mobile Field Force (MFF): a statewide tactical concept that utilizes groups of trained officers with standard marked police vehicles and equipment, who have the capability to respond to crowd events that are highly mobile or that break up and quickly reform in other locations.

20- Non-Permitted Event: Any demonstration, whether spontaneous or planned, wherein organizers have not obtained permits or licenses that are lawfully required under the circumstances.

21- Operations Commander: A sworn officer, usually a lieutenant or sergeant, responsible for the movement and actions of a platoon, squad, or other identified group of officers at the scene of an event.

22- Pain Compliance Technique: Any technique designed to inflict pain for the purpose of motivating a person to comply with verbal commands (e.g., buckle nerve, gum nerve, sternum rub).

23- Passive Resistance: When an individual does not follow the lawful verbal commands of a police officer, but does not physically resist in any way (i.e., a person who goes completely limp, sits down and refuses to stand or walk, or who may stand with arms at their sides without attempting to strike at or physically resist officers.)

(a) Persons who lock arms, use lockdown devices, or physically resist officers in any other way are not considered “passive”.

- 24 - Permitted Event: Any demonstration or event wherein organizers have obtained all applicable permits or licenses.
- 25 - Platoon: Any group of officers, usually 36 or more in number, organized into 3 or more squads. Each platoon will have a commander, usually a lieutenant, who is responsible for the actions of the platoon in the field.
- 26- Protected First Amendment Activity: Various forms of expression including, but not limited to, speech, assembly, marching, holding signs, street theater, distribution of literature, or displaying banners.
- (a) Freedom of speech and assembly are rights protected by the First Amendment of the United States Constitution, and Article 1 Sections 2 & 3 of the California Constitution subject to reasonable time, place and manner regulations, such as, compliance with lawful permit requirements and traffic regulations (ref. paragraph 34 of this Order).
- 27 - Riot: Any group of two or more people, acting together, who use force, violence, or the threat of force or violence, to disturb the public peace. (ref. Penal Code §405)
- 28- Riot Gear: Police equipment visible to the public and generally associated with crowd control, such as, helmets, batons, flex-cuffs, special uniforms, specialized vehicles, etc.
- 29- Spontaneous Event: Any unplanned event that develops, usually as a result of some catalyst, such as sporting events, parties, concerts, court rulings, festivals, major political events, major news events, or any combination thereof.
- 30- Squad: A group of sworn officers, usually 12 in number, with an identified squad leader responsible for the actions of the squad.
- 31- Squad Leader: A sworn officer, usually a sergeant, responsible for the movement and actions of a squad.
- 32- Team: A group of four sworn officers within a squad, inclusive of an identified leader responsible for the actions of the team.
- 33- Team Leader: A sworn officer, sometimes a sergeant, responsible for the movement and actions of a team of officers within a squad.

34- Time, Place, or Manner Restrictions: Reasonable restrictions on protected activity imposed by law (e.g., an applicable permit) intended to serve a specific governmental interest (e.g., public safety), with regard to the time, location, or manner in which protected activity is to be conducted.

35- Unlawful assembly: Two or more persons, assembled together to commit an unlawful act, or do a lawful act in a violent, boisterous, or tumultuous manner. (ref. PC §407)

(a) The prohibition in PC §407 against persons in an assembly doing a lawful act in a violent, boisterous or tumultuous manner is limited only to situations where the conduct poses a clear and present danger of imminent violence. (ref. *In re Brown* (1973) 9 Cal. 3d 612, 623)

PROCEDURE

Planned Events

36- At such time as a special event or crowd situation comes to the attention of police department personnel, the Patrol Division Captain or Patrol Watch Commander shall be notified, and forwarded all information regarding the event.

37- The Patrol Division Captain or Acting Captain will review the information and determine whether or not a request to call out CMT is warranted.

38- The Incident Command System shall be used for managing all crowd situations.

(a) The command structure should include the appointment of an Incident Commander, and be structured to sufficiently distribute responsibilities allowing for all necessary tasks to be accomplished with a manageable span of control.

(b) If CMT is called out for an event, the CMT Commander may be assigned as the Incident Commander.

39 - The Incident Commander shall, whenever possible, establish a liaison with the group or groups involved, and other potential stakeholders.

(a) Stakeholders may include event organizers, business owners or their employees, or private residents that may be affected by an event.

(1) Stakeholder involvement is critical to the overall success of managing any crowd event, but may be especially helpful during planned demonstrations where civil disobedience is expected.

(2) If a leader or cooperative event organizer is not identified, the Incident Commander shall ensure that attempts to communicate with the group and establish a liaison will continue to the extent reasonable.

40 - Once assigned to a preplanned event, the Incident Commander shall make an initial assessment of the personnel needed to appropriately manage the event based on the information available at the time.

(a) Initial assessment may include on-duty personnel in the Patrol Division and other divisions within the department.

(b) If available on-duty personnel will not be sufficient to manage an event, consideration should be given to calling in off duty personnel and requesting mutual aid resources from surrounding police agencies. (ref paragraphs 67-71 of this Order)

41 - Once sufficient details of the event are known to accurately estimate the scope of response, and required personnel are identified, the Incident Commander shall work with Division Commanders to secure their participation.

42- Once all personnel required to work the event are identified and committed to an event, the Incident Commander shall ensure a written Operations Plan is completed, time and circumstances permitting.

(a) An Operations Plan shall contain sufficient detail to allow an

uninvolved party who reads it to understand the nature of the event, department policy involved, planned response, and the department resources dedicated to it. (ref. General Order P-23)

(b) Upon approval by the Patrol Captain and signed by the Chief of Police, the original Operations Plan shall be routed to the Bureau of Internal Controls in the Office of the Chief, and copies distributed to all appropriate personnel.

Spontaneous Events

43 - Sworn officers shall respond to a reported spontaneous crowd situation to assess immediate hazards to public safety.

44 - The ranking sworn officer, or senior officer, shall assume the role and responsibilities of Incident Commander, and take the following immediate actions:

- (a) Broadcast the type of event, if known, and estimated number of participants.
- (b) Report known or imminent public safety hazards.
- (c) Request sufficient on-duty personnel resources to address life-threatening public safety emergencies.

45 - The on-duty Patrol Division Watch Commander, or if absent or unavailable, the senior Patrol Division Sergeant, shall respond to the event scene and take the following actions:

- (a) Assume the role and responsibilities of Incident Commander.
- (b) Assess the potential risks to public safety.
- (c) Assess whether or not a static event has the potential to go mobile, either on foot in the form of a march, or in vehicles.
- (d) Assess the number of officers and type of equipment required to maintain order and their manner of response.

- (e) Assess the potential need for outside resources:
 - (1) On-duty personnel from other police agencies.
 - (2) Fire Department personnel and resources.
 - (3) Media relations personnel.
- (f) Identify and broadcast the location of the Incident Command Post, operational staging areas, and routes to and from.

46- The Incident Commander should consider the following factors when making decisions regarding the police response:

- (a) The number of people involved in the event and their behavior.
- (b) The level of vehicular traffic.
- (c) The level of disruption to those not involved in, but impacted by the event.
- (d) The overall level of risk to both participants and the general public who may be inadvertently caught up in the event.
- (e) The personnel and equipment available for the task.

47- The Incident Commander may use on-duty personnel from other Divisions or units to assist in the police response to a spontaneous event.

48- The Incident Commander shall direct necessary on-duty personnel to a static event and make response assignments as required, which may include, but are not limited to:

- (a) Assign personnel to monitor the event only.
- (b) Use personnel to maintain order at the event and/or divert uninvolved, effected traffic away from the area.

49- If the event is mobile, the Incident Commander should consider response actions appropriate to manage or control the behavior and activities of the crowd, options including, but not limited to:

- (a) Let the group proceed with no police presence.
- (b) Assign officers to facilitate the mobile event by providing traffic control.
- (c) Attempt to direct the path of the mobile event by denying access to certain roadways.
- (d) Allow the mobile event to proceed, but deny access to certain locations that would create a public safety hazard, such as, roadways to bridge approaches and roadways in busy commercial districts.
- (e) Declare the event an unlawful assembly if circumstances qualify, and allow the group to disperse, make arrests, or use force to disperse the group for the purpose of restoring public order.

50- There is no required order of response; the Incident Commander shall be responsible for continually accessing the event and adjusting the response strategies and tactics accordingly.

51- The Incident Commander shall remain responsible for the police response to a planned or spontaneous crowd event until relieved by a higher ranking officer, or the position is relinquished another officer who officially assumes the responsibility.

- (a) Any change of command shall be broadcast on the radio frequency used to manage the police response.

General Event Procedures

52- Employees dispatched or pre-assigned to a crowd situation shall be in a department-approved uniform appropriate for their assignment.

- (a) CMT members shall be in approved CMT uniform when assigned to CMT operations.
- b) Employees shall ensure their name and badge number are visible upon their uniform, and badge number is visible on their helmet, if worn.

53- Officers dispatched or pre-assigned to a crowd situation shall have immediately available relevant department-issued safety equipment. (i.e., helmet, chemical agent mask, etc.)

54- Specialized weapons and equipment (i.e., patrol rifles, less-than-lethal munition launchers, chemical agent masks, etc.) shall be deployed at the discretion of the Incident Commander.

55- The Incident Commander shall ensure personnel receive an operational briefing, whether in person or via radio, prior to their deployment.

(a) Information communicated in an operational briefing shall include, at minimum:

- 1) The nature of the event.
- (2) The mission and operational goal(s) of the department.
- (3) The chain of command managing the event.
- (4) The individual's assignment and any special equipment he/she may require to accomplish it.
- (5) When possible, the identity and appearance of all undercover personnel involved in the police response.
 - (i) Undercover personnel should be present at operational briefings for planned events.

56- Undercover personnel shall adhere to laws and policies governing information gathering by law enforcement.

57- Verbal requests or commands should be used before and when advancing on a crowd.

- (a) Commands should be simple and stated clearly, giving members of the crowd an opportunity to comply before force is used. (Examples: "Step

back!” or “Move onto the sidewalk!”)

58- Employees shall not engage members of a crowd in debate or unnecessary dialogue.

59- When practical, as part of an implemented crowd control plan, police personnel should attempt to identify and separate from the crowd individuals who are violating law.

- (a) Efforts to take an offender into custody in a crowd situation should strive to minimize the risk to uninvolved persons, to the extent reasonably possible.

60- In conformance with procedures set forth in General Order V-10, visual recording devices should be used to document the activities of police personnel and the people involved in a crowd situation.

(a) Activities that should be documented via visual recording device include, but are not limited to:

- (1) Criminal activity (misdemeanor or felony);
- (2) Violation of a Permit condition, City Ordinance, or traffic violation.
- (3) Use of force by officers.
- (4) Arrests by officers.
- (5) Any person who, by words or action, is inciting violence.
- (6) Dispersal orders issued by police.

61- Employees shall adhere to information release and media liaison protocols set forth in General Orders R-23 and P-29, respectively.

(a) The Incident Commander shall ensure legitimate “credentialed” members of the media are provided access to areas available to them by law.

b) A person who claims to be a member of the media, but who does not possess a bona fide media credential, has no special privilege and shall be

treated like any other citizen with regard to event area access.

XX – As staffing permits, officers should be deployed to the best available vantage points to observe and report crowd actions.

XX- Lines of control should be established, especially in events that involve protesters with opposing views. Whenever possible, hostile factions should be separated.

XX – Considering the type of crowd involved is an important factor in responding properly to its behavior. Crowds may vary from cooperative or celebratory to non-compliant, hostile, and combative. Organized demonstrations in which some engage in coordinate, nonviolent civil disobedience should be distinguished to the extent possible from crowds in which substantial numbers of people are engaged in other types of unlawful acts.

XX- Sufficient resources to make multiple simultaneous arrests should be available at demonstrations where such arrests are a reasonable possibility. However, this need must be balanced against the fact that a large and visible police presence may have a chilling effect on the exercise of free speech rights.

XX- When possible, officers should be at their posts well in advance of arriving participants. If possible, officers should be positioned at a reasonable distance from the crowd to avoid a perception of intimidation.

XX- Crowd control and crowd dispersal, as well as a show of force in crowd control situations, should be accomplished to the extent possible using specialized units of BPD rather than on-duty patrol officers.

XX- It is essential to recognize that all members of a crowd of demonstrators are

not the same.

Even when some members of a crowd engage in violence or destruction of property, other members of the crowd are not participating in those acts. Once some members of a crowd become violent, the situation often turns chaotic, and many individuals in the crowd who do not want to participate in the violent and destructive acts may be blocked from leaving the scene because the crowd is so large or because they are afraid they will move into a position of heightened danger.

This understanding does not mean BPD cannot take enforcement action against the crowd as permitted under this policy, but that BPD shall seek to minimize the risk that force and arrests may be directed at innocent persons.

Verbal abuse against officers shall not constitute a reason for an arrest or for any use of force against such individuals. Officers shall avoid responding to abusive comments.

XX- Officers must not be affected by the content of the opinions being expressed nor by the race, gender, sexual orientation, physical disabilities, appearances, or affiliation of anyone exercising their lawful rights.

XX- Department personnel must maintain professional demeanor and remain neutral in word and deed despite unlawful or anti-social behavior on the part of crowd members. Unprofessional police behavior can inflame a tense situation and make control efforts more difficult and dangerous.

Strong supervision and command are essential to maintaining unified, measured and effective police response. A response incorporating strong leadership and based upon teamwork is crucial to maintaining control and safety. Impulsive or independent actions by officers are to be avoided.

XX – Officers in non-violent crowd situations shall not display weapons or non-lethal munitions before a dispersal order is given or other enforcement action is implemented.

XX- BPD officers shall not be sent into an obviously hostile crowd solely for the purpose of communication. BPD officers shall not penetrate a crowd for an individual arrest unless the targeted individual is involved in criminal conduct which endangers persons or property, and the decision to move into the crowd is made by a supervisor or commander.

Dispersal Orders

62- Decisions about crowd dispersal and general strategies about crowd containment or crowd redirection, mass arrests, planned individual arrests or planned use of force shall be made at the level of the Incident Commander or higher. The Incident Commander or a higher ranking official if appropriate at any crowd situation shall make the determination as to when or if a crowd, whose behavior poses a clear and present danger of imminent violence, will be declared an unlawful assembly.

XX – In the event of a declared unlawful assembly, it is the general policy of the BPD to use multiple simultaneous arrests to deal with a non-violent demonstration that fails to disperse and voluntarily submits to arrest as a form of political protests rather than dispersing the demonstrators by using weapons or force beyond that necessary to make the arrests.

XX- The Incident Commander shall make the final decisions as to what control action, if any, will be taken to address a given crowd situation.

Crowd size and available Department resources will also factor into the police response. The following factors will be considered prior to determining what action to take:

1. Will the police action likely improve the situation?
2. Will targeting specific violent or disruptive individuals for arrest be more effective or appropriate than applying control tactics to the entire crowd?
3. Are sufficient resources available to affectively manage the incident?
4. Have clear and secure escape routes been established for both the crowd and the police?
5. Has the dispersal order been given (loudspeaker, personal contact, etc.)?
6. Have contingency plans been established in the event initial police effort are ineffective?

XX- Commanders shall constantly reassess and adjust tactics, as necessary, as the crowd's actions change.

XX- The Incident Commander shall ensure and take reasonable and appropriate steps to ensure the safety of bystanders.

XX – When officers take action to move or disperse a crowd, steps should be taken to ensure that the crowd is not moved into a position or place that could be dangerous to persons in the crowd or to bystanders, such as pushing them up against glass windows.

63- Unless otherwise directed or required, the following dispersal order text shall be used by Berkeley Police Department personnel in crowd control situations:

- (a) “I am (*rank*) (*name*) with the Berkeley Police Department. I hereby

declare this to be an unlawful assembly, and in the name of the people of the State of California, command all those assembled at (*location*) to leave the area immediately. If you do not leave, you are in violation of section 409 of the California Penal Code, and may be arrested or subject to other police action. Other police action may include the use of less lethal munitions, which may pose a risk of serious injury. The following routes of dispersal are available: (*state options available*) You have (*state time expectation*) to leave the area.”

64- Except when exigent circumstances exist and doing so would place officers or the public at risk, a dispersal order shall be issued prior to forcibly dispersing a crowd.

65- The Incident Commander, or his/her designee, shall issue a dispersal order:

- (a) As close to the crowd as practical;
 - (b) In a manner clearly audible to persons in the crowd;
 - (1) Use sound amplification systems when necessary;
 - (2) When practical, employ officers stationed around the perimeter of the crowd to ensure the dispersal order is clearly audible.
 - (c) In more than one language, depending on the needs of the crowd;
- and,
- (d) A second time, following a reasonable period of time to allow for crowd dispersal.

XX- The mere failure to obtain a permit, such as a parade permit or sound permit is not a sufficient basis to declare an unlawful assembly. There must be criminal activity or a clear and present danger of imminent violence.

XX- The fact that some demonstrators or organizing groups have engaged in

violent or unlawful acts on prior occasions or demonstrations is not grounds for declaring an unlawful assembly.

XX- Unless emergency or dangerous circumstances prevent negotiation, crowd dispersal techniques shall not be initiated until after attempts have been made through contacts with the police liaisons and demonstration or crowd event leaders to negotiate a resolution of the situation so that the unlawful activity will cease and the First Amendment activity can continue.

XX- Unless an immediate risk to public safety exists or significant property damage is occurring, sufficient time will be allowed for a crowd to comply with police commands before action is taken to disperse the crowd.

XX- When a command decision is made to employ crowd dispersal techniques, attempts to obtain voluntary compliance through announcements and attempts to obtain cooperation through negotiation shall both be continued. At any point at which a crowd is dispersing, whether as a reaction to police dispersal techniques, through voluntary compliance, or as a result of discussion or negotiation with crowd leaders, BPD dispersal techniques shall be suspended and the crowd shall be allowed to disperse voluntarily. This directive does not preclude a command decision by BPD to reinstate dispersal techniques if crowd compliance ceases.

XX – If after a crowd disperses pursuant to a declaration of unlawful assembly and subsequently participants assemble at a different geographic location where participants are engaged in non-violent and lawful First Amendment activity, such an assembly cannot be dispersed unless it has been determined that it is an unlawful assembly and the required official declaration has been adequately given.

Mass Arrests

66- When considering the arrest of multiple people at a crowd control event, the Incident Commander should evaluate preparedness of the following operational elements:

- (a) Resource Availability: Sufficient personnel should be available to maintain order, accomplish intended arrests and subsequent processing, and maintain control of the arrestees through a booking process, if necessary.
- (b) In-Field Arrest Processing: Equipment and logistics should be available to facilitate in-field processing of mass arrests.
- (c) Transportation: In the event arrestees are not released in-field on citation, vehicles should be available to facilitate necessary transportation to a custodial facility.
- (d) Booking/Jail Capacity: The custodial facility to which arrestees are transported should have the capacity to receive and maintain custody of persons not released on citation.
- (e) Documentation: Arresting personnel must ensure arrestees are identified and photographed, arrests are effectively documented, and associated paperwork is properly directed for administrative processing.

Mutual Aid

67- An official request for mutual aid resources shall adhere to procedures set forth in General Order M-2.

- (a) Emergency requests for immediate assistance may be made directly to local agencies.

68- The Chief of Police or his/her designee shall contact the liaison from the Alameda County Sheriff's Department to coordinate a plan for mutual aid resources and response.

- (a) This plan should include the number of officers potentially needed, any special equipment requested, and an expected response time if called out.

69- In preparation for mutual aid forces, the Incident Commander shall ensure that liaison officers from BPD are assigned to work with the outside agency to assist with response routes into the staging area, parking vehicles, checking in with the staging area supervisor, communications, and response to event location.

70- In addition, the Incident Commander shall be responsible for ensuring to the extent possible that mutual aid agencies:

- (a) Are briefed and in agreement with BPD's Unity of Command structure under which only BPD Commanders may authorize the use of permitted less lethal munitions for crowd control and dispersal, and BPD Commanders will have tactical control over all operations;
- (b) Are briefed on BPD's policy on prohibited weapons and force;
- (c) Do not bring or use any weapons, equipment or force that is prohibited under BPD's policy;
- (d) Are provided with a copy of BPD's Crowd Control and Use of Force policies;
- (e) Are not assigned to front-line positions unless absolutely necessary, or used for crowd intervention, control or dispersal unless there is a public safety emergency;
- (f) Complete required reports prior to being released from duty.
Agencies should provide the following documents/reports when

- they are applicable: Use of force report, arrest report, injury report, equipment damage report and list of responding personnel; and
- (g) Inventory all weapons and equipment brought by responding mutual aid agencies prior to deployment.

70- MFF organization should be employed when integrating mutual aid personnel into local crowd event response, or when responding to another jurisdiction as a mutual aid unit.

- (a) Personnel should be formed into squads or teams that are easily integrated into squads and platoons.

71- When responding to another jurisdiction as a mutual aid unit, personnel will have with them enough vehicles and equipment to allow the deployed team or squad to patrol a designated area, use less-than-lethal munitions or authorized chemical agents, if necessary, and have enough food and water to last for a reasonable operational period until relieved.

72- If a responding mutual aid agency uses weapons, equipment or force that violates Departmental policy, or does not follow BPD commands, then the Chief of Police will seriously evaluate whether to request their assistance in future mutual aid situations. If so determined, the Chief of Police shall inform the Alameda County Sheriff's Department when requesting mutual aid that a specific department is not invited to participate in the requested mutual aid response.

Post-Event

72- At the conclusion of an event the Incident Commander shall ensure that an After Action Report is prepared.

(a) An After Action Report shall document arrests, injuries, and property damage, personnel costs, use of force, chemical agents or Specialty Impact Less-Lethal Munitions (SIMS) used, and a critique of the police preparation and response.

(b) An After Action Report should include information in sufficient detail to help others prepare for the event if it, or a similar event, should occur in the future.

Public Information and the Media

XX – The media have a right to cover demonstrations, including the right to record the event on video, film, or in photographs.

XX- BPD members shall accommodate the media in accordance with Departmental policy.

XX- The media shall be permitted to observe and shall be permitted close enough access to the arrestees to record their names. Even after a dispersal order has been given, clearly identified media shall be permitted to carry out their professional duties in any area where arrests are being made unless their presence would unduly interfere with the enforcement action.

XX- Self identified legal observers and crowd monitors do not have the same legal status as the professional media and are, subject to all laws and orders similar to any other person or citizen.

XX- Said personnel must comply with all dispersal orders similar to any other

person or citizen. A supervisor or commander may allow a person who self-identifies as a legal observer or crowd monitor to remain in the area after a dispersal order if circumstances permit and if the person's presence would not unduly interfere with the enforcement action.

XX – On request, the Incident Commander or a supervisor may inform the media, legal observers, crowd monitors, police liaison, and/or organizers about the nature of any criminal charges to be filed against arrestees, the location where arrestees are being taken, and the Department's intent for arrestees to be cited out or booked at a custodial facility.

XX- The media, legal observers, crowd monitors, police liaison, and/or organizers shall never be targeted for dispersal or enforcement action because of their status.

Training

73- When possible, training in crowd management and crowd control shall be incorporated into general departmental in-service training.

74- When possible prior to a major pre-planned event, update training should be provided to all assigned officers.

75- The CMT will train regularly, and incorporate as appropriate, all General Orders and Training Bulletins related to crowd management and crowd control into their sessions.

76- All newly hired police officers will receive supplementary training on crowd management and crowd control by attending a CMT training session as part of their Field Training Program.

References:

In re Brown (1973) 9 Cal. 3d 612, 623

Penal Code §§405, 407, 409 and 830.10

General Orders C-1, C-10, M-2, P-23, P-29, R-23, U-2, V-10 and X-1 Police

Regulations 225, 226, 249 and 250

BERKELEY POLICE DEPARTMENT

DATE ISSUED: September 18, 2012

GENERAL ORDER M-2

**SUBJECT: MUTUAL AID AND AGREEMENTS WITH LAW
ENFORCEMENT AGENCIES**

PURPOSE

1 - The purpose of this General Order is to describe Mutual Aid procedures and written agreements that the Berkeley Police Department has with other law enforcement agencies. **It is also to provide guidance to the Command Staff members regarding the philosophy of Mutual Aid application.**

POLICY

2- Berkeley Police Department employees are expected to follow the procedures of the California Law Enforcement Mutual Aid Plan as well as the written agreements made with other law enforcement agencies. **The Berkeley Police Department is also expected to take an event management approach to crowd control situations, and to evaluate the threat to public safety posed by each group prior to responding to, or requesting Mutual Aid.**

MUTUAL AID

3- California's Law Enforcement Mutual Aid Plan was formulated in the early 1950's and enacted into law as part of the Government Code in 1970. The authority of the State of California Law Enforcement Mutual Aid Plan is granted under California Government Code Sections 8550, 8569, 8616, and 8668. The Berkeley City Council grants authority to the Police Department for mutual aid participation in accordance with Berkeley Municipal Code Sections 2.04.150 - 2.04.210 (Ordinance 4640-NS, 1973).

(a) The California Law Enforcement Mutual Aid Plan is contained in a

compendium titled, "Agreements, Understandings and Policies Existing between the Berkeley Police Department and Other Law Enforcement Agencies".

- (1) Copies are publically available on line through the City of Berkeley website.**

PROCEDURES

4- All requests for mutual aid will be made via the Alameda County Sheriff, and all responses to mutual aid will result from mutual aid notification from the Alameda County Sheriff.

(a) When the Chief of Police determines that an emergency situation may become or is already beyond the control of Departmental resources, it is the Chief of Police's responsibility to request mutual aid from the Alameda County Sheriff. Generally, this process will be authorized by the Chief of Police in conjunction with notification of and approval by the City Manager.

I. The Chief or his/her designee will also attempt to determine if the only crimes being committed are civil disobedience offenses, and whether these offenses pose a threat to public safety.

II. If individuals are committing crimes that do not present a threat to public safety the Chief or his/her designee should seriously evaluate whether or not the Berkeley Police Department should request or participate in Mutual Aid. Crimes which do present a threat to public safety include property damage, utilizing weapons, creating physical hazards, or threats to community members or public safety personnel.

(b) It is the responsibility of the Alameda County Sheriff to provide assistance and coordination to control the problem (California Government Code Section

26602).

(1) It is also possible to obtain other services from the Alameda County Sheriff (such as a bus for prisoner transportation at a small demonstration) without invoking mutual aid.

5- To request Mutual Aid from the Alameda County Sheriff, the Berkeley Police Department must:

(a) Place all Berkeley Police Department sworn personnel on the following shifts: 12 hours on and 12 hours off.

(b) Contact the Alameda County Sheriff Emergency Services Unit, 667-7755, and verbally request mutual aid.

(c) Send a written message to the Alameda County Sheriff's Department. (FAX is acceptable.)

(d) Meet with Alameda County Sheriff's Department Mutual Aid personnel to discuss, plan, and coordinate the use of outside personnel regarding:

- (1) The dates and times that mutual aid personnel are required.
- (2) The number of personnel needed to assist.
- (3) The staging area for responding personnel to meet.
- (4) Mass processing procedures for persons arrested.
- (5) Transportation plans for persons arrested.
- (6) Operation of temporary detention facilities, if needed.

(e) An estimate of the number of available personnel in each agency is maintained by the Alameda County Sheriff's Department. The Alameda County Sheriff's Department will poll local agencies to obtain the necessary number of

officers requested at the time of each incident.

6 - Costs for mutual aid are the responsibility of each agency participating. In the case of State or Federal involvement, mutual aid costs will be paid for by the State/Federal government.

7- In crowd control situations in which the Department requests mutual aid for assistance, the Department shall comply with the procedures in General Order C-64 requiring briefing, use of weapons or force, assignment, and other requirements for responding mutual aid agencies.

REQUESTING STATE MUTUAL AID ASSISTANCE

7- The Law Enforcement Division of the State of California Office of Emergency Services (OES) is responsible for coordination of State resources in support of local law enforcement during "unusual occurrences" such as disorders, demonstrations, riots, and natural or war caused disturbances. Authority is granted to OES under Article 5, Chapter 7, of the California Government Code. A 24-hour communications center is maintained at the Office of Emergency Services in Sacramento. A representative of the Law Enforcement Division can be reached at any hour of the day or night by calling (1-916) 427-4235 or 427-4341.

(a) Five State agencies have specific responsibilities to support local law enforcement during emergency situations:

- (1) The California Highway Patrol: Provide traffic control and maintenance of law and order.
- (2) The State Military Department, which includes the California Army and Air National Guard, the State Military Reserve and the Naval Militia: Provide military support to local jurisdictions only after a request for same is made by the Chief Executive (City Manager)

of a City or County Sheriff, and only after the disturbance is beyond the capabilities of local law enforcement mutual aid forces.

- (3) The Department of Justice: Provide legal advice and intelligence.
- (4) The Department of Corrections: Provide support for local law enforcement (with resources).
- (5) Office of the California State Police: Provide personnel who remain under the command of the State Police.

REQUESTING FEDERAL MUTUAL AID ASSISTANCE

8- Only State government may make the request to the President to provide Federal resources to assist in restoring or maintaining law and order. State government may only make such requests after all of its available forces, including the State military, are unable to control the emergency. The Department of the Army has the responsibility for the temporary loan of Federal military resources to National Guard units and local civil authorities in anticipation of or during disturbances.

9- The Berkeley City Council reviews and approves agreements with other law enforcement agencies pursuant to California Government Code Section 8617, and in accordance with Berkeley Municipal Code (BMC) Sections 2.04.150 - 2.04.210 (Ordinance 4640-NS 1973).

- (a) Written agreements are maintained with agencies who have concurrent jurisdictions in Berkeley, as well as agencies who have "understandings" with the Berkeley Police Department.

(1) The agreements are maintained in a **compendium** entitled: "Agreements, Understandings and Policies Existing between the Berkeley Police Department and Other Law Enforcement Agencies".

(a) The compendium is publically available from the City of Berkeley website.

(b) A list of the agreements with other agencies is listed in the table of contents.

(b) The Berkeley Police Department will provide a report to Berkeley City Council summarizing all requests, responses, and denials of requests for Mutual Aid that involve civil disobedience offenses and First Amendment activity -- submitted in conjunction with the agreements contained in the above referenced compendium which is submitted annually as per BMC Sections 2.04.150 - 2.04.210

BERKELEY POLICE DEPARTMENT

DATE ISSUED: May 4, 2009

GENERAL ORDER U-2

SUBJECT: USE OF FORCE

PURPOSE

1- The purpose of this General Order is to provide Departmental standards on the reporting and use of force. This General Order supersedes all other Orders, Regulations, and training information to the extent that they are inconsistent with this Order.

POLICY

2- Police officers may use reasonable force to (1) make an arrest, (2) prevent an escape of a suspect, (3) overcome resistance, or (4) maintain order.

- (a) Under the Fourth Amendment of the United States Constitution, an officer can use reasonable force when doing so is reasonable under the totality of the circumstances as they appear through the eyes of the officer. Circumstances to be considered include the immediacy and severity of a threat to the safety of the officer or others, the severity of the crime involved, and whether a suspect is fleeing or resisting.

3- In deciding what type of reasonable force to use, officers and employees must use sound judgment and their training to assess the degree of threat in a given situation, and to determine what Departmentally authorized force techniques or weapons will bring the situation under control in a reasonable manner.

- (a) The Department uses a “use of force continuum” that refers to the concept that there are reasonable responses for every threat an officer faces in a hostile situation. The “spoked wheel” is one visual concept of the various options that an officer should consider in a threatening situation.
- (b) The force utilized need not be sequential (e.g., gradual or preceded by attempts at lower levels of force) if those lower levels are not appropriate to

the threat.

DEFINITIONS

- 4- Lethal Force: Any use of force that creates a substantial risk of causing death or serious bodily injury.
- 5- Less-Than-Lethal Force: Any use of force which, due to possible physiological effects of application, presents less potential for causing death or serious injury than conventional lethal force options.
 - (a) **Less-than-lethal force options include, but are not limited to, a specialized launcher, or other authorized device that can discharge, fire, launch or otherwise propel single or multiple flexible or non-flexible projectiles designed to cause physiological effects consistent with blunt force impact.**
- 6- Non-Lethal Force: Any use of force other than lethal force or less-than-lethal force.
- 7- Officer (or) Police Officer: Any sworn peace officer.
- 8- Authorized Employee: Any non-sworn employee who has received defensive tactics training and has been authorized by the Chief of Police to use non-lethal force.
- 9- Employee: Any non-sworn employee of the Berkeley Police Department, including those deemed "authorized employees."
- 10 -Deploy:
 - (a) With respect to less-than-lethal munitions, removal of a launcher, projectile or other device from its storage container for the purpose of operational use.
 - (b) **With respect to chemical agents and smoke, removal of a canister or delivery device from its storage container for the purpose of operational use.**
- 11- Use:
 - (a) With respect to less-than-lethal munitions, to discharge a less-than-lethal munition.

- (b) With respect to chemical agents and smoke, to discharge the contents of a canister or delivery device.

PROCEDURES

12- Use of Lethal Force

Officers shall not discharge firearms or use other lethal force in connection with police duty, except in the following circumstances:

- (a) When the officer reasonably believes that doing so is necessary to protect the officer or others from death or serious bodily injury, and, where feasible, some warning has been given.
- (b) To apprehend a suspected fleeing felon:
 - (1) When necessary to prevent escape, and
 - (2) When the officer has probable cause to believe that the suspected fleeing felon poses a significant threat of death or serious bodily injury to the officer or others, and
 - (3) Where feasible, some warning has been given.
- (c) During other police duty:
 - (1) In supervised Department training sessions at an approved range, or other site.
 - (2) To destroy an animal that represents a threat to public safety, or as a humanitarian measure where the animal is seriously injured. If possible, supervisory approval should be obtained prior to using lethal force to destroy an animal.

13- Use Of Vehicles

Officers shall not use police vehicles to ram or block other vehicles, persons, or moving objects in a manner that reasonably appears to constitute the use of lethal force, except in the following circumstances:

- (a) When the officer reasonably believes that doing so is necessary to

protect the officer or others from death or serious bodily injury, and, where feasible, some warning has been given.

- (b) To apprehend a suspected fleeing felon:
 - (1) When necessary to prevent escape, and
 - (2) When the officer has probable cause to believe that the suspected fleeing felon poses a significant threat of death or serious bodily injury to the officer or others, and
 - (3) Where feasible, some warning has been given.

Deployment and Use of Less-Than-Lethal Force

14- Less-than-lethal munitions shall only be deployed and used by trained officers authorized by the Chief of Police.

~~15- Except during authorized training programs, less-than-lethal force shall be deployed only at the direction of a sergeant or command officer, or the Incident Commander in a crowd situation.~~

16- Less-than-lethal **force** shall only be used in the following situations, and, where feasible, **after** some warning has been given:

- (a) When an act of violence is occurring, or is about to occur;
- (b) To overcome the resistance of a physically combative person, or to gain compliance from a non-compliant person reasonably believed to be armed;
- (c) To deter a person who is reasonably believed to be armed and is threatening to harm him-/herself, another person, or an officer; or,
- (d) To resolve a potentially violent incident not otherwise described above, when deemed reasonable by the authorizing sergeant or commander.

17- When practical, approval for the deployment and use of less-than-lethal

force will be obtained from the Patrol Division Watch Commander. If there is no Watch Commander on duty, deployment authorization will be requested from the Duty Command Officer (DCO).

(a) Prior to deployment, efforts should be made to ensure an appropriate medical response is available.

(b) In the event exigent circumstances preclude prior command approval, the supervisor authorizing less-than-lethal **force** deployment shall notify the Watch Commander, or in his/her absence the DCO, as soon as practical.

~~18--In crowd situations, less than lethal **force** and/or chemical agents shall not be used without the prior approval of the Chief of Police, or his/her designee, unless exigent circumstances prevent the request from being made and the delay would likely risk injury to citizens or police personnel (e.g., rocks, bottles, or other projectiles are being thrown and immediate crowd dispersal is necessary).~~

~~(a) In the event immediate use is necessary, notification to the Chief of Police, or his/her designee, should be made as soon as possible after the deployment.~~

Use of Non-Lethal Force

19- When lethal force and less-than-lethal **force** are not authorized, officers and authorized employees may use reasonable **approved** non-lethal force techniques and weapons in the following circumstances:

- (a) To protect themselves or another person from physical injury;
- (b) To restrain or subdue a resistant individual; or
- (c) To bring an unlawful situation safely and effectively under control.

Prohibited Uses of Force

20 - The following uses of force are prohibited:

(a) Carotid Restraint Hold: Council Resolution No. 52,605 - N.S., dated February 14, 1985, "Prohibiting use of 'chokehold' for law enforcement purposes in the City of Berkeley" states: "Be it resolved by the Council of the City of Berkeley as follows: That the chokehold, including but not limited to the carotid restraint and the bar-arm hold, is hereby banned from use for law enforcement purposes in the City of Berkeley."

(1) The term bar-arm refers to a variety of techniques. As defined in the City Council Resolution, "bar-arm hold" refers to *any* use of the forearm to exert pressure against the front of the neck. However, other types of arm hold techniques (e.g., those that involve control of the arm, wrist or elbow) remain authorized.

(b) Oleoresin Capsicum (pepper spray) for use as a crowd control technique is prohibited. On September 16, 1997, the City Council passed a policy recommendation that says, in part, "no pepper spray will be used for crowd control by the Berkeley Police Department."

(c) Deployment of less-than-lethal munitions from a shotgun is prohibited.

(d) Use of chemical agents or pyrotechnic gas dispersal devices shall not be used for crowd control purposes.

(e) Use of Specialty Impact Less-Lethal Munitions shall not be used for crowd control purposes.

Provision of Medical Attention

21 - When an officer or employee uses force that results in injury, or when a subject complains that an injury has been inflicted, the officer or employee shall ensure that the subject receives appropriate medical care. (See also General Order A-17)

Unauthorized Use of Force / Intervention and Reporting

22- When an officer or employee witnesses any other officer or employee of this Department, or of any other law enforcement agency, use force that he or she believes is unauthorized, he or she shall do the following:

(a) If the witness employee is a sworn officer, he or she shall immediately take reasonable action to attempt to mitigate such use of force. This may include verbal intervention or, if appropriate, physical intervention.

(1) A sworn officer's failure to act may potentially expose him/her to criminal charges and/or civil liability.

(b) Any officer or employee who observes a potentially unauthorized use of force shall make an oral report to an on-duty sergeant or a command officer at the first opportunity.

Use of Force / Reporting Requirements

23- Any officer or employee who uses force shall, as soon as practical, make an oral report to an on-duty sergeant or command officer in the following four situations:

(a) When an officer discharges a firearm (intentional or unintentional) while on duty, except during a supervised training session.

(b) When an officer discharges a firearm while off-duty pursuant to his or her authority as a law enforcement officer.

(c) When an officer or employee uses force that results in death or injury, or when a subject complains that an injury has been inflicted. (See also General Order C-16)

(d) When an officer or employee uses a non-lethal *weapon* (e.g., Oleoresin Capsicum or baton) on a person, whether or not an injury is

sustained, except in those situations deemed "Unusual Occurrences" as set forth in General Order U-4 and the Event Management Manual, in which case, the After Action Report will serve as the police report. (See also General Order U-4)

24- The officer or employee must also complete a police or incident report in any of the above four situations.

25- Whenever an officer or employee uses Oleoresin Capsicum (pepper spray), he or she must also complete a "Use of Pepper Spray Report" form. (See Training and Information Bulletin #216 for detailed instructions in completing this form)

Use of Force / Supervisor Responsibilities

26- A sergeant shall immediately be assigned and shall respond to the scene in the following four situations:

- (a) When an officer discharges a firearm (intentional or unintentional) while on duty, except during a supervised training session.
- (b) When an officer discharges a firearm while off-duty pursuant to his or her authority as a law enforcement officer.
- (c) When an officer or employee uses force (including, but not limited to, a non-lethal weapon) that results in death or injury, or when a subject complains that an injury has been inflicted. (See also General Order C-16)
- (d) When an officer or employee reports a use of force by another officer or employee of the Department, or of any other law enforcement agency, that he or she believes is unauthorized.

27- A supervisor shall complete a Use of Force Report in any of the above four situations.

- (a) A supervisor shall complete a Use of Force Report whenever an officer or employee uses a non-lethal weapon on a person, even if no injury results.

(b) The supervisor shall attach copies of all police reports relating to the incident to the Use of Force Report. (See Use of Force Report form at the end of this General Order)

28- The supervisor who completes the Use of Force Report shall route the Use of Force Report (with attached police reports) and/or Use of Pepper Spray Report forms to the Division Commander through the chain of command.

Use of Force / Administrative Review

29- The Division Commander shall review the Use of Force Report (and when applicable, Use of Pepper Spray Report) and route the report to the Chief of Police with a recommendation of findings.

(a) The Chief of Police may convene a Review Board (as outlined in General Order R-3) instead of utilizing Division Commander Review.

30- The Chief of Police will make a finding that the use of force was either within policy or initiate additional administrative review/investigation as may be appropriate.

31- Any determination concerning the propriety of force used will be based on facts and the information available to the officer at the time the force was employed, and not upon information gained after the fact.

32- All Use Of Force Reports will be reviewed to determine whether Departmental use of force regulations, policies, or procedures were: 1) violated or followed; 2) clearly understood, effective, and relevant to the situation; and/or, 3) require revision or additional training.

33- Use of Force Reports will be held in file for five (5) years and then purged,

unless needed for additional administrative action.

SPECIAL PROCEDURES / DEATHS AND SERIOUS BODILY INJURY

34- In addition to the above, the Departmental response to incidents in which an officer uses force that results in death or a serious bodily injury shall be as follows:

(a) The officer shall be placed on administrative leave as outlined in Police Regulation 325: " ... If any person is seriously injured or killed as a result of an officer's actions, including the discharging of a firearm, such officer shall be placed on administrative leave for a period of time, as determined by the Chief of Police, depending upon the circumstances of the situation. The officer(s) shall not return to regular duties until he/she meets with a mental health professional."

(b) The Department shall conduct both an administrative and criminal investigation of the incident as outlined in General Order P-12 (Police-Involved Shootings And Fatal or Serious Injury Incidents); and a Review Board shall be convened as described in General Order R-3.

References:

Tennessee v. Garner (1986) 471 U.S. 1

Graham v. Connor (1989) 490 U.S. 386

Doerle v. Rutherford (9th Cir. 2001) 272 F.3d 1272

California Penal Code §§196, 197, 835, 835(a), 836, 836.5, and 843

General Orders A-17, C-16, **C-64**, F-2, P-12, **P-26**, R-3 and U-4

Police Regulations 202, 318, 321, 322, 323, 324, 325 and 332

Training and Information Bulletin 216

Lethal and Non-Lethal Force Manual

Uniform and Equipment Manual

City of Berkeley Council Resolution No. 52,605 – N.S. (2/14/85),
“Prohibiting use of ‘chokehold’ for law enforcement purposes in the City of
Berkeley”

National Tactical Officers Association, General Policy Statement
for Less-Than-Lethal Impact Projectiles (11/22/2002)

OFFICE OF CHIEF OF POLICE
OAKLAND POLICE DEPARTMENT

MEMORANDUM

TO: All Personnel

DATE: 04 Oct 13

SUBJECT: Revision of Training Bulletin III-G, CROWD CONTROL AND CROWD
MANAGEMENT POLICY (Rev. 28 Oct 05)

The purpose of the revision to this order is to update Departmental policy and procedures regarding crowd control and crowd management.

This following summary of the substantive changes to TB III-G shall not take the place of the review and understanding of the entire document:

- Added Part III, A, 4 (General Principles-Planning): Internal Affairs personnel and civilian staff will not have operational/tactical assignments or decision making roles for crowd control events.
- Added Part III, A, 4 (General Principles-Planning): Internal Affairs and Criminal Investigations Division shall have sufficient personnel available to conduct internal and criminal investigations during a crowd control event.
- Added Part III, A, 5 (General Principles-Planning): The Incident Commander of a crowd control event shall coordinate with the City Attorney and County District Attorney to ensure policies and case law information are current.
- Deleted the following from Part III, C, 1 (General Principles-Policing a Crowd): “Where additional resources are needed, they should be deployed to the greatest extent possible so they are not readily visible to the crowd”.
- Deleted the following from Part V, H, 1 (Display of Officers): “Once this tactic is selected, officers should be assembled in formation at a location outside the view of the crowd” and “Do not bluff the crowd.”
- Deleted from Part V, H, 3, c (Police Formations and Use of Batons): “When reasonably necessary for protection of the officers or to disperse individuals in the crowd pursuant to the procedures of this policy, batons may be used in a pushing or jabbing motion. Baton jabs should not be used indiscriminately against a crowd or group of persons but only against individuals who are physically aggressive or actively resisting arrest. Baton jabs should not be used in a crowd control situation against an individual who is physically unable to disperse or move because of the press of the crowd or some other fixed obstacle”.
- Added Part V, H, 4, d (Non Hand-held Crowd Control Chemical Agents): Indirect use of chemical agents shall not be used unless approved by the Incident Commander. Under exigent circumstance, a commander or supervisor can use chemical agents. The Incident Commander shall be notified immediately upon an exigent use of chemical agents.
- Added Part V, H, 5, a (Hand-thrown chemical agents or pyrotechnic gas dispersal devices): Hand-thrown chemical agents or pyrotechnic gas dispersal devices shall not be used unless approved by the Incident Commander.

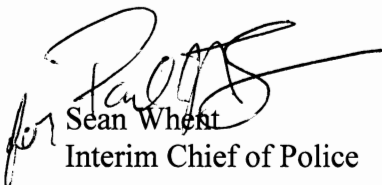
Under exigent circumstance, a commander or supervisor can use hand-thrown chemical agents or pyrotechnic gas dispersal devices chemical agents. The Incident Commander shall be notified immediately upon an exigent use of hand-thrown chemical agents or pyrotechnic gas dispersal devices.

- Added Part VI, G (Electronic Immobilizing Devices): "Officers are not restricted from using Tasers in accordance with Department General Order K-3, USE OF FORCE."
- Added Part VI, I (Munitions Inventory Log): Documentation and responsibilities for a munitions inventory log.
- Added Part VIII, B (Cite/Release and Booking Procedures): "...officers may cite and release arrestees from temporary processing stations or police facilities as near the site of the arrest as possible. While detained during the citation and release process, arrestees shall have reasonable access to toilet facilities and to appropriate medical attention."
- Added Part VIII, C (Cite/Release and Booking Procedures): "No fingerprinting will be done as part of the citation and release process. Arrestees may be instructed to appear for booking prior to or after arraignment. Commanders shall exercise discretion as to whether property searches are necessary. Property of persons who qualify for citation and release will not be confiscated unless it is found to contain contraband. The intention of this policy is to release citation-eligible arrestees as promptly as possible, and to obviate the need to transfer such arrestees to the Sheriff's custody. Persons for whom a valid warrant is confirmed, or who do not produce valid identification or who are otherwise found ineligible for citation will be transferred to the Sheriff's custody".
- Added Part IX, 1-7 (Mutual Aid and Multi-Agency Coordination). Roles and responsibilities.
- Added Part X, 1 (Documentation): "Officers shall utilize their Personal Digital Recording Device (PDRD) in accordance with DGO I-15.1. In addition, officers shall activate their PDRDs whenever taking any enforcement action during a crowd control situation or when ordered to activate their PDRD by a supervisor or commander".
- Added Part XI, B, C, 1-5 (Reporting): The Incident Commander will be responsible for conducting a debrief of the crowd control event within 72 hours and an After Action Report within 30-days.
- Added Part XIV Crowd Management Coordinator): The responsibilities of the Crowd Control Coordinator.

The provisions of Special Orders 7088 and 8135 are incorporated into this order and are hereby canceled.

Personnel shall acknowledge receipt, review, and understanding of this directive in accordance with the provisions of DGO A-1, DEPARTMENTAL PUBLICATIONS.

By order of


Sean Whent
Interim Chief of Police

Date Signed: 03 OCT 13

TRAINING



BULLETIN

Date of Issue / Revision
04 OCT 13

Index Number: III-G
Alpha Index: Crowd Control and
Crowd Management

Evaluation Coordinator: BFO Deputy Chief
Automatic Revision Cycle: 3 Years

"Department Training Bulletins shall be used to advise members of current police techniques and procedures and shall constitute official policy."

OPD Crowd Control and Crowd Management Policy

The purpose of this Training Bulletin is to set forth policy and procedures regarding crowd control and crowd management.

I. POLICY

The Oakland Police Department crowd management and crowd control policy is to

- Apply the appropriate level of direction and control to protect life, property, and vital facilities;
- Maintain public peace and order; and
- Uphold constitutional rights of free speech and assembly while relying on the minimum use of physical force and authority required to address a crowd management or crowd control issue.

II. DEFINITIONS

A. Crowd Management

Crowd management is defined as techniques used to manage lawful public assemblies before, during, and after an event for the purpose of maintaining the event's lawful status. Crowd management can be accomplished in part through coordination with event planners and group leaders, permit monitoring, and past event critiques.

B. Crowd Control

Crowd control is defined as those techniques used to address unlawful public assemblies, including a display of formidable numbers of police officers, crowd containment, dispersal tactics, and arrest procedures.

C. First Amendment Activities

First Amendment activities include all forms of speech and expressive conduct used to convey ideas and/or information, express grievances, or otherwise communicate with others and include both verbal and non-verbal expression.

Common First Amendment activities include, but are not limited to, speeches, demonstrations, vigils, picketing, distribution of literature, displaying banners or signs, use of puppets to convey a message, street theater, and other artistic forms of expression.



Crowd Control and Crowd Management, Index Number III-G

All these activities involve the freedom of speech, association, and assembly and the right to petition the government, as guaranteed by the United States Constitution (First Amendment) and the California Constitution (Article 1, Sections 2 & 3.)

All persons have the right to march, demonstrate, protest, rally, or perform other activities protected by the First Amendment of the United States Constitution and the California Constitution.

The government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.

D. Demonstration

Demonstration is used generically in this Training Bulletin to include a wide range of First Amendment activities which require, or which may require, police traffic control, crowd management, crowd control, crowd dispersal, or enforcement actions in a crowd situation.

As used in this Training Bulletin, the term, demonstration, means a public display of a group's or individual's feeling(s) toward a person(s), idea, cause, etc and includes, but is not limited to, marches, protests, student walk-outs, assemblies, and sit-ins. Such events and activities usually attract a crowd of persons including participants, onlookers, observers, media, and other persons who may disagree with the point of view of the activity.

E. Crowd Event or Crowd Situation

This Training Bulletin covers all crowd events or crowd situations, including sporting events, festivals, concerts, celebratory crowds, and demonstrations as defined above.

III. GENERAL PRINCIPLES

The Oakland Police Department's Crowd Management/Crowd Control Policy consists of the general principles discussed below.

A. Planning

1. Command staff shall be notified immediately of large or potentially disruptive demonstrations and/or crowd events.
2. The Incident Commander shall be responsible for the development of a written operations plan.
3. The Incident Command System shall be used for managing crowds and acts of civil disobedience.
4. Internal Affairs personnel and civilian staff shall not be included in any planning, tactical or strategy component of an anticipated crowd control or management scenario, other than to help plan for the specific role of IAD functions such as complaint intake and investigations.



Ensure there are sufficient Criminal Investigation Division (CID) and Internal Affairs Division (IAD) personnel that are not assigned to uniformed field assignments where a reasonable possibility of confrontation, force, or subsequent alleged misconduct or officer involved criminal complaints may occur, so that they are available for investigating such allegations.

5. The Incident Commander shall coordinate with the City Attorney and County District Attorney to solicit and ensure information is current regarding but not limited to:
 - a. Criteria for unlawful assembly.
 - b. Appropriate penal codes for enforcement and arrest criteria.
 - c. Appropriate Oakland Municipal Codes for enforcement and arrest criteria.
 - d. Legal updates regarding force, search and seizure and arrest.
6. OPD shall make every effort to follow the principle of establishing contact and communication with the event or demonstration planners.

Stakeholder involvement is critical to the overall success of managing crowd events and/or civil disobedience during demonstrations. If knowledge exists that a demonstration or crowd event may happen or will happen, OPD shall proactively and repeatedly make every reasonable attempt to establish and to maintain communication and cooperation with representatives or leaders of the demonstration or crowd event, without regard to whether a permit has been applied for or issued.

When planning for and responding to demonstrations, crowd events, and civil disobedience situations, Incident Commanders assigned to these incidents shall facilitate the involvement of stakeholders. If and when communication is established, personnel shall make every effort to identify representatives or leaders of the event and identify a primary police liaison. The primary police liaison should be requested to be in continuous contact with an assigned police representative, preferably the Incident Commander or someone with continuous access to the Incident Commander.

A group's failure to respond to OPD attempts to establish communication and cooperation prior to a demonstration shall not mitigate OPD's efforts to establish liaison and positive communication with the group as early as possible at the scene of the demonstration or crowd event.

7. Spontaneous demonstrations or crowd events, which occur without prior planning and/or without prior notice to the police, present less opportunity for OPD planning and prevention efforts. Nonetheless, the same policies and regulations concerning crowd management, crowd control, crowd dispersal, and police responses to violence and disorder apply to a spontaneous demonstration or crowd event situation as to a planned demonstration or crowd event. Incident Commanders shall involve representatives of demonstrators or crowd events when planning and responding to both planned and spontaneous events.



B. Deployment

1. Decisions about crowd dispersal and general strategies about crowd containment or crowd redirection, multiple simultaneous arrests, planned individual arrests, or planned use of force shall be made at the level of the Incident Commander or higher.
 - a. If such decisions are made by higher ranking off-site OPD officials, it is required that the Incident Commander first be consulted about the state of affairs in the field and the potential consequences of the decision.
 - b. All such decisions shall be documented in writing with regard to time, the identity of the person making the decision, and the precise decision and directions given. Such documentation shall be made at the time of the decision or as soon thereafter as possible and included in an After Action Report.

This directive shall not preclude individual commanders, supervisors, and officers from defending themselves or others from imminent danger when the delay in requesting permission to take action would increase the risk of injury.

2. OPD recognizes that the designated police liaison may change during the course of an event and that leadership of certain groups may not exist nor desire to be identified. No retaliatory practices or adverse action shall be taken by OPD against a group because it has failed or refused to appoint a police liaison or otherwise establish lines of communication with OPD.
3. Communication with the identified police liaison shall continue even if enforcement actions commence.
4. As staffing permits, officers should be deployed to the best available vantage points to observe and report crowd actions.
5. Lines of control should be established, especially in events that involve protesters with opposing views. Whenever possible, hostile factions should be separated.
6. Considering the type of crowd involved is an important factor in responding properly to its behavior.
7. Crowds may vary from cooperative or celebratory to non-compliant, hostile, and combative. Organized demonstrations in which some engage in coordinated, nonviolent civil disobedience should be distinguished, to the extent possible, from crowds in which substantial numbers of people are engaged in other types of unlawful acts.

C. Policing a Crowd

1. Sufficient resources to make multiple simultaneous arrests should be available at demonstrations where such arrests are a reasonable possibility. However, this need must be balanced against the fact that a large and visible police presence may have a chilling effect on the exercise of free speech rights.
2. When possible, officers should be at their posts well in advance of arriving participants. If possible, officers should be positioned at a reasonable distance from the crowd to avoid a perception of intimidation.



3. In general, OPD officers shall work together in squads or platoons when policing a demonstration.
4. Each officer shall wear a badge, nameplate, or other device on the outside of his or her uniform or on his or her helmet which bears the identification number or the name of the officer, as required by Penal Code § 830.10.

The number or name shall be clearly visible at all times. The letters or numerals on helmets, jackets, and vests shall be clearly legible at a distance sufficient to provide a measure of safety for both officers and demonstrators/observers and, in no case, shall be less than two inches in height on helmets.

5. Crowd control and crowd dispersal, as well as a show of force in crowd control situations, should be accomplished whenever possible using specialized units of OPD rather than on-duty patrol officers.
6. Regardless of whether a parade permit has been obtained, OPD officers will try to facilitate demonstrations that may temporarily block traffic and/or otherwise use public streets subject to time, place, and manner of circumstances, by regulating and/or rerouting traffic as much as practical.

For a demonstration without a pre-planned route, the Incident Commander shall evaluate the size of the crowd with regard to whether demonstrators should be required to stay on the sidewalk or whether demonstrators should be allowed to be in one or more lanes of traffic.

This directive does not mean demonstrations must be allowed to deliberately disrupt commuter traffic and/or bridge approaches.

The Incident Commander shall balance the level of disruption to traffic against the OPD policy of facilitating First Amendment activity, the practicality of relegating the crowd to sidewalks or an alternate route, the expected duration of the disruption, and the traffic disruption expected in making a mass arrest if demonstrators refuse to leave the street.

OPD shall seek to communicate with organizers through their police liaison to resolve a problem if possible. Traffic control may also be essential at varying points in a demonstration and may help accomplish crowd containment, crowd isolation, or crowd dispersal.

7. It is essential to recognize that all members of a crowd of demonstrators are not the same.

Even when some members of a crowd engage in violence or destruction of property, other members of the crowd are not participating in those acts. Once some members of a crowd become violent, the situation often turns chaotic, and many individuals in the crowd who do not want to participate in the violent or destructive acts may be blocked from leaving the scene because the crowd is so large or because they are afraid they will move into a position of heightened danger.

This understanding does not mean OPD cannot take enforcement action against the crowd as permitted under this policy, but OPD shall seek to minimize the risk that force and arrests may be directed at innocent persons.



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Verbal abuse against officers shall not constitute a reason for an arrest or for any use of force against such individuals. Officers shall avoid responding to abusive comments

8. Officers must not be affected by the content of the opinions being expressed nor by the race, gender, sexual orientation, physical disabilities, appearances, or affiliation of anyone exercising their lawful rights.
9. Department personnel must maintain professional demeanor and remain neutral in word and deed despite unlawful or anti-social behavior on the part of crowd members. Unprofessional police behavior can inflame a tense situation and make control efforts more difficult and dangerous.

Strong supervision and command are essential to maintaining unified, measured, and effective police response. A response incorporating strong leadership and based upon teamwork is crucial to maintaining control and safety. Impulsive or independent actions by officers are to be avoided.

10. Officers in non-violent crowd situations shall not display weapons before a dispersal order is given or other enforcement action is implemented.
11. OPD officers shall not be sent into an obviously hostile crowd solely for the purpose of communication. OPD officers shall not penetrate a crowd for an individual arrest unless the targeted individual is involved in criminal conduct which endangers persons or property, and the decision to move into the crowd is made by a supervisor or commander.
12. The Incident Commander and supervisors shall make every effort to ensure that the police mission is accomplished as efficiently and unobtrusively as possible with the highest regard for the human dignity and liberty of all persons and with minimal reliance on the use of physical force.

The use of force shall be restricted to circumstances authorized by law and to the degree reasonably necessary in light of the circumstances confronting members. This directive does not preclude police officers from taking appropriate action to direct crowd and vehicular movement; enforce ordinances and statutes; and employ the physical force necessary to maintain the safety of the crowd, the general public, law enforcement personnel, and emergency personnel.

IV. RESPONSES TO CROWD SITUATIONS

A. Spontaneous Event or Incident

1. The Watch Commander shall respond to the scene of spontaneous events, when practical, and take command of the incident as the Incident Commander until relieved by a ranking officer.
2. The Incident Commander shall declare over the police radio that he or she has assumed command of the incident. When practical, a command post shall be established as soon as possible.



3. An immediate assessment of the situation is essential for effective police response. The Incident Commander must ascertain the following information at the earliest possible time:
 - a. The location and type of event.
 - b. First Amendment activities will be evaluated by the Incident Commander to determine lawfulness of the actions by groups and individuals.
 - c. The approximate number of specific individuals engaged in unlawful conduct.
 - d. The likelihood that unlawful behavior will spread to other crowd participants (mimicking).
 - e. Immediate threats to the safety of the public and/or police officers.
 - f. The number of structure(s) or vehicle(s) involved.
 - g. The size of the involved area.
 - h. The number of additional officers and police resources needed as well as requirements for specialized units (Traffic, Tactical Operations Team, Crime Reduction Teams, etc.).
 - i. The appropriate manner of response (Code 2 or 3).
 - j. The staging area.
 - k. The location for a media staging area.
 - l. The ingress and egress routes.
 - m. Additional resources needed (paramedic, fire department, outside agencies, etc.).

B. Planned Event Involving Potentially Large Crowds

1. Upon notification, the Special Operations Division Commander or designee (Incident Commander) shall develop a written operations plan.

The Incident Commander of planned events shall be responsible for the overall coordination of the event as well as for crowd control and management.

Operations plans for large events requiring the redeployment of personnel from regular assignments shall be approved by the Deputy Chief of Field Operations.

2. The following factors shall be considered and addressed in developing the operations plan for a large crowd event, including but not limited to:
 - a. What type of event is to occur?
 - b. Who are the organizers? What is their past record of conduct (peaceful, violent, cooperative, etc.)?



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- c. Will outsiders visibly and/or physically oppose the planned event?
- d. Will the event involve the use or abuse of alcohol or other substances?
- e. Where is the event to occur? Consider the size, location, and ingress and egress points.
- f. What is the optimal site for a command post as well as staging areas?
- g. Have the appropriate permits been issued?
- h. Have other agencies, bureaus, and divisions been notified and included in the planning process (paramedics, fire department, Communications, Intel, etc.)?
- i. Will the EOC be needed? Is Mutual Aid needed?
- j. Will off-duty personnel be involved? Has the commander of any off-duty personnel been made part of the planning process?
- k. Is it possible and appropriate to coordinate with group organizers and explain the Department's mission, preparation, and potential responses?

Information considered sensitive or confidential shall not be released to group organizers if it will jeopardize the safety or effectiveness of police personnel.

- l. Have the proper number of personnel been scheduled to safely handle the event? Should a reserve force be available?
 - m. Has an enforcement policy been formulated and communicated to affected personnel?
3. The OPD Event Coordinator shall perform the following tasks.
- a. Gather and analyze intelligence information about future crowd events, including review of information from both internal and external sources.
 - b. Coordinate with Special Events regarding permits and various Department sections, including bureaus, divisions, and specialized units, to prepare for a planned special event.
 - c. Meet in advance with event sponsors and group leaders to exchange information and to present the Department's philosophy and intent. Details of the department plan and preparation shall not be disclosed except when necessary to ensure success of the operation.
 - d. Coordinate with affected bureaus, divisions, police service areas, and special units to prepare and coordinate the development of an operations plan for a given event that details assignments, traffic and crowd flow, communications, tactics, and training.
 - e. Prepare operations plan as requested.
 - f. Coordinate inspection of protest/event area prior to an event to locate any pre-positioned equipment staged by demonstrators.



- g. Ensure that appropriate equipment and supplies are available.
 - h. Ensure that a video team(s) is established and required video equipment is available (see Part X.)
 - i. Establish protocols and procedures for the processing of arrestees and collection of evidence.
- 4. Personnel creating an operations plan to address a large crowd event should anticipate a variety of scenarios and devise a police response for each. Such scenarios and responses should be made part of the final plan and communicated to the affected personnel.
 - 5. When practical, personnel preparing for a large event with the potential for violence shall be retrained; training to include physically practicing various aspects of crowd management and crowd control.

Topics may include but are not limited to Mobile Field Force (MFF), multiple simultaneous arrest procedures, functioning in a tear gas environment, use of specialty impact munitions, applicable ordinances and statutes, protected speech, etc.

- 6. Personnel shall be briefed on the operations plan and their particular assignments before deployment.

Specific instructions covering topics such as applicable laws, community concerns, appropriate enforcement actions, chain of command, tactics, traffic patterns, etc., shall be clearly presented to personnel. All personnel shall be given a copy of the operations plan.

V. PERMISSIBLE CROWD CONTROL AND CROWD DISPERSAL TECHNIQUES

- A. In the event of a declared unlawful assembly, it is the general policy of the OPD to use multiple simultaneous arrests to deal with a non-violent demonstration that fails to disperse and voluntarily submits to arrest as a form of political protest rather than dispersing the demonstrators by using weapons or force beyond that necessary to make the arrests.
- B. The Incident Commander shall make the final decision as to what control action, if any, will be taken to address a given crowd situation.

Crowd size and available Department resources will also factor into the police response. The following factors will be considered prior to determining what action to take:

- 1. Will police action likely improve the situation?
- 2. Will targeting specific violent or disruptive individuals for arrest be more effective or appropriate than applying control tactics to the entire crowd?
- 3. Are sufficient resources available to effectively manage the incident?



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4. Have clear and secure escape routes been established for both the crowd and the police?
 5. Has the dispersal order been given (loudspeaker, personal contact, etc.)?
 6. Have contingency plans been established in the event initial police efforts are ineffective?
- C. Commanders shall constantly reassess and adjust tactics, as necessary, as the crowd's actions change.
- D. The Incident Commander shall consider and take reasonable and appropriate steps to ensure the safety of bystanders.
- E. When officers take action to move or disperse a crowd, steps should be taken to ensure that the crowd is not moved into a position or place that could be dangerous to persons in the crowd or bystanders, such as pushing them up against glass windows.
- F. When an Unlawful Assembly May Be Declared
1. The definition of an unlawful assembly has been set forth in Penal Code Section 407 and interpreted by court decisions. The terms, "boisterous" and "tumultuous," as written in Penal Code Section 407, have been interpreted as "conduct that poses a clear and present danger of imminent violence" or when the demonstration or crowd event is for the purpose of committing a criminal act.

The police may not disperse a demonstration or crowd event before demonstrators have acted illegally or before the demonstrators pose a clear and present danger of imminent violence.
 2. The mere failure to obtain a permit, such as a parade permit or sound permit is not a sufficient basis to declare an unlawful assembly. There must be criminal activity or a clear and present danger of imminent violence.
 3. The fact that some of the demonstrators or organizing groups have engaged in violent or unlawful acts on prior occasions or demonstrations is not grounds for declaring an assembly unlawful.
 4. Unless emergency or dangerous circumstances prevent negotiation, crowd dispersal techniques shall not be initiated until after attempts have been made through contacts with the police liaisons and demonstration or crowd event leaders to negotiate a resolution of the situation so that the unlawful activity will cease and the First Amendment activity can continue.
 5. If after a crowd disperses pursuant to a declaration of unlawful assembly and subsequently participants assemble at a different geographic location where the participants are engaged in non-violent and lawful First Amendment activity, such an assembly cannot be dispersed unless it has been determined that it is an unlawful assembly and the required official declaration has been adequately given.



G. Declaration of Unlawful Assembly

1. When the only violation present is unlawful assembly, the crowd should be given an opportunity to disperse rather than face arrest.

Crowd dispersal techniques shall not be initiated until OPD has made repeated announcements to the crowd, asking members of the crowd to voluntarily disperse and informing them that, if they do not disperse, they will be subject to arrest.

These announcements must be made using adequate sound amplification equipment in a manner that will ensure that they are audible over a sufficient area. Announcements must be made from different locations when the demonstration is large and noisy. The dispersal orders should be repeated after commencement of the dispersal operation so that persons not present at the original broadcast will understand that they must leave the area. The announcements shall also specify adequate egress or escape routes. Whenever possible, a minimum of two escape/egress routes shall be identified and announced.

It is the responsibility of the on scene OPD commanders to ensure that all such announcements are made in such a way that they are clearly audible to the crowd.

2. Unless an immediate risk to public safety exists or significant property damage is occurring, sufficient time will be allowed for a crowd to comply with police commands before action is taken.
3. Dispersal orders should be given in English and in other languages that are appropriate for the audience.
4. The Incident Commander should ensure that the name of the individual making the dispersal order and the date/time each order was given is recorded.
5. Dispersal orders should not be given until officers are in position to support/direct crowd movement.
6. Personnel shall use the following Departmental dispersal order:

I am (rank/name), a peace officer for the City of Oakland. I hereby declare this to be an unlawful assembly, and in the name of the people of the State of California, command all those assembled at to immediately leave. If you do not do so, you may be arrested or subject to other police action, including the use of force which may result in serious injury.

Section 409 of the Penal Code prohibits remaining present at an unlawful assembly. If you remain in the area just described, regardless of your purpose, you will be in violation of Section 409. The following routes of dispersal are available (routes). You have (specify amount) minutes to leave. If you refuse to move, you will be arrested.

* If you refuse to move, chemical agents will be used. (* Provide the chemical warning only if use is anticipated).



7. When a command decision is made to employ crowd dispersal techniques, attempts to obtain voluntary compliance through announcements and attempts to obtain cooperation through negotiation shall both be continued. At any point at which a crowd is dispersing, whether as a reaction to police dispersal techniques, through voluntary compliance, or as a result of discussion or negotiation with crowd leaders, OPD dispersal techniques shall be suspended and the crowd shall be allowed to disperse voluntarily. This directive does not preclude a command decision by OPD to reinstate dispersal techniques if crowd compliance ceases.

H. Approved Tactics and Weapons to Disperse or Control a Non-Compliant Crowd

If negotiation and verbal announcements to disperse do not result in voluntary movement of the crowd, officers may employ additional crowd dispersal tactics, but only after orders from the Incident Commander or designated supervisory officials.

The permissible tactics to disperse or control a non-compliant crowd include all of the following (not in any specific order of use):

The use of these crowd dispersal tactics shall be consistent with the Department policy of using the minimal police intervention needed to address a crowd management or control issue in accordance with Department General Order K-3, USE OF FORCE.

1. Display of police officers (forceful presence).

A police formation may be moved as a unit to an area within the crowd's view to assist with crowd management. If a display of police officers, motorcycles, police vehicles, and mobile field forces, combined with a dispersal order, is not effective, more forceful actions may be employed.

Generally, officers should be assigned to squads of sufficient size to be effective. At larger events, the crowd can be divided (with a commander in charge of each squad).

2. Encirclement and Arrest

If the crowd has failed to disperse after the required announcements, officers may encircle the crowd or a portion of the crowd for purposes of making multiple simultaneous arrests (see Section VII).

Persons who make it clear (e.g., by sitting down, locking arms) that they seek to be arrested shall be arrested and not subjected to other dispersal techniques, such as the use of batons or chemical agents.

Arrests of non-violent persons shall be accomplished by verbal commands and persuasion, handcuffing, lifting, carrying, the use of dollies and/or stretchers, and/or the use of control holds including the bent-wrist control hold and twist-lock control hold (See Training Bulletin III-I.1, WEAPONLESS DEFENSE, pages 28-31.)

When dealing with non-violent or passive persons, control holds should only be used when a Supervisor or Commander determines that control holds are necessary to accomplish the policing goal after other methods of arrest have failed or are not feasible under the circumstances and when the use of control holds would be a lawful use of force.



In the event control holds are necessary, precautions should be taken to assure that arrestees are not injured or subjected to unnecessary or excessive pain.

A decision to authorize control holds and the reasons for said decision should be documented.

3. Police Formations and Use of Batons

- a. If a crowd refuses to disperse after the required announcements, the police may use squad or platoon formations (skirmish line, wedge, echelons, etc.) to move the crowd along.
- b. Batons shall not be used for crowd control, crowd containment, or crowd dispersal except as specified below.
- c. Batons may be visibly displayed and held in a ready position during squad or platoon formations.
- d. Batons shall only be used as set forth in Department General Order K-3, USE OF FORCE and Department Training Bulletin III-H.2, USE OF THE LONG BATON.

Officers shall not intentionally strike a person with any baton to the head, neck, throat, kidneys, spine, or groin or jab with force to the left armpit except when the person's conduct is creating an immediate threat of serious bodily injury or death to an officer or any other person. Batons shall not be used against a person who is handcuffed.

4. Non Hand-Held Crowd Control Chemical Agents

- a. Crowd control chemical agents are those chemical agents designed and intended to move or stop large numbers of individuals in a crowd situation and administered in the form of a delivery system which emits the chemical agent diffusely without targeting a specific individual or individuals.
- b. Chemical agents can produce serious injuries or even death. The elderly person or infant in the crowd or the individual with asthma or other breathing disorder may have a fatal reaction to chemical agents even when those chemical agents are used in accordance with the manufacturer's recommendations and the Department's training. Thus, crowd control chemical agents shall be used only if other techniques, such as encirclement and multiple simultaneous arrest or police formations have failed or will not accomplish the policing goal as determined by the Incident Commander.
- c. Members shall use the minimum amount of chemical agent necessary to obtain compliance in accordance with Department General Order K-3, USE OF FORCE.
- d. Indirect delivery or crowd dispersal spray and/or discharge of a chemical agent shall not be used in demonstrations or other crowd events without the approval of the Incident Commander. Only under exigent circumstances may a supervisor or commander authorize the immediate use of chemical agents.



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The Incident Commander shall be notified immediately when an exigent use of chemical agents has occurred.

- e. Chemical agents shall not be used for crowd control or dispersal without first giving audible warning of their imminent use and giving reasonable time to the crowd, media, and observers to disperse.
- f. If chemical agents are contemplated in crowd situations, OPD shall have medical personnel on site prior to their use and shall make provision for decontamination and medical screening to those persons affected by the chemical agent(s).

5. Hand-thrown chemical agents or pyrotechnic gas dispersal devices

- a. Hand-thrown chemical agents or pyrotechnic gas dispersal devices shall not be used for crowd control or crowd dispersal without the approval of the Incident Commander. Only under exigent circumstances may a supervisor or commander authorize the immediate use of hand-thrown chemical agents or pyrotechnic gas dispersal devices. The Incident Commander shall be immediately notified when an exigent use of hand-thrown chemical agents or pyrotechnic gas dispersal devices has occurred.
- b. The use of hand-thrown chemical agents or pyrotechnic gas dispersal devices may present a risk of permanent loss of hearing or serious bodily injury from shrapnel. Said devices shall be deployed to explode at a safe distance from the crowd to minimize the risk of personal injury and to move the crowd in the direction that will accomplish the policing objective.
- c. Hand-thrown chemical agents or pyrotechnic gas dispersal devices shall not be used for crowd control without first giving audible warnings to the crowd and additional reasonable time to disperse.
- d. Hand-thrown chemical agents or pyrotechnic gas dispersal devices shall be used only if other techniques such as encirclement and mass arrest or police formations have failed or will not accomplish the policing goal as determined by the Incident Commander.

VI. WEAPONS PROHIBITED FOR CROWD CONTROL AND CROWD DISPERSAL PURPOSES

A. Lethal Force

The use of lethal force by OPD members is governed by the Department's Use of Force Policy. Nothing about a crowd control situation eliminates or changes any of the constraints and criteria governing the use of lethal force in the Department's Use of Force Policy.

B. Canines

Canines shall not be used for crowd control, crowd containment, or crowd dispersal.



C. Horses

Horses shall be used only for purposes of crowd control in the event of a riot involving substantial numbers of people actively engaged in violence or serious property destruction. Horses shall never be used to disperse non-violent crowds, including persons who are seated or lying down.

Horses may be used for crowd management during festivals and sporting events.

D. Fire Hoses

Fire hoses shall not be used for crowd control, crowd containment, or crowd dispersal.

E. Motorcycles

The technique referred to as the Basic Use of Motorcycle Push Technique (B.U.M.P.) is prohibited. Motorcycles and police vehicles may not be used for crowd dispersal but may be used for purposes of observation, visible deterrence, traffic control, transportation, and area control during a crowd event.

F. Specialty Impact Less-Lethal Weapons

1. Skip Fired Specialty Impact Less-Lethal Munitions (Wooden Dowels and Stinger Grenades) are prohibited.
 - a. Any and all less-lethal specialty impact weapons designed to be skip fired or otherwise deployed in a non-directional non-target specific manner, including but not limited to the Multiple Wood Baton Shell (264W) manufactured by Armor Holdings, Inc. shall not be used at all by OPD during demonstrations or crowd events.
 - b. The use of the Stinger Grenade containing rubber pellets designed to be deployed in a non-directional non-target specific manner is also prohibited for all crowd control use.
2. Uses of Direct Fired Specialty Impact Less-Lethal Munitions (SIM)

Direct Fired SIM are less-lethal specialty impact weapons that are designed to be direct fired at a specific target, including but not limited to flexible batons ("bean bags"), and shall not be used for crowd management, crowd control or crowd dispersal during demonstrations or crowd events. Direct Fired SIM may never be used indiscriminately against a crowd or group of persons even if some members of the crowd or group are violent or disruptive.

- a. Direct Fired SIM may be used against a specific individual who is engaging in conduct that poses an immediate threat of loss of life or serious bodily injury to him or herself, officers, or the general public or who is engaging in substantial destruction of property which creates an immediate risk to the lives or safety of other persons.

In such instances, Direct Fired SIM shall be used only when other means of arrest are unsafe and when the individual can be targeted without endangering other crowd members or bystanders.



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- b. The use of Direct Fired SIM must cease when the violent or destructive actions cease. These weapons must not be used for the purpose of apprehension or to otherwise prevent escape unless escape would present a substantial risk of continued immediate threat to loss of life or serious bodily injury.
- c. Members shall only deploy Direct Fired SIM during a demonstration or crowd event under the direction of a supervisor.
- d. When circumstances permit, the supervisor on the scene shall make an attempt to accomplish the policing goal without the use of Direct Fired SIM as described above, and, if practical, an audible warning shall be given to the subject before deployment of the weapon.
- e. Any person struck by a round shall be transported to a hospital for observation and any necessary treatment. Ambulance service, if required, shall be ordered per Department General Order I-4, AMBULANCE SERVICE. First aid, when necessary, shall be administered per Training Bulletin III-K, FIRST AID.
- f. No member shall use Direct Fired SIM without formal training.
- g. Direct Fired SIM shall not be used against a person who is under restraint.
- h. Members shall not discharge a Direct Fired SIM at a person's head, neck, throat, face, left armpit, spine, kidneys, or groin unless deadly force would be justified.

G. Electronic Immobilizing Devices (EID)

EID's such as tasers, stun guns, and stun shields shall not be used for crowd management, crowd control, or crowd dispersal during demonstrations or crowd events. Officers are not restricted from using Tasers in accordance with Department General Order K-3, USE OF FORCE.

H. Aerosol Hand-held Chemical Agents

Aerosol, hand-held, pressurized, containerized chemical agents that emit a stream shall not be used for crowd management, crowd control, or crowd dispersal during demonstrations or crowd events. Aerosol hand held chemical agents may not be used indiscriminately against a crowd or group of persons, but only against specific individuals who are engaged in specific acts of serious unlawful conduct or who are actively resisting arrest.

Members shall use the minimum amount of the chemical agent necessary to overcome the subject's resistance in accordance with Department General Order K-3, USE OF FORCE.

Officers must be familiar with OPD Training Bulletin V-F.2, USE OF OLEORESIN CAPSICUM (OC), and, specifically, the risk factors associated with aerosol chemical agents and the treatment for individuals subjected to them.

Aerosol chemical agents shall not be used in a demonstration or crowd situation or other civil disorders without the approval of a supervisor or command officer.



When possible, persons should be removed quickly from any area where hand-held chemical agents have been used. Members shall monitor the subject and pay particular attention to the subject's ability to breathe following the application of OC. As soon as practical, members and employees shall obtain professional medical treatment for all persons who have had OC applied to them. Paramedics in the field may administer treatment if no other medical treatment is required. If paramedics are not available in a timely manner, subjects shall be transported to a hospital for treatment within 45 minutes of the application of OC.

A subject who has been sprayed with hand-held chemical agents shall not be left lying on his/her stomach once handcuffed or restrained with any other device.

I. Munitions Inventory Log

The Training Section shall maintain the munitions inventory log for all less-lethal munitions which are checked out during crowd control events. Officers shall update the munitions inventory log after each event to specify how many munitions were used and by which person. A copy of the inventory log shall be included in the after-action report.

VII. ARRESTS

A. Multiple Simultaneous Arrests

1. When a large-scale event involving possible arrests is to be conducted, OPD planners will estimate the number of potential arrestees and will configure arrest teams capable of managing multiple arrests safely.
2. When arrests are necessary, the Incident Commander shall attempt to ensure that sufficient numbers of police officers are present to effect arrests. This tactic can be effective in dispersing the remaining crowd members wanting to avoid arrest.
3. When multiple arrests are contemplated in advance and it is impracticable for arrestees to be cited at the scene as further discussed below, pre-arrangement of transportation shall be made.
4. The Incident Commander or his/her designee shall make the decisions to engage in selective individual arrests or multiple simultaneous arrests as a crowd control technique with consideration given to the following factors:
 - The likelihood that police action will improve the situation relative to taking no action.
 - The seriousness of the offense(s) as opposed to the potential for the arrest to escalate violence or unlawful activity by crowd members.
 - Whether individual or mass arrests will be more effective in ending the criminal activity at issue.
 - Whether clear and secure escape routes have been established for the crowd and police.
 - Whether communication has been established with crowd representatives.
 - What contingency plans are available?
 - What types of force can be used in effecting the arrests, if necessary.



5. Probable cause for each individual arrest:

Individuals may not be arrested based on their association with a crowd in which unlawful activity has occurred. There must be probable cause for each individual arrest.

This principle means the officer must have objective facts based on his own knowledge or information given him by other officers sufficient to believe that each specific individual being arrested committed the offense.

Thus, the only proper basis for a multiple simultaneous arrest of all the individuals encircled at a demonstration is failure to disperse (Pen. Code §409), when the dispersal was properly ordered based on the existence of an unlawful assembly and adequate notice and opportunity to disperse has been given.

To make arrests for violating Vehicle Code §2800 (non-compliance with lawful police order), the officer must have probable cause to believe that each individual arrested willfully failed or refused to comply with a lawful order.

6. The Incident Commander shall ensure that evidentiary items are recovered and preserved, when possible, to corroborate unlawful acts observed by personnel.

B. Arrests for Civil Disobedience

1. Some demonstrators commit "civil disobedience," by sitting down or otherwise blocking streets, intersections, sidewalks, and/or entranceways or by occupying a targeted office.

The proper response to such actions is to verbally advise the demonstrators that they will be subject to arrest if they choose to remain, allow time for some or all the demonstrators to cease the unlawful activity, and to arrest those who deliberately remain in violation of the law.

When practical, demonstrators committing civil disobedience shall be persuaded into compliance rather than being forcibly removed.

2. Passively resisting arrestees (i.e., arrestees who go limp) shall be arrested by handcuffing and then either by verbal persuasion, lifting, carrying, the use of dollies or stretchers, and/or control holds (See Training Bulletin III-I.1, WEAPONLESS DEFENSE, pages 28 - 31) depending on the circumstances and the decision of the Supervisor.

Control holds should be used only when the Supervisor determines that control holds are necessary to accomplish the policing goal after other methods of arrest have failed or are not feasible under the circumstances and when the use of control holds would be a lawful use of force.

In the event control holds are necessary, precautions must be taken to ensure that arrestees are not injured or subjected to unnecessary or excessive pain.

A Supervisor's decision to authorize control holds and the reasons for said decision should be documented.



Planning for demonstrations where civil disobedience and passive resistance to arrest are a possibility should take into account these different arrest techniques for passive demonstrators.

3. In some cases, demonstrators may lock arms or use lock boxes to slow down the arrest process.

Where such demonstrators have been advised that they will be subject to arrest if they choose to remain and refuse to disperse, a member of the arrest team shall individually advise each demonstrator that he or she is under arrest prior to the application of any force to remove locking devices or to move the demonstrators. The officer shall continue to give verbal directions to give the arrestee a chance to comply before force is used to unlock arms or implements used to remove lock boxes.

4. Although dealing with passive resistance may frustrate officers, civil disobedience is usually a nonviolent means of making a political statement, and officers shall remain neutral, non-antagonistic, and professional at all times in their response.

C. Use of Handcuffs

1. All persons subject to arrest during a demonstration or crowd event shall be handcuffed in accordance with department policy, orders, and Training Bulletins.
2. Officers should be cognizant that flex-cuffs may tighten when arrestees' hands swell or move, sometimes simply in response to pain from the cuffs themselves.

Each unit involved in detention and/or transportation of arrestees with flex-cuffs should have a flex-cuff cutter and adequate supplies of extra flex-cuffs readily available. The officer applying flex-cuffs shall write his serial number in indelible marker on the cuffs whenever used. When arrestees complain of pain from overly tight flex cuffs, members shall examine the cuffs to ensure proper fit

D. Arrest of Juveniles

Juveniles arrested in demonstrations shall be handled consistent with OPD policy on arrest, transportation, and detention of juveniles.

VIII. CITE/RELEASE AND BOOKING PROCEDURES

- A. Individuals arrested for minor offenses may be cited and released in compliance with Penal Code §853.6 and Department General Order M-7, CITATIONS FOR ADULT MISDEMEANORS, Part III, A-N.
- B. When it is impractical to cite arrestees at or near the site of the demonstration because of a substantial risk that this procedure would allow the unlawful activity to continue or because of specific geographic factors, officers may cite and release arrestees from temporary processing stations or police facilities as near the site of the arrest as possible. While detained during the citation and release process, arrestees shall have reasonable access to toilet facilities and to appropriate medical attention.
- C. No fingerprinting will be done as part of the citation and release process. Arrestees may be instructed to appear for booking prior to or after arraignment.



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Commanders shall exercise discretion as to whether property searches are necessary. Property of persons who qualify for citation and release will not be confiscated unless it is found to contain contraband. The intention of this policy is to release citation-eligible arrestees as promptly as possible, and to obviate the need to transfer such arrestees to the Sheriff's custody. Persons for whom a valid warrant is confirmed, or who do not produce valid identification or who are otherwise found ineligible for citation will be transferred to the Sheriff's custody.

- D. An officer seeking to book a misdemeanor arrestee into jail must have an articulable basis to believe that one of the specified statutory exceptions to mandatory cite and release applies to that individual. This basis must be documented in the police report.
- E. The mere fact that further demonstrations are likely to be held in the near future is not a proper basis to apply subdivision (7) of P.C. 853.6 ("reasonable likelihood that the offense may continue or resume") to individual demonstrators.
- F. There must be an articulable objective basis to believe that, if cited out, those specific individuals would continue the same illegal activity for which they were arrested.
- G. Individuals may not be booked into jail on the sole basis of a felony charge consisting of conspiracy to commit a misdemeanor.

IX. MUTUAL AID & MULTI-AGENCY COORDINATION

For large demonstrations and mass gatherings, OPD may be required to rely on Mutual Aid agencies for assistance (see DGO L-3, ASSISTANCE TO OUTSIDE JURISDICTIONS AND MUTUAL AID.) The Department is responsible for following the protocols of the Mutual Aid Plan in accordance with the California Emergency Services Act, commencing at Government Code Section 8550, for contacting law enforcement partners for assistance. Department leaders and commanders should be familiar with the process and responsibilities of requesting and receiving law enforcement mutual aid. See, the Law Enforcement Mutual Aid Plan and its companion document, Law Enforcement Guide for Emergency Operations, at www.calema.ca.gov. In addition, the IC shall be responsible for ensuring to the extent possible that mutual aid agencies:

- 1. Are briefed and in agreement with OPD's Unity of Command structure under which only OPD Commanders may authorize the use of less lethal munitions for crowd control and dispersal;
- 2. Are briefed on OPD's policy on prohibited weapons and force;
- 3. Do not bring or use any weapons or force that is prohibited under OPD's policy;
- 4. Are provided a copy of OPD's Crowd Control Policy and Use of Force policies;
- 5. Are not assigned to front-line positions or used for crowd intervention, control or dispersal unless there is a public safety emergency;
- 6. Complete required reports prior to being released from duty. Agencies should provide the following documents/reports when they are applicable: Use of force report, arrest report, crime report, injury report, equipment damage report and list of responding personnel; and



7. These provisions do not affect an OPD or mutual aid officer from taking action or using force against an individual in self-defense or in defense of another person or officer.

X. DOCUMENTATION

A. Video and Photographic Recording

1. It is the policy of the Department to videotape and photograph in a manner that minimizes interference with people lawfully participating in First Amendment activities.

Videotaping and photographing of First Amendment activities shall take place only when authorized by the Incident Commander or other supervisory officer.

Officers shall utilize their Personal Digital Recording Device (PDRD) in accordance with DGO I-15.1, PORTABLE VIDEO MANAGEMENT SYSTEM. In addition, officers shall activate their PDRDs whenever taking any enforcement action during a crowd control situation or when ordered to activate their PDRD by a supervisor or commander.

2. Individuals should not be singled out for photographing or recording simply because they appear to be leaders, organizers, or speakers.
3. Each camcorder operator shall write a supplemental report at the end of his/her duty assignment documenting the camcorder operations.
4. Unless they provide evidence of criminal activity, videos or photographs of demonstrations shall not be disseminated to other government agencies, including federal, state, and local law enforcement agencies. If videos or photographs are disseminated or shared with another law enforcement agency, a record should be created and maintained noting the date and recipient of the information.
5. If there are no pending criminal prosecutions arising from the demonstration or if the video recording or photographing is not relevant to an Internal Affairs or citizen complaint investigation or proceedings or to civil litigation arising from police conduct at the demonstration, the video recording and/or photographs shall be destroyed in accordance with Department and city policies.

This directive shall not prohibit the OPD from using these videos or footage from such videos as part of training materials for OPD officers in crowd control and crowd dispersal techniques and procedures. The destruction of any such videos or photographs shall be documented in writing with regard to the date of the destruction and the identity of the person who carried it out.

6. Nothing in this section is intended to alter the disclosure requirements of the California Public Records Act (Government Code §6250 et seq.) or the City of Oakland's Sunshine Ordinance (O.M.C. §2.20 et seq.).



XI. REPORTING

- A. The Incident Commander shall ensure that the Deputy Chief of the Bureau of Field Operations is notified of the incident in a timely manner.
- B. The Incident Commander shall ensure that a debrief is conducted within 72 hours of the critical incident.
- C. The IC shall evaluate the need for an After-Action report which outlines the lessons learned and training opportunities, as well as an assessment of the effectiveness and quality of the Operations Plans. An After Action Report will be completed within 30 days of the event if one of the following events occurs:
 - 1. Mutual Aid is requested;
 - 2. An unlawful assembly is declared;
 - 3. Arrests are made for acts of civil disobedience;
 - 4. Significant police resources are used to control the event; or
 - 5. Chemical agents or SIMS are used

The Operations Plan and After Action Report shall be reviewed by the chain of command and forwarded to the Bureau of Risk Management and the Crowd Control Coordinator for retention.

XII. PUBLIC INFORMATION AND THE MEDIA

- A. The media have a right to cover demonstrations, including the right to record the event on video, film, or in photographs.
- B. OPD members shall accommodate the media in accordance with Department policy.
- C. The media shall be permitted to observe and shall be permitted close enough access to the arrestees to record their names. Even after a dispersal order has been given, clearly identified media shall be permitted to carry out their professional duties in any area where arrests are being made unless their presence would unduly interfere with the enforcement action.
- D. Self-identified legal observers and crowd monitors do not have the same legal status as the professional media and are, therefore, subject to all laws and orders similar to any other person or citizen.
- E. Said personnel must comply with all dispersal orders similar to any other person or citizen. A supervisor or commander may allow a person who self-identifies as a legal observer or crowd monitor to remain in an area after a dispersal order if circumstances permit and if the person's presence would not unduly interfere with the enforcement action.



- F. On request, the Incident Commander or a supervisor may inform the media, legal observers, crowd monitors, police liaison, and/or organizers about the nature of any criminal charges to be filed against arrestees, the location where arrestees are being taken, and the Department's intent for arrestees to be cited out or booked at a custodial facility.
- G. The media, legal observers, crowd monitors, police liaison, and/or organizers shall never be targeted for dispersal or enforcement action because of their status.

XIII. TRAINING

- A. All OPD crowd control policies and procedures shall be set forth in a Crowd Control Training Bulletin.

All other OPD orders and Training Bulletins will be reviewed to ensure consistency with the new policy and Training Bulletin.

- B. All officers must receive training consistent with these new policies and procedures.

All training on crowd control shall include substantial coverage of these Department policies. No officers shall use less-lethal weapons unless they have received the training required by Department policies.

- C. Every OPD officer shall receive this training.

Either independently or in conjunction with other scheduled training, each officer shall receive periodic instruction regarding the key elements of this policy. The Department will seek to improve its ability to manage crowd control events through study and evaluation of past incidents occurring in Oakland and other jurisdictions. Training in crowd management is crucial and shall be an ongoing process. All members of OPD shall be trained in these crowd control policies and procedures and shall then receive additional periodic crowd control refresher training thereafter. Crowd control training shall also become an integral part of the recruit academy curriculum.

- D. All training called for in this section shall be documented with regard to individual officer attendance, dates of training, test scores or other evidence of successful completion of training, and identity of each instructor, and copies of both student curriculum materials and instructor curriculum materials shall be archived.

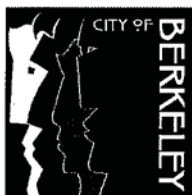
XIV. CROWD MANAGEMENT COORDINATOR (CMC)

- A. The Chief of Police shall designate a Departmental Crowd Management Coordinator whose responsibilities will include:
 - 1. Coordinating the training of personnel on crowd control, planning, operations and after-action reporting.
 - 2. Conducting reviews of crowd control policies and case law.



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3. Conducting quarterly reviews of all crowd control incidents and their respective operation plans and after action reports and providing a quarterly report to the Chief of Police. In the course of the producing the quarterly reports, the Crowd Management Coordinator shall:
 - a. Look to identify training points for publication in Training Bulletins;
 - b. Look to identify Departmental training needs;
 - c. Ensure Departmental policy and training comports with new case law and industry standards;
 - d. Ensure that the City Attorney and District Attorney are consulted when revising Departmental policy and planning Departmental training on crowd control and management and related topics; and
 - e. Produce a non-classified public quarterly crowd control report



Police Review Commission (PRC)

December 12, 2014

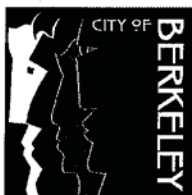
To: Honorable Mayor and Members of the City Council
From: Michael Sherman, *MS* Chairperson, Police Review Commission
Re: Request to ban the use of projectiles and over-the-shoulder baton strikes pending a review of General Order C-64

The Police Review Commission (PRC) is deeply concerned about the Berkeley Police Department's (BPD) use of projectiles and over-the-shoulder baton strikes to disperse crowds, and requests that these methods be banned for crowd control purposes until General Order C-64, Crowd Management and Control, is reviewed.

During the December 6, 2014 protests in Berkeley against recent events in Ferguson, MO and Staten Island, NY, the BPD swung batons over their shoulder level to strike demonstrators, and used projectiles to control the crowd. At its December 10, 2014 meeting, the PRC heard from several speakers during public comment who witnessed these acts; such methods of crowd control were also seen in online videos and read or heard in media accounts, raising the question of whether the use of these methods was necessary.

Therefore, the PRC passed the following motion at its December 10, 2014 meeting (M/S/C Bernstein/Rogers): Urge the City Council to prohibit the Berkeley Police Department's use of projectiles and over-the-shoulder baton strikes for crowd control purposes until such time that a complete review of General Order C-64 (Crowd Management and Control) is conducted. Ayes – Bernstein, Cardoza, Perezvelez, Rogers, Sherman; Noes – None; Abstain – None; Absent: Allen, Lowhurst, Zerrudo.

cc: Christine Daniel, City Manager
Michael Meehan, Chief of Police



Police Review Commission (PRC)

December 12, 2014

To: Honorable Mayor and Members of the City Council
From: Michael Sherman, Chairperson, Police Review Commission
Re: Request to temporarily ban the use of tear gas for crowd control
pending an investigation

The Police Review Commission (PRC) is deeply concerned about the Berkeley Police Department's (BPD) use of tear gas to disperse crowds, and requests that tear gas be banned for crowd control purposes until the PRC completes an investigation.

During the December 6, 2014 protests in Berkeley against recent events in Ferguson, MO and Staten Island, NY, the BPD employed tear gas as one means of forcing the protesters to disperse. At its December 10, 2014 meeting, the PRC heard from several speakers during public comment about how the tear gas affected them physically; one speaker, whose apartment windows on Telegraph Avenue were open the night of December 6, spoke of having to toss out food and wash clothing contaminated with the tear gas. These speakers amplified what many have seen in online videos and read or heard in media accounts about the police response to the December 6 protests. All this raises the question of whether the use tear gas was necessary.

Therefore, the PRC passed the following motion at its December 10, 2014 meeting (M/S/C Bernstein/Perezvelez): In accordance with the mission statement of General Order C-64, request that the City Council temporarily ban the Berkeley Police Department's use of tear gas for crowd control until the Police Review Commission conducts a full investigation into the improper use of tear gas on December 6, 2014, and to empower the PRC to produce documents and witnesses for the purposes of this investigation. Ayes – Bernstein, Cardoza, Perezvelez, Rogers, Sherman; Noes – None; Abstain – None; Absent: Allen, Lowhurst, Zerrudo.

cc: Christine Daniel, City Manager
Michael Meehan, Chief of Police

