

# COMPLAINANT DEADLINES REPORT

3/23/2016

INVESTIGATIONS										
NO.	COMPLAINANT	DATE FILED	INCIDENT DATE	20 Bus Day Notice of Alleg Due	Notice of Alleg DONE	75 day Report DUE	75-day Report Issued	BOI PACKET ISSUED	120 DAYS From Date Filed	STATUS
2385		Oct-15	09-16-2015	11-13-2015	11-13-2015	*tbd			02-15-2016	*tolled for criminal case
2386		Nov-15	08-20-2015	12-15-2015	12-08-2015	02-01-2016	01-22-2016		03-17-2016	Admin. Closure?
2390		Dec-15	12-12-2015	01-11-2016	12-21-2015	02-26-2016	n/a	03-11-2016	04-12-2016	BOI 3-25-16
2391		Jan-16	11-02-2015	02-22-2016	02-01-2016	04-08-2016			05-24-2016	Investigation
2394		Feb-16	01-22-2016	03-09-2016	02-23-2016	04-25-2016			06-09-2016	Investigation
2395		Mar-16	02-03-2016	04-04-2016	03-16-2016	05-23-2016			07-07-2016	Investigation
2397		Mar-16	2-26-16 2-27-16	04-15-2016		06-01-2016			07-15-2016	Ntc of Allegations Due

MEDIATION										
NO.	COMPLAINANT	DATE FILED	INCIDENT DATE	28-day Notice of Comp./Med Due	28-day Notice of Comp./Med Issued	Officer Agree to Mediate?	SEEDS Referral Date	Mediation Date	Mediation Completed?	STATUS
2392		Feb-16	11-15-2016	03-07-2016	03-11-2016	Y	03-23-2016			
2396		Mar-16	02-26-2016	04-07-2016	03-14-2016					

POLICY REVIEWS								
NO.	COMPLAINANT	DATE FILED	Notice of Complaint to BPD	Due to PRC in 30 days or next Mtg.	Initial Commission Meeting Date	Commission Resolved Y/N	Admin. Closure Due	Status
2362	LINDSAY, VIRGINIA	12-23-2014	01-08-2014	01-22-2015	01-14-2015	n		Investigation
2363	MCDONNELL, ROBIN	01-08-2015	01-08-2014	02-07-2015	01-14-2015			Investigation
2377	DENNEY, CAROL	06-22-2015	07-10-2014	07-22-2015	07-08-2015	n		Investigation
2384	PITCHER, STEPHEN	09-21-2015	09-23-2015	10-21-2015	10-14-2015	n		Investigation

CALOCA										
NO.	COMP	Officer Appeal Filed	PRC Records Due (60 days)	PRC Records Filed	Officer Brief Filed Y/N	PRC Brief Due	PRC Brief File Date	OAH Hearing Date	OAH Decision Due	STATUS
2380		11-25-2015	01-22-2016	01-20-2016		05-19-2016		06-02-2016	08-01-2016	



## BERKELEY POLICE DEPARTMENT

DATE ISSUED: TBD

GENERAL ORDER U-4

9. The Operations Captain is responsible for maintaining liaison with appropriate City, County, State, and Federal officials and agencies, to include attendance at meetings, training sessions and exercise as necessary. This function may be delegated to a lieutenant.

### STAGING SITE CONSIDERATIONS

10. Lengthy, large-scale events may require the establishment of additional staging sites, outside of the Public Safety building and its secure parking lots.
11. Planners shall consider sites other than the 2100 block of McKinley Avenue when determining the most suitable location for staging resources and personnel through a lengthy event or series of events.
12. Planners shall consider the time and duration(s) of the scheduled events, and consider the availability and security of alternative sites including but not limited to City of Berkeley properties, parking lots, and street blocks, Berkeley Unified School District sites, University of California sites, and other commercial sites and parking lots.
13. Planners shall consider likely negative impacts to any area selected as an alternative staging area, including the impacts to residents in or adjacent to the potential staging area. Should a residential street block be selected as a staging site, planner shall ensure a communication plan is in place to inform residents of the anticipated use of the street.
14. Planners shall establish a communication plan assigning specific personnel to provide information to residents of the affected area. For scheduled events, assigned personnel shall contact residents and provide information prior to the onset of the event, and in any case prior to street closures. Assigned personnel shall ensure information is also shared with the City Manager's Office. Information provided to residents shall include, but not be limited to:
  - a) The reason for the need of a staging site;
  - b) The anticipated duration of the operation,
  - c) A designated point-of-contact for BPD
  - d) An offer of a daily meeting opportunity for residents
  - e) Specific plans to provide access to residents, to be applied consistently to all residents.
  - f) An offer to be added to an email list for updates
15. Planners shall establish a site-support plan, to include measures to mitigate negative impacts on residents, including placement of portable toilets, scheduling City clean-up crews, and inspecting the area post-event.

# BERKELEY POLICE DEPARTMENT

DATE ISSUED: TBD

GENERAL ORDER U-4

SUBJECT: UNUSUAL OCCURRENCES

## PURPOSE

1. The purpose of this Order is to identify planning, operational and coordination responsibilities in the response to and the resolution of unusual occurrences. Unusual occurrences are generally defined as situations, generally of an emergency nature, that result from disasters and civil disturbances.
2. Specific instructions and checklists for handling unusual occurrences are contained in the Event Management Manual maintained in the Operations Watch Commanders office.

## POLICY

3. It is the policy of the Berkeley Police Department to maintain the capability to plan for and respond to unusual occurrences so as to provide for the safety of the community.

## PROCEDURES

4. Whenever possible, a plan will be developed and communicated to all responding personnel prior to any police response. In scheduled events, the mission statement will be in writing and briefed to all assigned personnel prior to deployment. In spontaneous events or incidents, the plan may be communicated verbally, but must still be an integral part of the planning process.
5. As soon as possible in spontaneous events or incidents, and in every instance in scheduled events, an operations plan shall be developed and followed. When events are scheduled in advance, a Special Order will be developed and distributed.
6. In every unusual occurrence, and Event Commander will be appointed. In small scheduled events or spontaneous incidents, the Event Commander may be a Sergeant. In larger operations, the Event Commander may be a Lieutenant. In every instance, the Incident Commander will be identified and his/her identity broadcast to all assigned personnel. Every change of Incident Commander will be logged in all logs maintained by the command post and/or the Communications Center.
7. After-action reports will be the responsibility of the Incident Commander in command at the time the event is over, or as assigned by the Division Commander. A copy of the after-action report will be routed via the chain of command to the Chief of Police.
8. The Operations Captain is responsible for overall planning responses to unusual occurrences. The Captain may delegate this responsibility to a lieutenant.

# BERKELEY POLICE DEPARTMENT

DATE ISSUED: September 6, 1995

GENERAL ORDER U-4

SUBJECT: UNUSUAL OCCURRENCES

## PURPOSE

- 1 - The purpose of the General Order is to identify planning, operational and coordination responsibilities in the response to and the resolution of unusual occurrences. Unusual occurrences are generally defined as situations, generally of an emergency nature, that result from disasters and civil disturbances.

Specific instructions and checklists for handling unusual occurrences are contained in the Event Management Manual maintained in the Patrol Lieutenant's Office.

## POLICY

- 2 - It is the policy of the Berkeley Police Department to maintain the capability to plan for and respond to unusual occurrences so as to provide for the safety of the community.

## PROCEDURES

- 3 - Whenever possible, a mission statement (plan) will be developed and communicated to all responding personnel prior to any police response. In scheduled special events, the mission statement will be in writing and briefed to all assigned personnel prior to deployment. In spontaneous events or incidents, the mission statement may be distributed verbally, but must still be an integral part of the planning process.
- 4 - As soon as possible in spontaneous events or incidents, and in every instance in scheduled special events, an operations plan will be developed and followed. When events are scheduled in advance, a Special Order will be developed and distributed.
- 5 - In every unusual occurrence, an Event Commander will be appointed. In small scheduled events or spontaneous incidents, the Event Commander may be a Sergeant. In larger incidents, the Event Commander may be a Watch Commander, the Duty Command Officer, or a Division Commander. **In prolonged civil disorder, the CMT Lieutenant will be the event commander.\*** In every instance, the Event Commander will be identified and his/her identity broadcast to all assigned personnel. Every change of Event Commander will be logged in all logs maintained by command post(s) and communication center(s).
- 6 - After-action reports will be the responsibility of the Event Commander having command at the time the incident is declared over, or as assigned by the Division Commander. A copy of the after-action report will be routed via the chain of command to the Chief of Police.

## BERKELEY POLICE DEPARTMENT

DATE ISSUED: September 6, 1995

GENERAL ORDER U-4

- 7 - The Patrol Captain is designated as the individual responsible for planning responses to unusual occurrences. The Patrol Captain may delegate this responsibility to one of the Patrol Lieutenants, **or CMT Commander.\***
- 8 - The Patrol Captain is responsible for maintaining liaison with appropriate City, County, State, and Federal disaster officials and agencies, to include attendance at meetings, training sessions and exercises as necessary. This function may be delegated to one of the Patrol Lieutenants.
- 9 - All plans developed to deal with unusual occurrences will be reviewed annually and, when necessary, updated.
- 10 - All equipment designated for use in unusual occurrences, to include Department controlled vehicles and radios, will be inspected monthly by the using Division/Bureau and noted deficiencies will be reported in the Monthly Management Report.

References: CALEA Standards  
Event Management Manual  
**CMT Manual\***

## Welcome to Protest 101

Protest 101 is a guide to assist anyone interested in organizing or participating in a safe and legal protest, march, demonstration, rally or labor action in the City of Berkeley.

During demonstrations, protest marches, public rallies or labor actions, the Berkeley Police Department is responsible for providing for the safety and security of the general public, while both monitoring and facilitating any peaceful demonstration. We facilitate the peaceful expression of First Amendment Rights, including but not limited to assembling, marching, carrying signs, making speeches, or other lawful activity designed to express or advocate political, religious, or social opinions.

While recognizing the above rights, the Berkeley Police Department will make every attempt to quickly identify and/or arrest only those specifically involved in criminal activity or violence. Citizens' rights are of the utmost importance and our goal is to ensure a safe environment for everyone involved.

To ensure that you have a safe and legal event, we recommend that organizers and attendees follow these guidelines.

What do I need to know as an organizer? ③-④

What do I need to know as a participant? ⑤-⑥

What do I need to know regarding labor actions? ⑦

What do I need to know if I am part of the media? ⑧

Event Planning Checklist ②

COMMUNICATION No. 4400

①

## **Event Planning Checklist**

The Berkeley Police and City of Berkeley want to facilitate the safe expression of constitutionally protected speech. We want to work in partnership with you to hold a safe and peaceful event. The following items are things that we recommend you do to ensure a safe event.

### **Go to City of Berkeley Website**

- Download and complete forms
- File them at the Recreation Department

### **Contact the Police Department and Provide:**

- Purpose of protest
- Date(s) and time of event
- Location(s)
- Route of march, if planned
- Estimated attendance
- Organizing person or group
- Number of organizers
- How to identify and contact organizers/monitors at the event (hats, shirts, armbands)
- What will they be wearing?
- Will they have mobile phones?
- Do you want symbolic arrests?
- If so, where and when?

### **When advertising on social media**

- Inform people of date, time and location
- Encourage peaceful expression and lawful behavior by attendees
- Discourage certain items from being brought to the event

### **During the Event**

- Make organizers/monitors visible through clearly identifiable clothing
- Coordinate at the event with uniformed bicycle officers, they will help facilitate the event
- Stay on your planned march route, if applicable
- Maintain communication with officers throughout the event and notify them of any change in plans



## What do I need to know as an organizer?

### Do I need a permit to have a protest, march, demonstration or rally?

Berkeley Municipal Code (BMC) 13.44 requires event organizers apply for and obtain a permit from the City to conduct a street event. This includes any march, demonstration, assembly, parade, festival, street fair, concert or any other gathering which takes place in a public street or right-of-way.

If the event applicant wishes to utilize amplified sound, a sound permit will also be required.

For more detailed information on applying for an event permit, we ask that you use these links:

[City of Berkeley Event Policies and Procedures](#)

[City of Berkeley Street Event Permit Planning Guide](#)

[Berkeley Municipal Code relating to permits for StreetEvents](#)

After completing the required paperwork, please file it at the:

*Recreation Customer Service Hub - Willard*

*2701 Telegraph Ave.*

*Berkeley, CA 94705*

*510-981-5150*

### Consequences of unpermitted events

Per BMC13.44.130, an intentional violation of this Chapter is a misdemeanor.

### Should I call the police in advance of my event?

We would like to talk with organizers when you are planning your event. We can help you plan safe routes, provide safety tips, prepare to facilitate your event and answer any questions you might have about police response. We can also establish a liaison (point of contact person) with your leadership, should you need help during the event. We recommend regular communication with the police liaison during the event.

Please contact the Berkeley police Special Events Coordinator ahead of your event. They can be reached by calling (510) 981-5821.

### How can the police help?

Given enough notice, the Police Department may provide police officers or parking enforcement officers to control traffic to facilitate the protest or march. Additionally, the Berkeley Police Department may assign officers to safeguard First Amendment activity. Officers may join the protest on bikes or on foot.

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**How can organizers improve protester participant safety?**

Establish safety monitors for crowd management and security. Discourage dangerous items from being brought to the event (any item that can be used as a projectile or weapon). Make organizers and safety monitors identifiable by wearing brightly colored matching armbands, hats or shirts. Inform your police liaison how police can identify organizers and safety monitors as well as contact information for them during the event.

**Should we march or not?**

If you are well organized and do not have any issues with unwanted or violent elements within your crowd, marching might be okay. The police will assist, when possible, by blocking traffic and protecting the march as it moves through the streets. If you do have problems with unwanted elements, we suggest you do not march. Marching makes it more difficult for the police to deter or stop unacceptable behavior. If you are marching and experience problems from unwanted groups including looters, arsonists, vandals, or people fighting with or intimidating members of your event, stop and call for police assistance.

**What do I need to know as a participant?****How far should I stay from officers standing on a police line?**

We recommend that participants stay approximately 6 feet back from a police line unless directed to do otherwise by officers. They need space and time to correctly perceive, evaluate and react to potential threats. Officers need space for their safety. This space gives officers time to make better use of force decisions. Advancing on officers only reduces the time an officer will have to make those decisions. If you don't encroach on their safety zone, they are not likely to feel you are a threat and won't need to order you to move back. If you fail to follow warnings or if an officer feels you pose a threat to their safety, you may be pushed away from the police line with a hand, arm or baton.

**Why don't the officers on the police line respond to my questions?**

Officers will not engage in conversations with the crowd. Officers on a police line are watching for threats and are watching the whole crowd, not just the people directly in front of them. Their safety helmet also makes it harder to hear and be heard. Engaging in conversations encourages people to come closer to the line to hear and be heard. As discussed, being close to the police line impacts officer and protester safety. If you need to communicate with an officer, go to the end of the police line (away from the center of the crowd) and ask to speak to a supervisor or call the non-emergency number (510) 981-5900. If staffing allows, an officer will be sent to contact people requesting police assistance.

**What would cause the police to issue a dispersal order?**

The police may issue a dispersal order if members of the crowd pose a clear and present danger to the public. This may include looting, assaults, lighting fires, or throwing objects at people (including officers).

**What if I am not part of the protest? Do I have to leave the area?**

Yes. After a dispersal order is issued, anyone within earshot of the order is required by law to leave the area to comply with the order. You are no longer allowed to remain together as a group. The order also applies to those present who are not members of the group protesting, are just curious bystanders, or did not participate in any of the activity that led to the issuance of the dispersal order.

**What will happen if I don't disperse?**

The police may make arrests for failure to disperse per California Penal Code section 409. Depending on the circumstances, you may be cited or booked into jail and charged with a crime. If necessary, the police may use reasonable physical force to disperse the crowd.

This may include the use of police batons, less than lethal foam baton rounds, and CS gas (tear gas). These uses of force can cause physical discomfort, significant pain and potential injury.

**Should I try to stop people who are looting, lighting fires, causing damage or fighting?**

(5)

We do not recommend physically confronting these elements in a crowd. This can be extremely dangerous. Crowding around looters only slows police response. We recommend peaceful protesters back away and call the police. Be a good witness, use your camera phones and, when possible get good pictures or videos of the suspects. This is only helpful if you share the video with the police department or make it available online.

BPD wants you to have safe protests. This may mean violent elements need to be arrested and removed from the crowd. Violations of laws may result in detentions, citations, or arrests. Do not interfere with officers trying to detain people or make arrests. No matter how chaotic the scene surrounding an arrest may appear, please keep your distance and allow the officers to safely place someone in custody. While in public, it is your Constitutional right to film or photograph officers taking action.

### **Why do the police want to keep protests off of the freeway and train tracks?**

Entering a freeway or railroad right of way can be extremely dangerous. Entering the freeway could lead to collisions between motorists and protesters and also between motorists trying to stop abruptly. At speed, these collisions could cause serious damage, injury or prove fatal. Trains are large and may appear slow but can move deceptively fast. Trains can take over a mile to stop once the engineer sees a problem on the track and applies the brakes. However, when arriving in Berkeley, engineers may not have a mile long line of sight. For these reasons, entering the freeway or train tracks can be extremely dangerous and is not advised.

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## What do I need to know regarding labor actions?

Protesters may not block driveways or deny worker or vehicle access to businesses.

Protesters may not enter private property. Once asked to leave, noncompliant protesters are subject to citation or arrest for trespassing.

The use of amplified sound requires a permit and is limited to the hours between 10:00 AM and 8:00 PM.

Protesters may not block sidewalks, roadways or impede vehicle traffic.

Protesters may carry signs and/or banners.

Under Penal Code Section 602.1(c)(2), individuals may engage in "protected" activity upon private business property open to the public. In general, protected activity includes holding rallies, picketing, leafleting, etc., on an employer's private property that is open to the public so long as the conduct is peaceful and does not obstruct the streets and passageways to and from the employer's place of business.

Under the California Constitution, most activities which express ideas in a peaceful non-disruptive manner and are conducted on privately owned property that is open to the public could be regarded as "protected constitutional activities" within the meaning of Penal Code Section 602.1(c)(2). These activities can include circulating petitions, handing out leaflets, and other forms of free speech activity.

The Berkeley Police Department, however, may arrest individuals engaged in labor or other activities if their conduct constitutes a threat to public safety by becoming threatening or violent, by obstructing free access to the employer's place of business, by obstructing streets and sidewalks, or by constituting conduct in violation of other Penal Code Sections.

An illustration of such a situation could be where strikers or picketers resort to physical violence or threats of violence, harassment, destruction of property, picketing with weapons, blocking access to the employer's place of business, or obstructing streets.

Under such circumstances, local law enforcement agencies are justified in arresting the individuals responsible without violating the aforementioned labor activity exemptions.

### **What do I need to know if I am part of the media?**

With its rich history in the Free Speech movement, the City of Berkeley is, and remains, committed to allowing the public to peacefully assemble. Unfortunately, some of the participants in demonstrations may resort to criminal activity. Acts of violence, oftentimes, lead to a chaotic environment for officers as well. Because of this, it can be difficult for line officers to quickly differentiate demonstrators from members of the media who need access to the location.

We value your safety as you cover important events in our community and want you to be safe while you do your work. With this in mind, the Berkeley Police Department would like you to consider these personal safety measures when you cover demonstrations:

- Officers in the area may not be able to ensure your safety.
- Have your media credentials clearly visible for officers.
- Try to cover the event from the side of any established police lines.
- If that is not possible, ask an officer to be let through the police line to cover the incident from behind the police officers. For even better results, ask a police supervisor.
- If you experience difficulty getting the access and freedom of movement you require, contact the Department's Public Information Officer for assistance.
- If you are photographing or video recording in the midst of violent and assaultive activity, consider moving away from the situation to a safer place.

March 22, 2016

Dear PRC Commissioners,

Reacting to some concerns in the Berkeley community and some of our own, we asked the ACLU of Northern CA legal staff to review the new General Order W-01.

The general conclusion is that the new GO W-01 is clearly a step backwards from the point of view of the witness and the First Amendment right to witness.

Note the link to the San Francisco "Rights of Onlookers" GO 5.07 and also attached below. <http://www.scorcher.org/screed/pdf/copwatching.pdf>.

Comments are from ACLU legal staff in reference to the new order W-01. Examples below the comments are added by the chapter.

Paragraph 1 (of the new GO): There should be a statement that Berkeley recognizes and protects the citizen's constitutional right here, maybe lifting language from the federal cases. That should come before listing the restrictions that can be opposed to that right. This order does not do that.

**Here is some proposed text:** "The U.S. Supreme Court ruled *ACLU vs Alvarez* ([http://www.aclu-il.org/wp-content/uploads/2012/05/Alvarez\\_ruling.pdf](http://www.aclu-il.org/wp-content/uploads/2012/05/Alvarez_ruling.pdf)) that the First Amendment protects a 'program of advancing police accountability by means of openly audio recording police officers without their consent when the officers are performing their public duties; the officers are in public places; the officers are speaking at a volume audible to the unassisted human ear; and the manner of recording is otherwise lawful.'" **This is a long citation for a General Order, but could be condensed to make the point to something like:** "The U.S. Supreme Court has ruled that the First Amendment protects 'a program of advancing police accountability' by openly recording public actions of on-duty police officers without their consent."

Paragraph 2 : The "least possible restriction" means that the officer's mindset should be to only limit observation if necessary for law enforcement purposes. In terms of witnessing, this Order is a time, place and manner restriction on speech. At a minimum, the GO needs to have a "narrowly tailored to achieve a law enforcement purpose" standard, like this: "It is Departmental policy that any restriction an officer imposes on public observation of police officer conduct should be narrowly tailored to meet legitimate law enforcement purposes."

Paragraph 3b : "Safe distance" is too vague and permissive- the officer should

only be able to ask someone to move back to protect the safety of the officer and the detainee (not "others"), and to prevent interference with a legitimate investigation.

From the SF GO 5.07:

#### WITNESSING STOPS, DETENTIONS, ARRESTS.

- a. It is the policy of this Department that persons not involved in an incident be allowed to remain **in the immediate vicinity** to witness stops, detentions and arrests of suspects occurring in public areas, except under the following circumstances:
  - i. When the safety of the officer or the suspect is jeopardized.
  - ii. When persons interfere or violate law.
  - iii. When persons threaten by words or action, or attempt to incite others to violate the law.

Paragraph 3c - This needs qualifying or defining what is a confidential communication. It is unclear what, if anything, is "confidential" in most street or demonstration encounters with police that are in presumably public spaces. If it's not "confidential," then neither the officer nor suspect should be able to prevent observation. But there may be instances where an investigation is happening and "confidentiality" is appropriate – like when an informant is involved.

From the SF GO 5.07:

#### OVERHEARING CONVERSATION.

- b. If the conditions at the scene are peaceful and sufficiently quiet, and the officer has stabilized the situation, persons shall be allowed to approach close enough to overhear the conversation between the suspect and the officer, except when:
  - i. **The suspect** objects to persons overhearing the conversation.
  - ii. There is a specific and articulable need for confidential conversation for the purpose of police interrogation.

Again, we strongly recommend you carefully review the relevant San Francisco Police Department General Order 5.07, "Rights of Onlookers," which is also attached below.

Sincerely ,

Elliot Halpern  
ACLU Berkeley\ North East Bay Chapter



Finally, we strongly recommend you carefully review the relevant San Francisco Police Department General Order 5.07, "Rights of Onlookers," which can be found at <http://www.scorcher.org/screed/pdf/copwatching.pdf>.

### **RIGHTS OF ONLOOKERS**

This order establishes policies regarding when persons are permitted to remain as onlookers, their right to overhear conversations between the officer and suspect, and their right to act as a witness.

#### **I. POLICY**

**A. WITNESSING STOPS, DETENTIONS, ARRESTS.** It is the policy of this Department that persons not involved in an incident be allowed to remain in the immediate vicinity to witness stops, detentions and arrests of suspects occurring in public areas, except under the following circumstances:

1. When the safety of the officer or the suspect is jeopardized.
2. When persons interfere or violate law.
3. When persons threaten by words or action, or attempt to incite others to violate the law.

**B. OVERHEARING CONVERSATION.** If the conditions at the scene are peaceful and sufficiently quiet, and the officer has stabilized the situation, persons shall be allowed to approach close enough to overhear the conversation between the suspect and the officer, except when:

1. The suspect objects to persons overhearing the conversation.
2. There is a specific and articulable need for confidential conversation for the purpose of police interrogation.

#### **C. INQUIRIES**

1. Persons shall be permitted to make a short, direct inquiry as to the suspect's name and whether the officer or the suspect wishes a witness. The suspect shall be allowed to respond to the inquiry.

2. If a citizen is a witness to the activity for which the suspect was detained or arrested, the officer may request his/her name; however, the citizen is not compelled to disclose such information.

**D. BYSTANDER FILMING OF OFFICER-SUSPECT CONTACTS.** It is increasingly common for bystanders, who are not involved in any criminal

activity, to record contacts between officers and citizens, during which officers are detaining, citing or arresting a suspect or engaging in crowd control at a demonstration. Bystanders have the right to record police officer enforcement activities by camera, video recorder, or other means (except under certain narrow circumstances as set forth in Sections A and B above).

1. An officer shall not seize, compel or otherwise coerce production of these bystander recordings by any means without first obtaining a warrant. Without a warrant, an officer may only request, in a non-coercive manner, that a bystander voluntarily provide the film or other recording. These requests should be made only if the officer has probable cause to believe that a recording has captured evidence of a crime and that the evidence will be important to prosecution of that crime. If a bystander refuses to voluntarily provide the recording, an officer may request the person's identity as provided in Section C., 2., above.

2. If a bystander voluntarily provides his or her recording and/or equipment, the officer shall provide the bystander with a receipt (SFPD 315). The receipt shall contain a written statement verifying that the recording and/or equipment has been voluntarily provided to the Department and shall be signed by the bystander.

**E. VIOLATIONS/COMPLIANCE.** As an alternative to arresting an onlooker who is in violation of Penal Code Section 148 or other related offenses (e.g., 647 c P.C., 22 Municipal Police Code) officers may order onlookers to "move on"; however, the person shall not be ordered to move any farther distance than is necessary to end a violation (see DGO 5.03, Investigative Detentions and DGO 6.11, Obstruction of Streets and Sidewalks). Persons who believe that an officer did not comply with the provisions of this order shall be referred to an appropriate supervisor or to the Office of Citizen Complaints.

#### **References**

DGO 5.03, Investigative Detentions

DGO 6.02, Physical Evidence

DGO 6.11, Obstruction of Streets and Sidewalks

DGO 6.15, Property Processing

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To ensure that you have a safe and legal event, we recommend that organizers and attendees follow these guidelines.

What do I need to know as an organizer? (3-4)

What do I need to know as a participant? (5-6)

What do I need to know regarding labor actions? (7)

What do I need to know if I am part of the media? (8)

Event Planning Checklist (2)

COMMUNICATION No. 4400

## **Event Planning Checklist**

The Berkeley Police and City of Berkeley want to facilitate the safe expression of constitutionally protected speech. We want to work in partnership with you to hold a safe and peaceful event. The following items are things that we recommend you do to ensure a safe event.

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- What will they be wearing?
- Will they have mobile phones?
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- If so, where and when?

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- Make organizers/monitors visible through clearly identifiable clothing
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- Stay on your planned march route, if applicable
- Maintain communication with officers throughout the event and notify them of any change in plans

## What do I need to know as an organizer?

### Do I need a permit to have a protest, march, demonstration or rally?

Berkeley Municipal Code (BMC) 13.44 requires event organizers apply for and obtain a permit from the City to conduct a street event. This includes any march, demonstration, assembly, parade, festival, street fair, concert or any other gathering which takes place in a public street or right-of-way.

If the event applicant wishes to utilize amplified sound, a sound permit will also be required.

For more detailed information on applying for an event permit, we ask that you use these links:

[City of Berkeley Event Policies and Procedures](#)

[City of Berkeley Street Event Permit Planning Guide](#)

[Berkeley Municipal Code relating to permits for StreetEvents](#)

After completing the required paperwork, please file it at the:

*Recreation Customer Service Hub - Willard*

*2701 Telegraph Ave.*

*Berkeley, CA 94705*

*510-981-5150*

### Consequences of unpermitted events

Per BMC13.44.130, an intentional violation of this Chapter is a misdemeanor.

### Should I call the police in advance of my event?

We would like to talk with organizers when you are planning your event. We can help you plan safe routes, provide safety tips, prepare to facilitate your event and answer any questions you might have about police response. We can also establish a liaison (point of contact person) with your leadership, should you need help during the event. We recommend regular communication with the police liaison during the event.

Please contact the Berkeley police Special Events Coordinator ahead of your event. They can be reached by calling (510) 981-5821.

### How can the police help?

Given enough notice, the Police Department may provide police officers or parking enforcement officers to control traffic to facilitate the protest or march. Additionally, the Berkeley Police Department may assign officers to safeguard First Amendment activity. Officers may join the protest on bikes or on foot.

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**How can organizers improve protester participant safety?**

Establish safety monitors for crowd management and security. Discourage dangerous items from being brought to the event (any item that can be used as a projectile or weapon). Make organizers and safety monitors identifiable by wearing brightly colored matching armbands, hats or shirts. Inform your police liaison how police can identify organizers and safety monitors as well as contact information for them during the event.

**Should we march or not?**

If you are well organized and do not have any issues with unwanted or violent elements within your crowd, marching might be okay. The police will assist, when possible, by blocking traffic and protecting the march as it moves through the streets. If you do have problems with unwanted elements, we suggest you do not march. Marching makes it more difficult for the police to deter or stop unacceptable behavior. If you are marching and experience problems from unwanted groups including looters, arsonists, vandals, or people fighting with or intimidating members of your event, stop and call for police assistance.

**What do I need to know as a participant?****How far should I stay from officers standing on a police line?**

We recommend that participants stay approximately 6 feet back from a police line unless directed to do otherwise by officers. They need space and time to correctly perceive, evaluate and react to potential threats. Officers need space for their safety. This space gives officers time to make better use of force decisions. Advancing on officers only reduces the time an officer will have to make those decisions. If you don't encroach on their safety zone, they are not likely to feel you are a threat and won't need to order you to move back. If you fail to follow warnings or if an officer feels you pose a threat to their safety, you may be pushed away from the police line with a hand, arm or baton.

**Why don't the officers on the police line respond to my questions?**

Officers will not engage in conversations with the crowd. Officers on a police line are watching for threats and are watching the whole crowd, not just the people directly in front of them. Their safety helmet also makes it harder to hear and be heard. Engaging in conversations encourages people to come closer to the line to hear and be heard. As discussed, being close to the police line impacts officer and protester safety. If you need to communicate with an officer, go to the end of the police line (away from the center of the crowd) and ask to speak to a supervisor or call the non-emergency number (510) 981-5900. If staffing allows, an officer will be sent to contact people requesting police assistance.

**What would cause the police to issue a dispersal order?**

The police may issue a dispersal order if members of the crowd pose a clear and present danger to the public. This may include looting, assaults, lighting fires, or throwing objects at people (including officers).

**What if I am not part of the protest? Do I have to leave the area?**

Yes. After a dispersal order is issued, anyone within earshot of the order is required by law to leave the area to comply with the order. You are no longer allowed to remain together as a group. The order also applies to those present who are not members of the group protesting, are just curious bystanders, or did not participate in any of the activity that led to the issuance of the dispersal order.

**What will happen if I don't disperse?**

The police may make arrests for failure to disperse per California Penal Code section 409. Depending on the circumstances, you may be cited or booked into jail and charged with a crime. If necessary, the police may use reasonable physical force to disperse the crowd.

This may include the use of police batons, less than lethal foam baton rounds, and CS gas (tear gas). These uses of force can cause physical discomfort, significant pain and potential injury.

**Should I try to stop people who are looting, lighting fires, causing damage or fighting?**

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We do not recommend physically confronting these elements in a crowd. This can be extremely dangerous. Crowding around looters only slows police response. We recommend peaceful protesters back away and call the police. Be a good witness, use your camera phones and, when possible get good pictures or videos of the suspects. This is only helpful if you share the video with the police department or make it available online.

BPD wants you to have safe protests. This may mean violent elements need to be arrested and removed from the crowd. Violations of laws may result in detentions, citations, or arrests. Do not interfere with officers trying to detain people or make arrests. No matter how chaotic the scene surrounding an arrest may appear, please keep your distance and allow the officers to safely place someone in custody. While in public, it is your Constitutional right to film or photograph officers taking action.

**Why do the police want to keep protests off of the freeway and train tracks?**

Entering a freeway or railroad right of way can be extremely dangerous. Entering the freeway could lead to collisions between motorists and protesters and also between motorists trying to stop abruptly. At speed, these collisions could cause serious damage, injury or prove fatal. Trains are large and may appear slow but can move deceptively fast. Trains can take over a mile to stop once the engineer sees a problem on the track and applies the brakes. However, when arriving in Berkeley, engineers may not have a mile long line of sight. For these reasons, entering the freeway or train tracks can be extremely dangerous and is not advised.

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## What do I need to know regarding labor actions?

Protesters may not block driveways or deny worker or vehicle access to businesses.

Protesters may not enter private property. Once asked to leave, noncompliant protesters are subject to citation or arrest for trespassing.

The use of amplified sound requires a permit and is limited to the hours between 10:00 AM and 8:00 PM.

Protesters may not block sidewalks, roadways or impede vehicle traffic.

Protesters may carry signs and/or banners.

Under Penal Code Section 602.1(c)(2), individuals may engage in "protected" activity upon private business property open to the public. In general, protected activity includes holding rallies, picketing, leafleting, etc., on an employer's private property that is open to the public so long as the conduct is peaceful and does not obstruct the streets and passageways to and from the employer's place of business.

Under the California Constitution, most activities which express ideas in a peaceful non-disruptive manner and are conducted on privately owned property that is open to the public could be regarded as "protected constitutional activities" within the meaning of Penal Code section 602.1(c)(2). These activities can include circulating petitions, handing out leaflets, and other forms of free speech activity.

The Berkeley Police Department, however, may arrest individuals engaged in labor or other activities if their conduct constitutes a threat to public safety by becoming threatening or violent, by obstructing free access to the employer's place of business, by obstructing streets and sidewalks, or by constituting conduct in violation of other Penal Code Sections.

An illustration of such a situation could be where strikers or picketers resort to physical violence or threats of violence, harassment, destruction of property, picketing with weapons, blocking access to the employer's place of business, or obstructing streets.

Under such circumstances, local law enforcement agencies are justified in arresting the individuals responsible without violating the aforementioned labor activity exemptions.

### **What do I need to know if I am part of the media?**

With its rich history in the Free Speech movement, the City of Berkeley is, and remains, committed to allowing the public to peacefully assemble. Unfortunately, some of the participants in demonstrations may resort to criminal activity. Acts of violence, oftentimes, lead to a chaotic environment for officers as well. Because of this, it can be difficult for line officers to quickly differentiate demonstrators from members of the media who need access to the location.

We value your safety as you cover important events in our community and want you to be safe while you do your work. With this in mind, the Berkeley Police Department would like you to consider these personal safety measures when you cover demonstrations:

- Officers in the area may not be able to ensure your safety.
- Have your media credentials clearly visible for officers.
- Try to cover the event from the side of any established police lines.
- If that is not possible, ask an officer to be let through the police line to cover the incident from behind the police officers. For even better results, ask a police supervisor.
- If you experience difficulty getting the access and freedom of movement you require, contact the Department's Public Information Officer for assistance.
- If you are photographing or video recording in the midst of violent and assaultive activity, consider moving away from the situation to a safer place.

# 5 CORE FUNCTIONS OF SB1286

## Under existing law

When police kill someone, the investigation and any discipline imposed is secret

The public cannot find out if an officer has been disciplined for false statements, excessive force, or wrongful search or arrest.

People who file complaints are only told whether the officer was found to have violated policy or not:

- If their complaint is rejected, they aren't told why.
- If the complaint is found valid, they aren't told what the department did to correct the problem.

Cities can have civilian complaint review boards to adjudicate complaints and boards to hear appeals from officer discipline. But since a Supreme Court ruling in 2006, those hearings have been confidential and closed to the public.

Confidentiality can bar access to officer personnel records by civilian oversight bodies outside the police department – including independent auditors or even city councils or boards of supervisors

## Under SB 1286

investigations, findings, any discipline or corrective action open to the public.

Where a department finds that an officer violated someone's rights or engaged in job-related dishonesty, the investigation and discipline would be public.

People who file complaints would be given factual findings to explain the result, as well as the discipline imposed.

Local jurisdictions that have civilian boards could choose to have public hearings on civilian complaints or appeals from officer discipline.

The law would allow local government entities charged with oversight to access personnel records, so long as they kept that information confidential

