

**Police Review Commission meeting of September 4, 2019**

**Lexipol Policies for review and approval**

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## Use of Force Review Board

### 301.1 PURPOSE AND SCOPE

This policy establishes a process for the Berkeley Police Department to review the use of force by its employees in order to identify organizational and individual training needs.

This review process shall be in addition to any other review or investigation that may be conducted by any outside or multi-agency entity having jurisdiction over the investigation or evaluation of the use of deadly force.

### 301.2 POLICY

The Berkeley Police Department will objectively evaluate the use of force by its members to ensure that their authority is used lawfully, appropriately and is consistent with training and policy.

### 301.3 REMOVAL FROM LINE DUTY ASSIGNMENT

Generally, whenever an employee's actions or use of force in an official capacity, or while using department equipment, results in death or very serious injury to another, that employee will be placed in a temporary administrative assignment pending an administrative review. The Chief of Police may exercise discretion and choose not to place an employee in an administrative assignment in any case.

### 301.4 REVIEW BOARD

The Use of Force Review Board will be convened when the use of force by a member results in very serious injury or death to another.

The Use of Force Review Board will also investigate and review the circumstances surrounding every discharge of a firearm, whether the employee was on- or off-duty, excluding training or recreational use.

The Chief of Police may request the Use of Force Review Board to investigate the circumstances surrounding any use of force incident.

The Support Services Division Captain will convene the Use of Force Review Board as necessary. It will be the responsibility of the Division Captain or supervisor of the involved employee to notify the Support Services Division Captain of any incidents requiring board review. The involved employee's Division Captain or supervisor will also ensure that all relevant reports, documents and materials are available for consideration and review by the board.

#### 301.4.1 COMPOSITION OF THE BOARD

The Support Services Division Captain should select five Use of Force Review Board members from the following, as appropriate:

- Representatives of each division
- Commanding officer in the involved member's chain of command

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- Personnel and Training Sergeant
  - Non-administrative supervisor
  - A peer officer
  - ~~A sworn peace officer from an outside law enforcement agency~~
  - Department instructor for the type of weapon, device or technique used

The senior ranking command representative who is not in the same division as the involved employee will serve as chairperson.

#### 301.4.2 RESPONSIBILITIES OF THE BOARD

The Use of Force Review Board is empowered to conduct an administrative review and inquiry into the circumstances of an incident.

The board members may request further investigation, request reports be submitted for the board's review, call persons to present information and request the involved employee to appear. The involved employee will be notified of the meeting of the board and may choose to have a representative through all phases of the review process.

The board does not have the authority to recommend discipline.

The Chief of Police will determine whether the board should delay its review until after completion of any criminal investigation, review by any prosecutorial body, filing of criminal charges the decision not to file criminal charges, or any other action. The board should be provided all relevant available material from these proceedings for its consideration.

Absent an express waiver from the employee, no more than two members of the board may ask questions of the involved employee (Government Code § 3303). Other members may provide questions to these members.

The review shall be based upon those facts which were reasonably believed or known by the officer at the time of the incident, applying any legal requirements, department policies, procedures and approved training to those facts. Facts later discovered but unknown to the officer at the time shall neither justify nor call into question an officer's decision regarding the use of force.

Any questioning of the involved employee conducted by the board will be in accordance with the department's disciplinary procedures, the Personnel Complaints Policy, the current collective bargaining agreement and any applicable state or federal law.

The board shall make one of the following recommended findings:

- (a) The employee's actions were within department policy and procedure.
- (b) The employee's actions were in violation of department policy and procedure.

A recommended finding requires a majority vote of the board. ~~The board may also recommend additional investigations or reviews, such as disciplinary investigations, training reviews to consider whether training should be developed or revised, and policy reviews, as may be appropriate. The board chairperson will submit the written recommendation to the Chief of Police.~~

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~~The Chief of Police shall review the recommendation, make a final determination as to whether the employee's actions were within policy and procedure and will determine whether any additional actions, investigations or reviews are appropriate. The Chief of Police's final findings will be forwarded to the involved employee's Division Captain for review and appropriate action. If the Chief of Police concludes that discipline should be considered, a disciplinary process will be initiated.~~

~~At the conclusion of any additional reviews, copies of all relevant reports and information will be filed with the Chief of Police.~~

### **301.5 FINAL REPORT TO THE CHIEF OF POLICE**

~~Unless otherwise directed by the Chief of Police, the board chairperson shall submit a final report to the Chief of Police within ten business days of the hearing. The final report shall contain:~~

- ~~(a) The findings of the Board~~
- ~~(b) The concurring or non-concurring signatures of each member,
  - ~~1. Dissenting Board members may submit a minority report which shall be included with the final report.~~~~
- ~~(c) Recommendations of the Board (when directed)~~
- ~~(d) Documents, photographs, and related evidence used during the Board's examination shall be submitted with the final report.~~

~~The Chief of Police retains the right to agree or disagree with the final recommendations of the Board, and to limit or augment those recommendations.~~

~~Upon approval of the final report by the Chief of Police, the Board shall be deactivated.~~

### **301.6 NOTIFICATION OF SUBJECT EMPLOYEE**

~~The subject employee shall be notified of the Chief's decision as soon as possible (see Personnel Complaints Policy for further).~~

### **301.7 FINAL REPORT FORMAT**

~~The memorandum format below shall be used when preparing a final report.~~

#### **EXEMPLAR**

To: \_\_\_\_\_ (Chief of Police)  
From: \_\_\_\_\_ (Name of Review Board)  
Subject: \_\_\_\_\_ (XXXXXXXXXXXXXXXXXXXX)

#### **Composition of the Board:**

~~The board chairperson and members of the Board will be identified.~~

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Summary of the Investigation:

This will be a statement in chronological sequence of the incident and the Board's examination.

Conclusion:

This will contain a statement of the Board's findings and recommendation(s) (e.g., Sustained or Exonerated).

Additional Observations:

This entry is optional and can be used to provide the Chief of Police with additional or independent information or observations.

## BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 12, 2008

GENERAL ORDER R-3

SUBJECT: REVIEW BOARD PROGRAM

### PURPOSE

- 1 - The purpose of this Order is to provide a procedure through which the Chief of Police can review an incident involving a police department employee, equipment or policy to examine relevant facts in furtherance of an administrative inquiry or action.

### POLICY

- 2 - A Review Board shall be convened as a fact-finding body and, unless specifically required or requested to do otherwise, shall refrain from expressing opinions or making recommendations.
- 3 - The Chief of Police has sole authority to convene a Review Board as provided by this Order.

### PROCEDURES

- 4 - A Review Board shall be comprised of Departmental employees of appropriate rank and seniority, as determined by the Chief of Police.
  - (a) Regarding the composition of a Board, the Chief of Police will consider the nature of the subject matter under inquiry and the relevant qualifications of the employees selected to serve as members.
- 5 - The Chairperson of a Board shall be designated by the Chief of Police.
- 6 - When appointed, the Chairperson of the Board shall, within seven (7) calendar days, convene the Review Board and conduct an investigation into the matter within its jurisdiction.
- 7 - The Chairperson shall appoint a Recorder from the membership of the Board.
  - (a) The Recorder will be responsible for taking meeting minutes and for preparation of the final report to the Chief of Police.
- 8 - Any Board member may select a qualified subject matter advisor or resource person to provide relevant information to the Board.
- 9 - The Board shall avail itself of any Department facility necessary to conduct a complete examination of the circumstances subject to administrative review.

## BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 12, 2008

GENERAL ORDER R-3

- (a) Department employees shall provide assistance or information as requested by the Review Board to facilitate its thorough and objective inquiry.
- 10 - When a Review Board requests the presence of a subject employee at hearing, the employee shall be informed of the nature of the inquiry prior to the hearing.
- 11 - Whenever a Review Board's inquiry may result in findings prejudicial to an employee in a criminal or administrative proceeding, the subject employee shall be afforded the opportunity to appear before the Board, and present relevant information and evidence.
- 12 - As provided by law or as directed by the Chief of Police, the Board will allow a subject employee to have a representative (e.g., legal counsel, a collective bargaining unit representative, etc.) present during a Board proceeding in which he/she is participating.

### ESTABLISHED REVIEW BOARDS

- 13 - The Chief of Police has established the following standing Review Boards, to be convened as needed or directed by related policy directive:
  - (a) Traffic Accident Review Board.
  - (b) Police-involved Shooting/Injury Review Board.
  - (c) Complaint Board of Review.
- 14 - The Traffic Accident Review Board shall be responsible for review of all traffic collisions involving a Department employee operating a City-owned vehicle, as set forth in General Order E-3.
  - (a) After evaluating all evidence, the Traffic Accident Review Board will reach a majority decision and present in its final report a recommendation of "Preventable" or "Not Preventable."
- 15 - The Police-involved Shooting/Injury Review Board shall be responsible for Department employee-involved incidents involving the use of a firearm or incidents resulting in serious injury or death, as set forth in General Order P-12.
  - (a) After evaluating all evidence, the Police-involved Shooting/Injury Review Board will reach a majority decision, and absent other direction from the Chief of Police, present in its final report a recommendation of "Within Policy," "In Violation of Policy," or

BERKELEY POLICE DEPARTMENT

DATE ISSUED: June 12, 2008

GENERAL ORDER R-3

"Accidental."

- 16 - The Complaint Board of Review shall be responsible for examination of Internal Affairs Bureau Investigations of external personnel complaints and, if directed by the Chief of Police, policy complaints, as set forth in General Order P-26.
- (a) After evaluating all information, the Complaint Board of Review will reach a majority decision and present a recommendation for complaint disposition as described in General Order P-26.

FINAL REPORT TO CHIEF OF POLICE

- 17 - Unless otherwise directed by policy or the Chief of Police, the Chairperson shall submit a final report of the Board's examination and any other related reports within ten (10) business days following the end of the hearing to the Chief of Police.
- (a) The final report shall contain the findings of the Board and the concurring or non-concurring signatures of all its members.
- (1) Dissenting members of a Board may submit a minority report which shall be included with the final report.
- (2) The final report shall contain the findings and, when so directed, recommendations of the Board.
- (3) Upon approval of the final report by the Chief of Police, the Board shall be deactivated.
- (b) Documents, photographs, and related evidence used during the Board's examination shall be submitted with the final report.
- 18 - All information associated with Board of Review proceedings shall be deemed confidential, and the final report package shall be administered in accordance with established personnel record management procedures.



**BERKELEY POLICE DEPARTMENT**

**DATE ISSUED: June 12, 2008**

**GENERAL ORDER R-3**

**19 - The memorandum format below shall be used when preparing a final report:**

**EXEMPLAR**

**To: (Chief of Police)**

**From: (Name of Review Board)**

**Subject: (XXXXXXXXXXXXXXXXXXXX)**

**Composition of the Board: (The Chairperson and members of the Board will be identified).**

**Summary of the Investigation: (This will be a statement in chronological sequence of the incident and the Board's examination).**

**Conclusion: (This will contain a statement of the Board's findings and recommendation(s) (e.g., Preventable or Non-preventable)).**

**Additional Observations: (This entry is optional and can be used to provide the Chief of Police with additional or independent information or observations).**

**References: General Orders E-3, P-12 and P-26  
Government Code Section 3300, et seq.**

**329.1 PURPOSE AND SCOPE**

The purpose of this policy is to provide guidance to members of this department in determining when, how and to whom notification of major incidents should be made.

**329.2 POLICY**

The Berkeley Police Department recognizes that certain incidents should be brought to the attention of supervisors or other specified personnel of this department to facilitate the coordination of activities and ensure that inquiries from the media and the public may be properly addressed.

**329.3 MINIMUM CRITERIA FOR NOTIFICATION**

Most situations where the media show a strong interest are also of interest to the Chief of Police and the affected Division **Commander/Captain**. The following list of incident types is provided as a guide for notification and is not intended to be all inclusive:

- Homicides
- Traffic accidents with fatalities
- Officer-involved shooting - on or off duty (see Officer-Involved Shootings and Deaths Policy for special notifications)
- Significant injury or death to employee - on or off duty
- Death of a prominent Berkeley official
- Arrest or investigation of a city employee department employee or prominent Berkeley official
- Aircraft crash with major damage and/or injury or death
- In-custody deaths

**329.4 WATCH COMMANDER RESPONSIBILITY**

The Watch Commander is responsible for making the appropriate notifications. The Watch Commander shall make reasonable attempts to obtain as much information on the incident as possible before notification. The Watch Commander shall attempt to make the notifications as soon as practicable. Notification should be made by calling the home telephone number first and then by any other available contact numbers.

**329.4.1 STAFF NOTIFICATION**

In the event an incident occurs described in the Major Incident Notification Policy, the Chief of Police shall be notified along with the affected Division **Commander/Captain** and the Detective Lieutenant if that division is affected.

**329.4.2 DETECTIVE NOTIFICATION**

If the incident requires that a detective respond from home, the immediate supervisor of the

appropriate detail shall be contacted who will then contact the appropriate detective.

**329.4.3 TRAFFIC BUREAU NOTIFICATION**

In the event of a traffic fatality or major injury, the Traffic Sergeant shall be notified who will then contact the appropriate accident investigator. The Traffic Sergeant will notify the Traffic Lieutenant.

**329.4.4 PUBLIC INFORMATION OFFICER (PIO)**

The Public Information Officer shall be called after members of staff have been notified that it appears the media may have a significant interest in the incident.

**BERKELEY POLICE DEPARTMENT**

**DATE ISSUED: August 31, 2005**

**GENERAL ORDER A-49**

**SUBJECT: IMPROPER CONDUCT OR ARREST OF CITY EMPLOYEES**

**PURPOSE**

- 1 - The purpose of this Order is to define the proper procedure to follow in the event a City employee becomes the subject of an arrest or investigation alleging improper conduct.

**POLICY**

- 2 - When a City of Berkeley employee is arrested, the arresting officer shall forward a copy of the report to the Support Services Division Captain.

**PROCEDURES**

- 3 - The report shall be clearly marked "CITY EMPLOYEE" in capital letters across the top of the first page.
- 4 - This Order shall apply to criminal cases, as well as reports of improper conduct, whether or not an arrest is made.
- 5 - The Captain of Support Services Division shall notify the Chief of Police and forward a copy of the report to the Office of the Chief as soon as possible. The Chief of Police will determine if it is necessary to contact the City Manager and forward a copy of the report to the City Manager. Should a Department Head be the subject of the report, the City Manager shall be notified as soon as possible.

Highlighted text is new.

## Volunteer Program

### 341.1 PURPOSE AND SCOPE

It is the policy of this department to use qualified volunteers for specified tasks and duties in order to create efficiencies for the Department and improve services to the community. Volunteers are intended to supplement and support, rather than supplant, sworn officers and civilian personnel. Volunteers can be an important part of any organization and are proven to be a valuable asset to law enforcement agencies. Volunteers help to increase departmental responsiveness, delivery of services and information input, and provide new program opportunities. In addition, volunteers bring new skills and expertise to the Department and prompt new enthusiasm.

#### 341.1.1 DEFINITION OF VOLUNTEER

An individual who performs a service for the Department without promise, expectation or receipt of compensation for services rendered. This may include unpaid chaplains, ~~unpaid reserve officers~~, interns, persons providing administrative support and youth involved in a law enforcement ~~education programs Explorer Post~~, among others.

### 341.2 VOLUNTEER MANAGEMENT

#### 341.2.1 VOLUNTEER COORDINATOR

The Volunteer Coordinator shall be appointed by the ~~Community Services Bureau Lieutenant Support Services Division Commander~~. The function of the Volunteer Coordinator is to provide a central coordinating point for effective volunteer management within the Department, and to direct and assist staff and volunteer efforts to jointly provide more productive services. The Volunteer Coordinator should work with other Department staff on an ongoing basis to assist in the development and implementation of volunteer-staffed positions.

The Volunteer Coordinator, or his/her designee, shall be responsible for the following:

- (a) Recruiting, selecting and training qualified volunteers for various positions.
- (b) Facilitating the implementation of new volunteer activities and assignments.
- (c) Maintaining records for each volunteer.
- (d) Tracking and evaluating the contribution of volunteers.
- ~~(e) Maintaining the volunteer handbook and outlining expectations, policies and responsibilities for all volunteers.~~
- ~~(f)~~(e) Maintaining a record of volunteer schedules and work hours.
- ~~(g)~~(f) Completion and dissemination as appropriate of all necessary paperwork and information.

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(h)(g) Planning periodic recognition events.

(h)(h) Administering discipline when warranted.

(h)(i) Maintaining liaison with other volunteer-utilizing programs in the community and assisting in community-wide efforts to recognize and promote volunteering.

#### 341.2.2 RECRUITMENT

Volunteers should be recruited on a continuous and ongoing basis consistent with department policy on equal opportunity nondiscriminatory employment. A primary qualification for participation in the application process should be an interest in, and an ability to assist the Department in serving the public.

Requests for volunteers should be submitted in writing by interested staff to the Volunteer Coordinator through the requester's immediate supervisor. A complete position description and a requested time-frame should be included in the request. All parties should understand that the recruitment of volunteers is enhanced by creative and interesting assignments. The Volunteer Coordinator may withhold assignment of any volunteer until such time as the requesting unit is prepared to make effective use of volunteer resources.

#### 341.2.3 SCREENING

All prospective volunteers should complete the volunteer application form. The Volunteer Coordinator or his/her designee should conduct a face-to-face interview with an applicants under consideration.

A documented background investigation shall be completed on each volunteer applicant and shall include, but not necessarily be limited to, the following:

- (a) Traffic and criminal background check. Fingerprints shall be obtained from all applicants and processed through the California Criminal Information Index.
- (b) Employment
- (c) References
- (d) Credit check

A Computer Voice Stress Analysis (CVSA) polygraph exam may be required of each applicant depending on the type of assignment.

#### 341.2.4 SELECTION AND PLACEMENT

Service as a volunteer with the Department shall begin with an official notice of acceptance or appointment to a volunteer position. Notice may only be given by an authorized representative of the Department, who will normally be the Volunteer Coordinator. No volunteer should begin any assignment until they have been officially accepted for that position and completed all required screening and paperwork. At the time of final acceptance, each volunteer should complete all required enrollment paperwork and will receive a copy of their position description and agreement of service with the Department. All volunteers shall receive a copy of the volunteer handbook and shall be required to sign a volunteer agreement.

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Volunteers should be placed only in assignments or programs that are consistent with their knowledge, skills, abilities and the needs of the Department.

#### 341.2.5 TRAINING

Volunteers will be provided with an orientation program to acquaint them with the Department, personnel, policies and procedures that have a direct impact on their work assignment.

Volunteers should receive position-specific training to ensure they have adequate knowledge and skills to complete tasks required by the position and should receive periodic ongoing training as deemed appropriate by their supervisor or the Volunteer Coordinator.

Training should reinforce to volunteers that they may not intentionally represent themselves as, or by omission infer that they are sworn officers or other full-time members of the Department. They shall always represent themselves as volunteers.

All volunteers shall comply with the rules of conduct and with all orders and directives, either oral or written, issued by the Department.

#### 341.2.6 FITNESS FOR DUTY

No volunteer shall report to work or be on-duty when his/her judgment or physical condition has been impaired by alcohol, medication, other substances, illness or injury.

Volunteers shall report to their supervisor any changes in status that may affect their ability to fulfill their duties. This includes, but is not limited to, the following:

- (a) Driver license
- (b) Medical condition
- (c) Arrests
- (d) Criminal investigations

All volunteers shall adhere to the guidelines set forth by this department regarding drug and alcohol use.

#### 341.2.7 DRESS CODE

As representatives of the Department, volunteers are responsible for presenting a professional image to the community. Volunteers shall dress appropriately for the conditions and performance of their duties.

Volunteers shall conform to department-approved dress consistent with their duty assignment. Uniforms authorized for volunteers should be readily distinguishable from those worn by sworn officers. The uniform or identifiable parts of the uniform shall not be worn while off-duty except volunteers may choose to wear the uniform while in transit to or from official department assignments or functions provided an outer garment is worn over the uniform shirt so as not to bring attention to the volunteer while he/she is off duty.

Volunteers shall be required to return any issued uniform or department property at the termination of service.

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### 341.3 SUPERVISION OF VOLUNTEERS

Each volunteer who is accepted to a position with the Department must have a clearly identified supervisor who is responsible for direct management of that volunteer. This supervisor will be responsible for day-to-day management and guidance of the work of the volunteer and should be available to the volunteer for consultation and assistance.

A volunteer may be assigned as, and act as, a supervisor of other volunteers provided that the supervising volunteer is under the direct supervision of a paid staff member.

Functional supervision of volunteers is the responsibility of the supervisor in charge of the unit where the volunteer is assigned. Following are some considerations to keep in mind while supervising volunteers:

- (a) Take the time to introduce volunteers to employees on all levels.
- (b) Ensure volunteers have work space and necessary office supplies.
- (c) Make sure the work is challenging. Do not hesitate to give them an assignment or task that will tap these valuable resources.

### 341.4 CONFIDENTIALITY

With appropriate security clearance, volunteers may have access to confidential information such as criminal histories or investigative files. Unless otherwise directed by a supervisor or departmental policy, all information shall be considered confidential. Only that information specifically identified and approved by authorized personnel shall be released. Confidential information shall be given only to persons who have a need and a right to know as determined by departmental policy and supervisory personnel.

Each volunteer will be required to sign a nondisclosure agreement before being given an assignment with the Department. Subsequent unauthorized disclosure of any confidential information, verbally, in writing or by any other means, by the volunteer is grounds for immediate dismissal and possible criminal prosecution.

Volunteers shall not address public gatherings, appear on radio or television, prepare any article for publication, act as correspondents to a newspaper or other periodical, release or divulge any information concerning the activities of the Department, or maintain that they represent the Department in such matters without permission from the proper department personnel.

### 341.5 PROPERTY AND EQUIPMENT

Volunteers will be issued an identification card that must be worn at all times while on-duty. Any fixed and portable equipment issued by the Department shall be for official and authorized use only. Any property or equipment issued to a volunteer shall remain the property of the Department and shall be returned at the termination of service. Loss of the identification card is to be reported to the on-duty shift supervisor or the Volunteer Coordinator immediately.

#### 341.5.1 VEHICLE USE



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Volunteers assigned to duties such as vacation house checks or other assignments that require the use of a vehicle must first complete the following:

- (a) A driving safety briefing and department approved driver safety course.
- (b) Verification that the volunteer possesses a valid California Driver License.
- (c) Verification that the volunteer carries current vehicle insurance.

The Volunteer Coordinator should ensure that all volunteers receive safety briefing updates and license and insurance verification at least once a year.

When operating a Department vehicle, volunteers shall obey all rules of the road, including seat belt requirements. Smoking is prohibited in all Department vehicles.

Volunteers should not operate a marked patrol car (unless there is a prominently placed sign indicating that it is out of service) and are not authorized to operate a Department vehicle Code-3.

#### **341.5.2 RADIO AND MDT USAGE**

Volunteers shall successfully complete CLETS and radio procedures training prior to using the police radio or MDT and comply with all related provisions. The Volunteer Coordinator should ensure that radio and CLETS training is provided for volunteers whenever necessary.

#### **341.6 DISCIPLINARY PROCEDURES/TERMINATION**

A volunteer may be removed from the volunteer program at the discretion of the Chief of Police or the Volunteer Coordinator. Volunteers shall have no property interests in their continued appointment. However, if a volunteer is removed for alleged misconduct, the volunteer will be afforded an opportunity solely to clear his/her name through a liberty interest hearing which shall be limited to a single appearance before the Chief of Police or authorized designee.

Volunteers may resign from volunteer service with the Department at any time. It is requested that volunteers who intend to resign provide advance notice of their departure and a reason for their decision.

##### **341.6.1 EXIT INTERVIEWS**

Exit interviews, where possible, should be conducted with volunteers who are leaving their positions. The interview should ascertain why the volunteer is leaving the position and solicit the volunteer's suggestions on improving the position. When appropriate, the interview should also include a discussion on the possibility of involvement in some other capacity with the Department.

#### **341.7 EVALUATION**

An evaluation of the overall volunteer program will be conducted on an annual basis by the Volunteer Coordinator. Regular evaluations should be conducted with volunteers to ensure the best use of human resources available, to ensure personnel problems can be identified and dealt with promptly and fairly, and to ensure optimum satisfaction on the part of volunteers.

## BERKELEY POLICE DEPARTMENT

DATE ISSUED: December 15, 1999

GENERAL ORDER V-8

SUBJECT: VOLUNTEER PROGRAM

### PURPOSE

- 1 - The purpose of this General Order is to establish the guidelines and procedures for the Berkeley Police Department Volunteer Program.

### POLICY

- 2 - The Volunteer Program is designed to provide citizens with an opportunity to assist the Berkeley Police Department. All employees are expected to support this Program to the extent possible.

### BACKGROUND

- 3 - The Berkeley Police Department has utilized volunteers for many years in different assignments. The Program provides volunteers with an opportunity to participate and observe actual police activities. An ongoing training program provides volunteers with the necessary background to assist the Police Department.

### PROCEDURES

- 4 - The Volunteer Coordinator\* administers the Volunteer Program, under the guidance of the Community Services Bureau Sergeant.\*
  - (a) The Chief of Police will be the final authority on all appointments to the Volunteer Program or severance from service.
- 5 - It shall be the responsibility of the Volunteer Coordinator\* to assist in the overall planning, administration, and supervision of the Volunteer Program.
- 6 - The Volunteer Coordinator\* will serve as the advisor. He/she shall coordinate all relations between volunteers and regular police Divisions/Bureaus.

### ELIGIBILITY FOR VOLUNTEER PROGRAM MEMBERSHIP

- 7 - Volunteer applicants must:
  - (a) Be at least eighteen (18) years of age.
  - (b) Have no serious criminal history.
  - (c) Possess a valid California Driver's License (only for certain assignments).
  - (d) Possess enthusiasm, drive and an interest in making a difference in the community.

\*Highlighted text is new.

## BERKELEY POLICE DEPARTMENT

DATE ISSUED: December 15, 1999

GENERAL ORDER V-8

### APPLICATION FOR VOLUNTEER PROGRAM

- 8 - All persons seeking to become a member\* of the Berkeley Police Volunteers Program shall be referred to the Volunteer Coordinator. The applicant will complete the BPD Volunteer Application form (BPD81998) and the BPD Volunteer Agreement and Release from Liability form (BPD81998L). After completion of an Oral Board for each candidate, a background investigation will be completed, including (at minimum) a records check, Department of Motor Vehicles check and a fingerprint check. Upon completion of the above, each candidate will attend the Volunteer Academy, which will run for one night a week for four consecutive weeks.\*

### UNIFORM AND EQUIPMENT

- 9 - Uniform and equipment for the Volunteer Program includes:
- (a) Appropriate civilian attire to be able to meet the general public and ID Badge\*
  - (b) "Polo type" shirt with "V.I.P.S." (Volunteer In Police Service) logo\*

### FUNCTIONS

- 10 - Some of the functions which volunteers may be assigned to might include, but are not limited to:
- (a) Assisting the Volunteer Coordinator\* or others on special projects and on-going programs.
  - (b) Providing assistance to other divisions as needed.
  - (c) Any other tasks that may be deemed appropriate by the Chief of Police.
- 11 - Volunteers for the most part\* will not perform duties, which are normally performed by sworn personnel or other full time employees of the Berkeley Police Department. They are here to augment not supplant.\*

### DISCIPLINARY ACTION

- 12 - All members of the Volunteer Program shall be required to observe and obey the policies, rules, regulations, and procedures as set forth in the Berkeley Police Department General Orders and Regulations binder, as well as directives issued by the Chief of Police, or his/her duly designated representatives. A copy of the Berkeley Police Department General Orders and Regulations binder is maintained in the Volunteer\* Office. Disciplinary action may include:

\*Highlighted text is new.

## BERKELEY POLICE DEPARTMENT

DATE ISSUED: December 15, 1999

GENERAL ORDER V-8

- (a) Verbal reprimand.
- (b) Written reprimand.
- (c) Suspension.
- (d) Dismissal.

### SEPARATION FROM SERVICE

13 - All persons separated from the Volunteer Program will return all Departmental equipment immediately. Persons may be separated from the Volunteer Program in the following manner:

- (a) Resignation.
- (b) Dismissal.\*

Reference: CALEA Standards

\*Highlighted text is new.

## Service Animals

### 342.1 PURPOSE AND SCOPE

The purpose of this policy is to provide the guidelines necessary to ensure the rights of individuals who use service animals to assist with disabilities are protected in accordance with Title II of the Americans with Disabilities Act of 1990 (ADA).

#### 342.1.1 DEFINITIONS

Definitions related to this policy include:

**Service animal** - A dog that is trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual or other mental disability. The work or tasks performed by a service animal must be directly related to the individual's disability (28 CFR 35.104; Health and Safety Code § 113903).

**As** Service animal also includes a miniature horse if the horse is trained to do work or perform tasks for people with disabilities, provided the horse is housebroken, is under the handler's control, the facility can accommodate the horse's type, size and weight, and the horse's presence will not compromise legitimate safety requirements necessary for safe operation of the facility (28 CFR 35.136(i)).

**Service Dog in Training:** A service dog in training is any dog that is being trained to assist a person with a disability. Other than guide dogs for the blind, there are no state-wide certifications, standards or qualifications for service dogs in training or their trainers. Thus, a service dog trainer may be the disabled owner of the dog or a licensed dog trainer.

### 342.2 POLICY

It is the policy of the Berkeley Police Department to provide services and access to persons with service animals in the same manner as those without service animals. Department members shall protect the rights of persons assisted by service animals in accordance with state and federal law.

### 342.3 IDENTIFICATION AND USE OF SERVICE ANIMALS

Some service animals may be readily identifiable. However, many do not have a distinctive symbol, harness or collar.

Service animals may be used in a number of ways to provide assistance, including:

- Guiding people who are blind or have low vision.
- Alerting people who are deaf or hard of hearing.
- Retrieving or picking up items, opening doors or flipping switches for people who have limited use of their hands, arms or legs.
- Pulling wheelchairs.

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- Providing physical support and assisting with stability and balance.
  - Doing work or performing tasks for persons with traumatic brain injury, intellectual disabilities or psychiatric disabilities, such as reminding a person with depression to take medication.
  - Alerting a person with anxiety to the onset of panic attacks, providing tactile stimulation to calm a person with post-traumatic stress disorder, assisting people with schizophrenia to distinguish between hallucinations and reality, and helping people with traumatic brain injury to locate misplaced items or follow daily routines.

#### **342.4 MEMBER RESPONSIBILITIES**

Service animals that are assisting individuals with disabilities are **generally** permitted in all public facilities and areas where the general public is allowed. Department members are expected to treat individuals with service animals with the same courtesy and respect that the Berkeley Police Department affords to all members of the public (28 CFR 35.136).

##### **342.4.1 INQUIRY**

If it is apparent or if a member is aware that an animal is a service animal, the individual generally should not be asked any questions as to the status of the animal. If it is unclear whether an animal meets the definition of a service animal, the member should ask the individual only the following questions (28 CFR 35.136(f)):

- Is the animal required because of a disability?
- What task or service has the service animal been trained to perform?

If the individual explains that the animal is required because of a disability and has been trained to work or perform at least one task, the animal meets the definition of a service animal and no further questions as to the animal's status should be asked. The individual should not be questioned about his/her disability nor should the person be asked to provide any license, certification or identification card for the service animal.

##### **342.4.2 ANIMALS IN TRAINING**

A service animal in training, that is not a dog, may be denied entry into public establishments. A service dog in training may be allowed entry into public establishments under either of the following conditions:

- The individual with the disability advises they are in the process of training the dog to become a service animal, OR
- The individual advises they are not disabled but are in the process of training the dog to become a service animal and the person has some documentation to identify him or her as a dog trainer.

##### **342.4.3 CONTACT**

Service animals are not pets. Department members should not interfere with the important work performed by a service animal by talking to, petting or otherwise initiating contact with a service animal.

##### **342.4.4 REMOVAL**

If a service animal is not housebroken or exhibits vicious behavior, poses a direct threat to the health of others, or unreasonably disrupts or interferes with normal business operations, an officer may direct the handler to remove the animal from the premises. Barking alone is not a threat nor

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does a direct threat exist if the person takes prompt, effective action to control the service animal (28 CFR 35.136(b)).

Each incident must be considered individually and past incidents alone are not cause for excluding a service animal. Removal of a service animal may not be used as a reason to refuse service to an individual with disabilities. Members of this department are expected to provide all services as are reasonably available to an individual with a disability, with or without a service animal.

#### 342.4.5 COMPLAINTS

When handling calls of a complaint regarding a service animal, members of this department should remain neutral and should be prepared to explain the legal ADA requirements concerning service animals to the concerned parties. Businesses are required to allow service animals to accompany their handlers into the same areas that other customers or members of the public are allowed (28 CFR 36.302).

Absent a violation of law independent of the disability laws ADA, officers should take no enforcement action beyond keeping the peace. Individuals who believe they have been discriminated against as a result of a disability should be referred to the Civil Rights Division of the U.S. Department of Justice (DOJ).

## Gun Violence Restraining Orders

### 343.1 PURPOSE AND SCOPE

#### Best Practice

The purpose of this policy is to provide guidelines for petitioning and serving gun violence restraining orders and accounting for the firearms obtained pursuant to those orders.

#### 343.1.1 DEFINITIONS

##### State

Definitions related to this policy include:

**Gun violence restraining order** - Civil restraining order prohibiting a named person from controlling, owning, purchasing, possessing, receiving or otherwise having custody of any firearms or ammunition, including an ammunition magazine (Penal Code § 18100).

### 343.2 POLICY

#### Best Practice

It is the policy of the Berkeley Police Department to petition and serve gun violence restraining orders in compliance with state law and to properly account for firearms and ammunition obtained by the Department pursuant to such orders.

### 343.3 GUN VIOLENCE RESTRAINING ORDERS

##### State

An officer who reasonably believes a person is a present danger to him/herself or another person by controlling, owning, purchasing, possessing, receiving or otherwise having custody of a firearm may request permission from his/her supervisor to petition the court for a gun violence restraining order.

Officers petitioning the court should use the forms established by the Judicial Council (Penal Code § 18105). The petition should describe the number, types and locations of any firearms and ammunition that the officer believes to be possessed or controlled by the person (Penal Code § 18107). The petition should also describe why less-restrictive alternatives are ineffective or inadequate for the circumstances (Penal Code § 18125; Penal Code § 18150; Penal Code § 18175).

If it is not practical under the circumstances to submit a written petition, an officer may orally request an order using the procedures for obtaining an oral search warrant and preparing the order using the appropriate Judicial Council form and then prepare and sign a declaration under penalty of perjury that recites the oral statements provided to the judicial officer and memorialize the order of the court on the appropriate Judicial Council form (Penal Code § 18140; Penal Code § 18145).



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#### 343.4 SERVICE OF GUN VIOLENCE RESTRAINING ORDERS

State

An officer serving any gun violence restraining order shall:

- (a) Verbally ask the subject of the order if he/she has any firearm, ammunition, or magazine in his/her possession or under his/her custody or control (Penal Code § 18160).
- (a)(b) Request that any firearms or ammunition be immediately surrendered and issue a receipt for the surrendered items (Penal Code § 18120).
- (b)(c) Take into temporary custody any firearm or other deadly weapon discovered in plain view or pursuant to consent or other lawful search (Penal Code § 18250) and issue the restrained person a Property Receipt.
- (e)(d) Inform the restrained person of any scheduled hearing regarding the order (Penal Code § 18160).
- (d)(e) Submit the Transmit the original proof of service form to Records Management so that it may be transmitted to the issuing court as soon as practicable but within one business day (Penal Code § 18115).
- (e)(f) As soon as practicable, but by the end of his/her shift, submit proof of service to Telecomthe Public Safety Business Manager for prompt entry into the California Restraining and Protective Order System (Penal Code § 18115).

The officer should also inform the restrained person that he/she is required, within 24 hours, to surrender to a law enforcement agency any other firearms and ammunition he/she owns or that are in his/her custody or control or sell them to a firearms dealer. This notification should be documented.

All firearms and ammunition collected shall be handled and booked in accordance with the Property and Evidence Policy.

##### 343.4.1 SERVICE OF ORAL GUN VIOLENCE RESTRAINING ORDERS

State

If a gun violence restraining order is obtained orally, the officer shall (Penal Code § 18140):

- (a) Serve the order on the restrained person in the manner outlined above, if the restrained person can reasonably be located.
- (b) File a copy of the order with the court as soon as practicable after issuance.
- (c) Ensure the order is provided to the Records Management for entry into the computer database system for protective and restraining orders maintained by the Department of Justice.

#### 343.5 SEARCH WARRANTS

State

If a person who has been served with a gun violence restraining order refuses to surrender any firearm or ammunition, the officer should consider whether to seek a search warrant. If a search warrant is to be obtained, the preparation and service of the search warrant shall be done in accordance with the Warrant Service Policy. Additionally, (Penal Code § 1542.5):

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- (a) The officer serving the warrant shall take custody of any firearm or ammunition that is controlled, possessed or owned by the person who is the subject of the gun violence restraining order, including any discovered pursuant to the warrant, a consensual search or other lawful search.
  - (b) If the location being searched is jointly occupied and the firearm or ammunition is owned by a person other than the restrained person, the firearm or ammunition should not be seized if the following conditions are met:
    - 1. The firearm or ammunition can be stored in a manner that does not allow the restrained person to have control or access.
    - 2. There is no evidence that the owner unlawfully possesses the firearm or ammunition.
  - (c) If a locked gun safe belonging to someone other than the subject of a gun violence restraining order is discovered, the officer shall not search the contents of the safe unless the owner consents or there is a valid search warrant for the safe. Any search of the safe must be done in the owner's presence.

#### **343.6 SUPPORT SERVICES BUREAU LIEUTENANT OR DESIGNEE PUBLIC SAFETY**

**State**

##### **BUSINESS MANAGER RESPONSIBILITIES**

The Support Services Bureau Lieutenant or designee Public Safety Business Manager is responsible for ensuring:

- (a) Proof of service of any gun violence restraining order served by an officer or received from the clerk of the court is entered in the computer database system for protective and restraining orders maintained by the Department of Justice within one business day of service if served by an officer, or within one business day of receipt of proof of service if served by a person other than a law enforcement officer (Penal Code § 18115).
- (b) Oral orders are entered into the California Restraining and Protective Order System (Penal Code § 18140).
- (c) Copies of receipts of surrendered firearms or ammunition issued by other agencies for gun violence restraining orders issued by the Department are properly maintained (Penal Code § 18120).

#### **343.7 COURT-ORDERED FIREARMS AND AMMUNITION SURRENDERS**

**State**

Authorized members shall accept firearms and ammunition from any individual who is the subject of a gun violence restraining order. The member receiving any firearm or ammunition shall:

- (a) Record the individual's name, address and telephone number.
- (b) Record the serial number of the firearm.
- (c) Prepare an incident report and property report.
- (d) Provide a property receipt to the individual who surrendered the firearms and ammunition.
- (e) Package and submit the firearms and ammunition in accordance with the Property and Evidence Policy.

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### **343.8 RELEASE OF FIREARMS AND AMMUNITION**

**State**

Firearms and ammunition that were taken into temporary custody or surrendered pursuant to a gun violence restraining order shall be returned to the restrained person upon the expiration of the order and in accordance with Penal Code § 18120 and the Property and Evidence Policy.

## Off-Duty Law Enforcement Actions

### 344.1 PURPOSE AND SCOPE

The decision to become involved in a law enforcement action when off-duty can place an officer as well as others at great risk and must be done with careful consideration. This policy is intended to provide guidelines for officers of the Berkeley Police Department with respect to taking law enforcement action while off-duty.

### 344.2 POLICY

Initiating law enforcement action while off-duty is generally discouraged. Officers should not attempt to initiate enforcement action when witnessing minor crimes, such as suspected intoxicated drivers, reckless driving or minor property crimes. Such incidents should be promptly reported to the appropriate law enforcement agency.

Officers are not expected to place themselves in unreasonable peril. However, any sworn member of this department who becomes aware of an incident or circumstance that he/she reasonably believes poses an imminent threat of serious bodily injury or death, or significant property damage may take reasonable action to minimize the threat.

When public safety or the prevention of major property damage requires immediate action, officers should first consider reporting and monitoring the activity and only take direct action as a last resort.

### 344.3 FIREARMS

Officers of this department may carry firearms while off-duty in accordance with federal regulations and department policy. All firearms and ammunition must meet guidelines as described in the department Firearms Policy. When carrying firearms while off-duty officers shall also carry their department-issued badge or authorized flat badge and identification.

Officers should refrain from carrying firearms when the consumption of alcohol is likely or when the need to carry a firearm is outweighed by safety considerations. Firearms shall not be carried by any officer who has consumed an amount of an alcoholic beverage or taken any drugs or medications or any combination thereof that would tend to adversely affect the officer's senses or judgment.

### 344.4 DECISION TO INTERVENE

There is no legal requirement for off-duty officers to take law enforcement action. However, should officers decide to intervene, they must evaluate whether the action is necessary or desirable, and should take into consideration the following:

- (a) The tactical disadvantage of being alone and the fact there may be multiple or hidden suspects.

- (b) The inability to communicate with responding units.
- (c) The lack of equipment, such as handcuffs, OC or baton.
- (d) The lack of cover.
- (e) The potential for increased risk to bystanders if the off-duty officer were to intervene.
- (f) Unfamiliarity with the surroundings.
- (g) The potential for the off-duty officer to be misidentified by other peace officers or members of the public.

Officers should consider waiting for on-duty uniformed officers to arrive, and gather as much accurate intelligence as possible instead of immediately intervening.

#### 344.4.1 INTERVENTION PROCEDURE

If involvement is reasonably necessary the officer should attempt to call or have someone else call 9-1-1 to request immediate assistance. The dispatcher should be informed that an off-duty officer is on-scene and should be provided a description of the officer if possible.

Whenever practicable, the officer should loudly and repeatedly identify him/herself as **an Berkeley Police Departmenta police** officer until acknowledged. Official identification should also be displayed.

#### 344.4.2 INCIDENTS OF PERSONAL INTEREST

Officers should refrain from handling incidents of personal interest, (e.g., family or neighbor disputes) and should remain neutral. In such circumstances officers should call the responsible agency to handle the matter.

#### 344.4.3 NON-SWORN RESPONSIBILITIES

Non-sworn personnel should not become involved in any law enforcement actions while off-duty except to notify the local law enforcement authority and remain at the scene, if safe and practicable.

#### 344.4.4 OTHER CONSIDERATIONS

When encountering a non-uniformed officer in public, uniformed officers should wait for acknowledgement by the non-uniformed officer in case he/she needs to maintain an undercover capability.

#### 344.5 REPORTING

Any off-duty officer who engages in any law enforcement activity, regardless of jurisdiction, shall notify the Watch Commander as soon as practicable. The Watch Commander shall determine whether a report should be filed by the employee.

Officers should cooperate fully with the agency having jurisdiction in providing statements or reports as requested or as appropriate.

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## Firearms and Tactics Unit

### 347.1 PURPOSE AND SCOPE

This Policy sets forth guidelines governing the organization and operation of the Department's Firearms and Tactics Unit (FTU).

### 347.2 POLICY

The FTU shall serve to develop, design, implement, instruct, manage, and evaluate all phases of a comprehensive program to enhance the firearms and tactical skills of officers, sworn personnel. The FTU also serves to provide training in Less than Lethal and chemical agent systems as well as to coordinate the maintenance, servicing, and repair of Departmentally authorized weapons.

### 347.3 PROCEDURES

The FTU shall be administered by a Program Coordinator, who is responsible to the Professional Standards Division's Personnel and Training Sergeant.

The Program Coordinator shall submit reports summarizing the Unit's activities and projects, as needed, through the Personnel and Training Sergeant and Lieutenant to the Professional Standards Division Captain.

### 347.4 UNIT COMPOSITION

The FTU is composed of the following positions of responsibility:

- (a) Firearms Program Coordinator as defined in section 347.5
- (b) Firearms Instructors: Sworn Officers staff who are selected by the Department who have completed a POST Certified Firearms Instructor course
- (c) Less than Lethal Instructor: A Firearms Instructor who has been qualified to train officers personnel in Less than Lethal systems deployed by the Department.
- (d) Armorers: Officers Members selected by the department who are trained and certified to service and repair Departmentally authorized firearms.
- (e) Lead Armorer: An Armorer who is selected by the Personnel and Training Sergeant that works with the Program Coordinator and the Personnel and Training Sergeant to schedule coordinates and task, weapons maintenance, repair and inventory tracking. The Lead Armorer also manages the equipment in the indoor range and gun cleaning room, inventories, repair schedules, and other hardware related to the FTU Firearms and Tactics Unit responsibilities
- (f) Chemical Agent Instructors: Officers selected by the Department who have completed requiring certification of completion of a minimum of 40 hours of formal chemical agent instruction training.
- (g) Lead Chemical Agent Instructor: A Chemical Agent Instructor who is selected by the

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Personnel and Training Sergeant who is responsible for coordinating training and; gas mask fit testing as well as the, and chemical agent and the purchase and management of related equipment, management and purchases

Assignments are based on experience, training and ability, not Departmental rank.

#### **347.5 PROGRAM COORDINATOR**

The FTU is administered by a Program Coordinator, who is responsible to the Personnel and Training Sergeant.

The responsibilities of the Program Coordinator include:

- (a) Coordinate, develop, manage, and evaluate all Department sponsored firearms training and tactics programs
- (b) Facilitate and remain cognizant of special weapons training programs and be responsive to specialized firearms training needs.
- (c) Coordinate the selection, evaluation, and the continuing education needs of Firearms Instructors and Armorsers.
- (d) Serve as the primary resource in firearms, firearms related equipment and firearms training matters for Department Command Staff. Responsibilities in this area include:
  1. Serve as a resource for firearms related training materials, and equipment and provide presentations to Department Staff on these matters.
  2. Work with the Lead Armorer to research, evaluate, and implement, evaluate changes, to Department issued ammunition, authorized firearms, or related equipment, and/or modifications of related Department procedures, regulations, or rules, in regards to these issues.
  3. Serve on the Use of Force Review Board when a firearm was involved in the incident under review, all Department Shooting Inquiry Boards.
- (e) Prepare, submit, justify and track requisitions for firearms training related equipment, materials, and supplies.
- (f) Receive, disburse, and monitor firearms training related equipment, materials and supplies.
- (g) Work with Departmental Defensive Tactics Instructors to coordinate joint/concurrent use of force training for officerssworn personnel.
- (h) Coordinate with Firearms Instructors and the Personnel and Training Sergeant to ensure unit and departmental training and equipment goals are identified and met.
- (i) Establish, maintain, and update an accessible central information depository for firearms related equipment and training matters.

#### **347.6 SELECTION PROCESS**

The Selection Panel for all positions described in this policy shall consist of the Firearms and

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~~Tactics Coordinator, Lead Armorer and a Firearms Instructor chosen by the Personnel and Training Sergeant - shall be run by the Personnel and Training Bureau Sergeant, Firearms and Tactics Coordinator or their designee for all positions except for armorer. The Personnel and Training Sergeant and Lead Armorer, or their designees are responsible for running the selection panel for armorers.~~

Final authority for selection shall rest with the Chief of Police based upon the recommendations of the Selection Panel.



## BERKELEY POLICE DEPARTMENT

DATE ISSUED: July 11, 1994

GENERAL ORDER F-5

SUBJECT: DEPARTMENTAL FIREARMS TRAINING UNIT

### PURPOSE

- 1 - This Order sets forth policies and guidelines governing the organization and operation of the Department's Firearms Training Unit (FTU).

### POLICY

- 2 - The Firearms Training Unit shall serve to develop, design, implement, instruct, manage, and evaluate all phases of a comprehensive program to enhance the firearms and tactical skills of sworn, regularly uniformed and plainclothes personnel, as well as Police Reserves of the Berkeley Police Department. The FTU also serves to coordinate the maintenance, servicing and repair of Departmentally authorized weapons.

### PROCEDURES

- 3 - The Firearms Training Unit shall be administered by a Coordinator, who is responsible to the Administrative Division's Personnel and Training Sergeant.
  - (a) The Program Coordinator shall submit reports, summarizing, the Unit's activities and projects, as needed, through the Personnel and Training Sergeant and Administrative Division Lieutenant to the Administrative Division Captain.

### UNIT COMPOSITION

- 4 - The Firearms Training Unit is composed of the following positions of responsibility:
  - (a) Firearms Program Coordinator (FPC).
  - (b) Primary Firearms Instructors (PFI): requiring certification of completion of a minimum of 120 hours of formal firearms instruction training.
  - (c) Adjunct Firearms Instructors (AFI): requiring certification of completion of a minimum of 40 hours of formal firearms instruction training.
  - (d) Armorer(s): requiring current certification of formal, specialized training in the servicing and repair of Departmentally authorized firearms.
  - (e) Chemical Agent Instructor (CAI): requiring certification of completion of a minimum of 40 hours of formal chemical agent instruction training.
- 5 - Assignments are based on selection, experience, training and ability, not Departmental rank.

## BERKELEY POLICE DEPARTMENT

DATE ISSUED: July 11, 1994

GENERAL ORDER F-5

### PROGRAM COORDINATOR

- 6 - The Firearms Training Unit is administered by a Program Coordinator, who is responsible to the Personnel and Training Sergeant.
- 7 - The Coordinator's responsibilities include:
  - (a) coordination of the development, design, implementation, instruction, management, and evaluation of all Department sponsored firearms training and tactics programs for sworn regularly uniformed (including Police Reserves) and plainclothes personnel.
  - (b) to facilitate and remain cognizant of special weapons training programs and be responsive to specialized firearms training needs.
  - (c) to coordinate the selection, evaluation, skills enhancement and the tracking of the continuing education needs of Primary and Adjunct Firearms Instructors and Armorers.
  - (d) to serve as the primary resource in firearms, firearms related equipment and firearms training matters for Department Command Staff.
  - (e) to conduct, upon request of Department Staff, research into and / or presentations regarding Departmentally authorized firearms related training matters and equipment.
  - (f) to research, evaluate, propose or make recommendations to Department Command Staff regarding changes in Department issued ammunition, authorized firearms or related equipment, and/or modifications of Department procedures, regulations or rules in regards to these issues.
  - (g) serves on all Department Shooting Inquiry Boards.
  - (h) conducts regular meetings involving all members of the Firearms Training Unit.
  - (i) attends, upon request of a Command Staff member, Departmental Command Staff meetings.
  - (j) prepares, submits, justifies and tracks requisitions for firearms training related equipment, materials, and supplies.
  - (k) receives, disburses and monitors firearms training related equipment, materials and supplies.
  - (l) secures appropriate training sites for training programs.

## BERKELEY POLICE DEPARTMENT

DATE ISSUED: July 11, 1994

GENERAL ORDER F-5

- (m) monitors and maintains firearms cleaning supplies and their storage and usage sites.
  - (n) through Unit Armorers, facilitates and remains cognizant of the maintenance, repair and servicing needs of Department issued weapons.
  - (o) maintains liaison with Departmental Defensive Tactics Instructors to coordinate joint/ concurrent use of force training for sworn personnel.
  - (p) establishes and maintains liaison with Firearms Program Administrators and/or Instructors from other agencies and Firearms Instructors organizations.
  - (q) establishes, maintains and updates an accessible central information depository for firearms related equipment and training matters.
- 8 - It is recognized that the duties the Coordinator is responsible or may require time beyond the Coordinator's regular shift. As much as possible and working with the Coordinator's supervisor, the responsibilities should be handled through a flexing of the Coordinator's shift. However, it is recognized that it may occasionally be necessary to compensate, via Compensatory Overtime or Paid Overtime, the Coordinator-when their primary duties do not permit the flexing of his / her shift to meet the duties of the Firearms Program Coordinator.
- 9 - Nothing in this policy precludes the Coordinator from delegating any of their duties. However, final responsibility for completion of a delegated task rests with the Coordinator.

### QUALIFICATION AND SELECTION PROCESS

- 10 - Firearms Instructor Qualifications:
- (a) Demonstrate an interest in firearms instruction.
  - (b) Demonstrate requisite skill level to complete a training course for certification as a Firearms Instructor.
- 11 - Chemical Agent Instructor Qualifications:
- (a) Demonstrate an interest in chemical agent instruction.
  - (b) Demonstrate requisite skill level to complete a training course for certification as Chemical Agent Instructor.
- 12 - Program Coordinator Qualifications:
- (a) Completion of Department probationary period for sworn, full-time employees.

\* Entire text is new

**BERKELEY POLICE DEPARTMENT**

**DATE ISSUED: July 11, 1994**

**GENERAL ORDER F-5**

- (b) Sworn, full-time Department employee.
  - (c) Completion of a certified Firearms Instructor's Course.
  - (d) Documented experience instructing classroom, dry and live fire exercises.
- 13 - The selection process shall adhere to the policy set forth in General Order P-15.
- 14 - The Selection Panel shall consist of the Administrative Division Captain, Administrative Division Lieutenant, Personnel and Training Sergeant, or their selected alternates.
- 15 - Final authority for selection shall rest with the Chief of Police based upon the recommendations of the Selection Panel.

References: General Orders F-2 and P-15

## Second Response

### 351.1 BACKGROUND

In 1993, the Berkeley City Council recognized that various City services, especially the Police Department, ~~often had to respond~~ frequently responded to "unruly gatherings", in order to restore and maintain the peace and protect public safety. Such gatherings were, and continue to be, a burden on City resources and often result in delayed police responses to ~~other regular and emergency~~ calls for service and emergencies.

Inadequate supervision and a lack of personal responsibility allowed some gatherings to become problematic, ~~uncommonly~~. Uncommonly loud and disruptive to others. ~~These,~~ these events were deemed by Council to constitute a threat to the peace, health, safety, or general welfare of the public as a result of inappropriate conduct. ~~To~~ To discourage the repeated occurrence of loud and unruly gatherings, the Council enacted Berkeley Municipal Code §13.48, the "Second Response" Ordinance, to recognize such incidents as public nuisances, and provide for civil fines as the punitive action for ordinance violation.

### 351.2 THE ORDINANCE

Berkeley Municipal Code §13.48.010 states it shall be unlawful and a public nuisance to conduct a gathering, which incorporates the following criteria:

- Ten or more persons involved;
- The event is occurring on private property; and,
- The gathering occurs in a manner which constitutes a substantial disturbance of the quiet enjoyment of private or public property in a significant segment of a neighborhood, as a result of conduct constituting a violation of law.

Examples of such unlawful conduct may include the following: excessive noise or traffic, obstruction of public streets by crowds or vehicles, public intoxication, the service of alcohol to minors, public urination, fights, disturbances of the peace, and littering. A gathering constituting a public nuisance may be abated by all reasonable means including, but not limited to, an order requiring the gathering be disbanded, and citation and/or arrest of any law violators under any applicable local laws and state statutes.

The Ordinance explicitly prohibits targeted enforcement against student housing. However, nothing in the Ordinance precludes the City from setting priorities in the use of its resources by employing the Ordinance against events that are the most disruptive, against properties at which disruptive events are held most often, or on the basis of other similar legitimate factors.

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### 351.3 PATROL OFFICER RESPONSIBILITIES

When the police intervenes at a gathering which constitutes a nuisance under the Ordinance, a "Notice" must be prominently posted at the premises at which the nuisance occurred. The Notice, referred to in the ordinance as an "Exhibit A," states that the intervention ofby the policeCity has been necessitated as a result of a public nuisance caused by an event at the premises. The "Exhibit A" also indicates:

- the date and time of the police intervention;
- any subsequent police intervention at the same premises within a one hundred twenty-day (120) period, including an intervention on the same day as the posting of the "Exhibit A," shall result in joint and/or several liability (i.e., one or more people may be responsible for the applicable fine); and,
- liability may fall upon any guests causing the public nuisance, all sponsors of the gathering, all residents of the premises, all persons in control of the premises, and all owners of the premises that reside on or adjacent to the premises or are present at the premises when the nuisance occurs.

The residents or persons in control of the property, if present, must be consulted regarding a location where the Notice can be conspicuously and securely posted. When consulted, those persons, as well as sponsors of the nuisance event, if involved in the decision, become responsible for ensuring that the "Exhibit A" is neither removed nor defaced. If either occurs, those responsible for the security of the notice become liable for a civil penalty of \$100.00, in addition to any other penalties which may be due under the Ordinance.

### 351.4 PROCEDURE - OFFICER StepStep-by-Step Procedure

1. Contact the resident, person in control of the property, or event organizer, and determine if Ordinance enforcement is appropriate.
2. Complete an "Exhibit A" or "Exhibit B" form (in duplicate, including the date, time, address, issuing officer, and case number.)
3. Confer with the resident, person in control of the property, or event organizer and identify a conspicuous and secure location to post the "Exhibit ~~A~~" form. Should the resident, person in control of the property, or event organizer decline to confer, the officer should choose an appropriate posting location and inform the parties present that removal or defacement of the notice within the 120 day period may result in a \$100.00 fine.
4. Post the duplicate (yellow) copy of the "Exhibit ~~A~~" form at the premises and retain the original (white) for the report.

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5. Complete a NCIR "Case" report to document your observations relevant to the Ordinance violation and responsible parties contacted. The following information should be included:
    - known complainant's identification and report information;
    - identification of parties responsible for the property hosting the event;
    - the overall condition and/or general environment of the premises;
    - the number of people involved in the unruly gathering;
    - whether or not alcohol was a factor;
    - traffic conditions effected by the gathering;
    - any other information that may be relevant to the Ordinance violation; and,
    - the exact location the notice was posted.
  
  6. Submit Route the original ~~the~~ -report in AEGIS, route the original exhibit to Records Management and place a copy of -the exhibit in the CSB and Exhibit A or B mailbox form to Records Detail in Support Services Division, and photocopies to the appropriate Community Services Bureau Area Coordinator to ensure proper administrative follow-up.

~~Patrol~~Patrol officers should be aware of what properties in their assigned area have been posted for Ordinance violation(s) and should monitor them for repeat violation within the prescribed term. If, within 120 days of the initial posting, an officer investigates another unruly gathering as described in the Ordinance, officers should ensure~~replace~~ the "Exhibit A" is still conspicuously posted and not defaced~~posting with an~~ "Exhibit B", and document their observations and actions (as in #5 above) on a supplemental~~new~~ "Case" report. A copy of that report should also be forwarded to the appropriate Area Coordinator for administrative follow-up.

It is important to know that with each subsequent report~~occurrence~~ of a nuisance at a previously posted property, the 120 day "clock" resets. For example, if an address was initially posted on January 1<sup>st</sup>, and there was a reported violation on March 1<sup>st</sup>, the 120 day period restarts and would conclude~~conclude~~, absent a subsequent violation, on June 28<sup>th</sup>. As such, knowing the date of the most recent documented Ordinance violation at a posted property will allow an officer to determine if the 120 day term is still in effect or has expired.

### 351.5 ADMINISTRATIVE FOLLOW-UP PROCEDURES

Administrative follow-up of Ordinance violations is the responsibility of the Community Services Bureau Area Coordinator responsible for the area in which the subject property is located. Follow-up responsibilities include: contacting the Communication Center to ensure the posting is logged into CAD as a "Premise Alert"; mailing of requisite notices of police intervention; and, one or more site inspections to examine the "Exhibit" form-A posting.

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When advised of an "Exhibit A" or "Exhibit B" form posting, the responsible Area Coordinator should work with the Communication Center staff to ensure a Premise Alert has been entered into CAD for the subject property. Minimally, the CAD entry should include: the date/time the "Exhibit A (or B)" form was posted; the name and phone number of the liable person(s) contacted; and, the location where the notice form was posted. Additionally, if regarding an "Exhibit B", the alert should include the fine amount to be assessed against the property. Having this information available in CAD will help patrol officers enforce the Ordinance should they respond to subsequent loud, unruly parties during the 120 day period. Additionally, requesting the Communication Center staff to revise the CAD event description to "2<sup>nd</sup> Response" will help with event tracking and future administrative research efforts.

BMC 13.48.030(B) requires a notice of police intervention be mailed to the property owner(s) on file in the City's property tax assessment records. The notice, commonly a letter from the Chief responsible Area Coordinator and a copy of the "Exhibit A/B" form, informs the property owner(s) that any subsequent event within 120 days on the same premises necessitating City intervention shall result in liability of the property owner for all penalties associated with such intervention as more particularly set forth in the Ordinance.

The Area Coordinator should set a three week follow-up in order to conduct an initial inspection visit of the site to examine the Exhibit A posting. In the event the form has been removed, post a new Exhibit A form shall be posted. Observed violations of the Ordinance and related enforcement actions must be documented in a supplemental report, which will support a demand for the prescribed civil fine. Additional inspections should be conducted to ensure Ordinance compliance.

For each instance wherein an Ordinance violation is identified, the Area Coordinator is responsible for mailing an "Exhibit B" notice letter to the person(s) liable for the civil penalty.

#### **351.6 PROCEDURE - CSB Step-by-Step Procedure**

1. Ensure the incident's CAD event record is updated with relevant contact and form posting information.
2. Identify the property owner(s) as indicated in City property tax assessment records and mail that party a notice of violation and copy of the "Exhibit A" notice of police intervention form.
3. Set an initial follow-up date within three weeks of the initial "Exhibit A" posting to examine the form. Replace a missing form, if necessary, and document observed violations.
4. Conduct supplemental site inspections, as necessary.



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5. If police intervention is necessary after the initial posting of "Exhibit A" and Ordinance violations are discovered, ensure they are documented in a ~~supplemental~~ new "Case" report, complete the "Exhibit B" letter, and mail it to all parties liable for the civil fine (e.g., the event organizer, property residents, and/or property owner.)
  6. Provide the City of Berkeley Finance Department with copies of all reports and letters associated with any Ordinance violation to facilitate billing of the responsible parties.

### CIVIL CIVIL PENALTIES AND COLLECTION PROCEDURES

Civil penalties may be assessed against all persons liable for the City's intervention to abate a gathering deemed a public nuisance. ~~The~~The schedule of penalties is as follows:

- For ~~the~~ a second violation of the Ordinance- response in any during the 120-day period, the penalty shall be the sum of \$750.
- For ~~the~~ a third-third violation of the Ordinance response ~~in any during the~~ 120-day period, the penalty shall be the sum of \$1,500.
- For any subsequent violation of the Ordinance ~~further response in any during the~~ 120-day period, the penalty shall be the sum of \$2,500 for each intervention by police.

Billed by "Exhibit B", all persons liable for applicable civil penalties will be directed to remit payment within thirty days of the letter's postmark to the City of Berkeley Finance Department, who will be responsible for collections. If payment is not received within the stated term, the bill will be deemed delinquent, and all persons liable for the penalties will be subject to accrued interest at the maximum legal rate, as well as an additional penalty of \$100.

#### 351.7 SUMMARY

A tool wielded to quell public nuisances, the "2<sup>nd</sup> Response" Ordinance can improve, if not restore, the quality of life in neighborhoods adversely ~~effected~~affected by loud and unruly gatherings. This result cannot occur, however, unless the Ordinance is used effectively. Knowing the elements of the statute and the role the police officer plays in its enforcement will help ensure success. Make and document detailed observations in your report, post the "Exhibit A" form appropriately, and route the report package properly so the administrative effort that follows may be readily accomplished.

# BERKELEY POLICE DEPARTMENT TRAINING AND INFORMATION BULLETIN



DATE: September 25, 2007

Number: 249

## BERKELEY MUNICIPAL CODE §13.48, THE "SECOND RESPONSE" ORDINANCE

### BACKGROUND

In 1993, the Berkeley City Council recognized that various City services, especially the Police Department, often had to respond multiple times to social events, often described as "unruly gatherings", in order to restore and maintain the peace and protect public safety. Such gatherings were, and continue to be, a burden on City resources and often result in delayed police responses to regular and emergency calls for service.

Inadequate supervision and a lack of personal responsibility allowed some gatherings to become problematic, uncommonly loud and disruptive to others. These events were deemed by Council to constitute a threat to the peace, health, safety, or general welfare of the public as a result of inappropriate conduct. To discourage the repeated occurrence of loud and unruly gatherings, the Council enacted Berkeley Municipal Code §13.48, the "Second Response" Ordinance, to recognize such incidents as public nuisances, and provide for civil fines as the punitive action for ordinance violation.

### THE ORDINANCE

Berkeley Municipal Code §13.48.010 states it shall be unlawful and a public nuisance to conduct a gathering, which incorporates the following criteria:

- Ten or more persons involved;
- The event is occurring on private property; and,
- The gathering occurs in a manner which constitutes a substantial disturbance of the quiet enjoyment of private or public property in a significant segment of a neighborhood, as a result of conduct constituting a violation of law.

Examples of such unlawful conduct may include the following: excessive noise or traffic, obstruction of public streets by crowds or vehicles, public intoxication, the service of alcohol to minors, fights, disturbances of the peace, and littering. A gathering constituting a public nuisance may be abated by all reasonable means including, but not limited to, an order requiring the gathering be disbanded, and citation and/or arrest of any law violators under any applicable local laws and state statutes.

The Ordinance explicitly prohibits targeted enforcement against student housing. However, nothing in the Ordinance precludes the City from setting priorities in the use of its resources by employing the Ordinance against events that are the most disruptive, against properties at which disruptive events are held most often, or on the basis of other similar legitimate factors.

### PATROL OFFICER RESPONSIBILITIES

When the City intervenes at a gathering which constitutes a nuisance under the Ordinance, a "Notice" must be prominently posted at the premises at which the nuisance occurred. The Notice, referred to in the ordinance as an "Exhibit A," states that the intervention of the City has been necessitated as a result of a public nuisance caused by an event at the premises. The "Exhibit A" also indicates:

- the date and time of the police intervention;
- any subsequent police intervention at the same premises within a one hundred twenty-day (120) period, including an intervention on the same day as the posting of the "Exhibit A," shall result in joint and several liability (i.e., one or more people may be responsible for the applicable fine); and,
- liability may fall upon any guests causing the public nuisance, all sponsors of the gathering, all residents of the premises, all persons in control of the premises, and all owners of the premises that reside on or adjacent to the premises or are present at the premises when the nuisance occurs.

The residents or persons in control of the property, if present, must be consulted regarding a location where the Notice can be conspicuously and securely posted. When consulted, those persons, as well as sponsors of the nuisance event, if involved in the decision, become responsible for ensuring that the "Exhibit A" is neither removed nor defaced. If either occurs, those responsible for the security of the notice become liable for a civil penalty of \$100.00, in addition to any other penalties which may be due under the Ordinance.

### Step-by-Step Procedure

1. Contact the resident, person in control of the property, or event organizer, and determine if Ordinance enforcement is appropriate.
2. Complete an "Exhibit A" form (in duplicate, including the date, time, address, issuing officer, and case number.)
3. Confer with the resident, person in control of the property, or event organizer and identify a conspicuous and secure location to post the "Exhibit A" form. Should the resident, person in control of the property, or event organizer decline to confer, the officer should choose an appropriate posting location and inform the parties present that removal or defacement of the notice within the 120 day period may result in a \$100.00 fine.

4. Post the duplicate (yellow) copy of the "Exhibit A" form at the premises and retain the original (white) for the report.
5. Complete a NCIR to document your observations relevant to the Ordinance violation and responsible parties contacted. The following information should be included:
  - known complainant's identification and report information;
  - identification of parties responsible for the property hosting the event;
  - the overall condition and/or general environment of the premises;
  - the number of people involved in the unruly gathering;
  - whether or not alcohol was a factor;
  - traffic conditions effected by the gathering;
  - any other information that may be relevant to the Ordinance violation; and,
  - the exact location the notice was posted.
6. Route the original report and Exhibit A form to Records Detail in Support Services Division, and photocopies to the appropriate Community Services Bureau Area Coordinator to ensure proper administrative follow-up.

Patrol officers should be aware of what properties in their assigned area have been posted for Ordinance violation(s) and should monitor them for repeat violation within the prescribed term. If, within 120 days of the initial posting, an officer investigates another unruly gathering as described in the Ordinance, officers should ensure the Exhibit A is still conspicuously posted and not defaced, and document their observations and actions (as in #5 above) on a supplemental report. A copy of that report should also be forwarded to the appropriate Area Coordinator for administrative follow-up.

It is important to know that with each subsequent report of a nuisance at a previously posted property, the 120 day "clock" resets. For example, if an address was initially posted on January 1<sup>st</sup>, and there was a reported violation on March 1<sup>st</sup>, the 120 day period restarts and would concluded, absent a subsequent violation, on June 28<sup>th</sup>. As such, knowing the date of the most recent documented Ordinance violation at a posted property will allow an officer to determine if the 120 day term is still in effect or has expired.

#### ADMINISTRATIVE FOLLOW-UP PROCEDURES

Administrative follow-up of Ordinance violations is the responsibility of the Community Services Bureau Area Coordinator responsible for the area in which the subject property is located. Follow-up responsibilities include: contacting the Communication Center to ensure the posting is logged into CAD as a "Premise Alert"; mailing of requisite notices of police intervention; and, one or more site inspections to examine the Exhibit A posting.

When advised of an Exhibit A form posting, the responsible Area Coordinator should work with the Communication Center staff to ensure a Premise Alert has been entered into CAD for the subject property. Minimally, the CAD entry should include: the date/time the Exhibit A form was posted; the name and phone number of the liable person(s) contacted; and, the location

where the notice form was posted. Having this information available in CAD will help patrol officers enforce the Ordinance should they respond to subsequent loud, unruly parties during the 120 day period. Additionally, requesting the Communication Center staff to revise the CAD event description to "2<sup>nd</sup> Response" will help with event tracking and future administrative research efforts.

BMC 13.48.030(B) requires a notice of police intervention be mailed to the property owner(s) on file in the City's property tax assessment records. The notice, commonly a letter from the Chief and a copy of the Exhibit A form, informs the property owner(s) that any subsequent event within 120 days on the same premises necessitating City intervention shall result in liability of the property owner for all penalties associated with such intervention as more particularly set forth in the Ordinance.

The Area Coordinator should set a three week follow-up in order to conduct an initial inspection visit of the site to examine the Exhibit A posting. In the event the form has been removed, post a new Exhibit A form. Observed violations of the Ordinance and related enforcement actions must be documented in a supplemental report, which will support a demand for the prescribed civil fine. Additional inspections should be conducted to ensure Ordinance compliance.

For each instance wherein an Ordinance violation is identified, the Area Coordinator is responsible for mailing an Exhibit B notice to the person(s) liable for the civil penalty.

#### Step-by-Step Procedure

1. Ensure the incident's CAD event record is updated with relevant contact and form posting information.
2. Identify the property owner(s) as indicated in City property tax assessment records and mail that party a copy of the Exhibit A notice of police intervention form.
3. Set an initial follow-up date within three weeks of the initial Exhibit A posting to examine the form. Replace a missing form, if necessary, and document observed violations.
4. Conduct supplemental site inspections, as necessary.
5. If police intervention is necessary after the initial posting of "Exhibit A" and Ordinance violations are discovered, ensure they are documented in a supplemental report, complete the "Exhibit B" letter, and mail it to all parties liable for the civil fine (e.g., the event organizer, property residents, and/or property owner.)
6. Provide the City of Berkeley Finance Department with copies of all reports and letters associated with any Ordinance violation to facilitate billing of the responsible parties.

CIVIL PENALTIES AND COLLECTION PROCEDURES

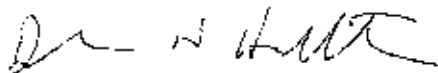
Civil penalties may be assessed against all persons liable for the City's intervention to abate a gathering deemed a public nuisance. The schedule of penalties is as follows:

- For the second response in any 120-day period, the penalty shall be the sum of \$750.
- For the third response in any 120-day period, the penalty shall be the sum of \$1,500.
- For any further response in any 120-day period, the penalty shall be the sum of \$2,500 for each intervention by police.

Billed by "Exhibit B", all persons liable for applicable civil penalties will be directed to remit payment within thirty days of the letter's postmark to the City of Berkeley Finance Department, who will be responsible for collections. If payment is not received within the stated term, the bill will be deemed delinquent, and all persons liable for the penalties will be subject to accrued interest at the maximum legal rate, as well as an additional penalty of \$100.

SUMMARY

A tool wielded to quell public nuisances, the "2<sup>nd</sup> Response" Ordinance can improve, if not restore, the quality of life in neighborhoods adversely effected by loud and unruly gatherings. This result cannot occur, however, unless the Ordinance is used effectively. Knowing the elements of the statute and the role the police officer plays in its enforcement will help ensure success. Make and document detailed observations in your report, post the Exhibit A form appropriately, and route the report package properly so the administrative effort that follows may be readily accomplished.



**Douglas N. Hambleton**  
Chief of Police

References: Berkeley Municipal Code §13.48

## Hostage and Barricade Incidents

### 407.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for situations where officers have legal cause to contact, detain or arrest a person, and the person refuses to submit to the lawful requests of the officers by remaining in a structure or vehicle and/or by taking a hostage.

The scope of this policy is not intended to address all variables that officers encounter during their initial response or when a hostage or barricade situation has developed. This policy does not require or purport to recommend specific strategies or tactics for resolution as each incident is a dynamic and rapidly evolving event.

#### 407.1.1 DEFINITIONS

Definitions related to this policy include:

**Barricade situation** - An incident where a person maintains a position of cover or concealment and ignores or resists law enforcement personnel, and it is reasonable to believe the subject is armed with a dangerous or deadly weapon.

**Hostage situation** - An incident where it is reasonable to believe a person is:

- (a) Unlawfully held by a hostage-taker as security so that specified terms or conditions will be met.
- (b) Unlawfully held against his/her will under threat or actual use of force.

### 407.2 POLICY

It is the policy of the Berkeley Police Department to address hostage and barricade situations with due regard for the preservation of life and balancing the risk of injury, while obtaining the safe release of hostages, apprehending offenders and securing available evidence. The National Tactical Officers Association's (NTOA) TOA priority of life decision making process should be applied during hostage and barricade situations.

#### PRIORITY OF LIFE

The NTOA's priority of life decision making process is as follows.

- (a) Hostages
- (b) Innocent involved civilians
- (c) Police officers
- (a)(d) Suspects and subjects

### 407.3 COMMUNICATION

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When circumstances permit, initial responding officers should try to establish and maintain lines of communication with a barricaded person or hostage-taker. Officers should attempt to identify any additional subjects, inquire about victims and injuries, seek the release of hostages, gather intelligence information, identify time-sensitive demands or conditions and obtain the suspect's surrender.

When available, department-authorized negotiators should respond to the scene as soon as practicable and assume communication responsibilities. Negotiators are permitted to exercise flexibility in each situation based upon their training, the circumstances presented, suspect actions or demands and the available resources.

#### **407.3.1 EMERGENCY COMMUNICATIONS**

Only an officer who has been designated by the District Attorney or Attorney General may use or authorize the use of an electronic amplifying or recording device to eavesdrop on or record, or both, oral communication in response to an emergency situation involving a hostage or the barricading of a location, and only when (Penal Code § 633.8(b)):

- (a) The officer reasonably determines an emergency situation exists that involves the immediate danger of death or serious physical injury to any person within the meaning of 18 USC § 2518(7)(a)(i),
- (b) The officer reasonably determines that the emergency situation requires that eavesdropping on oral communication occur immediately, and
- (c) There are grounds upon which an order could be obtained pursuant to 18 USC § 2516(2).
- (d) An application for an order approving the eavesdropping and complying with the requirements of Penal Code § Section 629.50 is made within 48 hours of the beginning of the eavesdropping.
- (e) The contents of any oral communications overheard are recorded on tape or other comparable device.

#### **407.4 FIRST RESPONDER CONSIDERATIONS**

First responding officers should promptly and carefully evaluate all available information to determine whether an incident involves, or may later develop into, a hostage or barricade situation.

The first responding officer should immediately request a supervisor's response as soon as it is determined that a hostage or barricade situation exists. The first responding officer shall assume the duties of the supervisor until relieved by a supervisor or a more qualified responder. The officer shall continually evaluate the situation, including the level of risk to officers, to the persons involved and to bystanders, and the resources currently available.

The handling officer should brief the arriving supervisor of the incident, including information about suspects and victims, the extent of any injuries, additional resources or equipment that may be needed, and current perimeters and evacuation areas.

##### **407.4.1 BARRICADE SITUATION**

Unless circumstances require otherwise, officers handling a barricade situation should attempt to



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avoid a forceful confrontation in favor of stabilizing the incident by establishing and maintaining lines of communication while awaiting the arrival of specialized personnel and trained negotiators. During the interim the following options, while not all-inclusive or in any particular order, should be considered:

- (a) Ensure injured persons are evacuated from the immediate threat area if it is reasonably safe to do so. Request medical assistance.
- (b) Assign personnel to a contact team to control the subject should he/she attempt to exit the building, structure or vehicle, and attack, use deadly force, attempt to escape or surrender prior to additional resources arriving.
- (c) Request additional personnel, resources and equipment as needed (e.g., Emergency Rescue Vehicle, Mobile Command Vehicle ~~canine team, air support~~).
- (d) Provide responding emergency personnel with a safe arrival route to the location.
- (e) Evacuate uninjured persons in the immediate threat area if it is reasonably safe to do so.
- (f) Attempt or obtain a line of communication and gather as much information on the subject as possible, including weapons, other involved parties, additional hazards or injuries.
- (g) Establish an inner and outer perimeter as circumstances require and resources permit to prevent unauthorized access.
- (h) Evacuate bystanders, residents and businesses within the inner and then outer perimeter as appropriate. Check for injuries, the presence of other involved subjects, witnesses, evidence or additional information.
- (i) Determine the need for and notify the appropriate persons within and outside the Department, such as command officers and the Public Information Officer (PIO).
- (j) If necessary and available, establish a tactical or exclusive radio frequency for the incident.
- (k) Establish a command post.

#### 407.4.2 HOSTAGE SITUATION

Officers presented with a hostage situation should attempt to avoid a forceful confrontation in favor of controlling the incident in anticipation of the arrival of specialized personnel and trained hostage negotiators. However, it is understood that hostage situations are dynamic and can require that officers react quickly to developing or changing threats. The following options while not all-inclusive or in any particular order, should be considered:

- (a) Ensure injured persons are evacuated from the immediate threat area if it is reasonably safe to do so. Request medical assistance.
- (b) Assign personnel to a contact team to control the subject should he/she attempt to exit the building, structure or vehicle, and attack, use deadly force, attempt to escape or surrender prior to additional resources arriving.
- (c) Establish a rapid response team in the event it becomes necessary to rapidly enter a building, structure or vehicle, such as when the suspect is using deadly force against any hostages (see the Rapid Response and Deployment Policy).

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- (d) Assist hostages or potential hostages to escape if it is reasonably safe to do so. Hostages should be kept separated if practicable pending further interview.
  - (e) Request additional personnel, resources and equipment as needed ~~\_(e.g., canine team, air support)\_~~.
  - (f) Provide responding emergency personnel with a safe arrival route to the location.
  - (g) Evacuate uninjured persons in the immediate threat area if it is reasonably safe to do so.
  - (h) Coordinate pursuit or surveillance vehicles and control of travel routes.
  - (i) Attempt to obtain a line of communication and gather as much information about the suspect as possible, including any weapons, victims and their injuries, additional hazards, other involved parties and any other relevant intelligence information.
  - (j) Establish an inner and outer perimeter as resources and circumstances permit to prevent unauthorized access.
  - (k) Evacuate bystanders, residents and businesses within the inner and then outer perimeter as appropriate. Check for injuries, the presence of other involved subjects, witnesses, evidence or additional information.
  - (l) Determine the need for and notify the appropriate persons within and outside the Department, such as command officers and the PIO.
  - (m) If necessary and available, establish a tactical or exclusive radio frequency for the incident.

#### **407.5 SUPERVISOR RESPONSIBILITIES**

Upon being notified that a hostage or barricade situation exists, the supervisor should immediately respond to the scene, assess the risk level of the situation, establish a proper chain of command and assume the role of Incident Commander until properly relieved. This includes requesting the Special Response Team (SRT) if appropriate and apprising the SRT Commander of the circumstances. In addition, the following options should be considered:

- (a) Ensure injured persons are evacuated and treated by medical personnel.
- (b) Ensure the completion of necessary first responder responsibilities or assignments.
- (c) Request crisis negotiators, specialized units, additional personnel, resources or equipment as appropriate.
- (d) Establish a command post location as resources and circumstances permit.
- (e) Designate assistants who can help with intelligence information and documentation of the incident.
- (f) If it is practicable to do so, arrange for video documentation of the operation.
- (g) Consider contacting utility and communication providers to restrict such services (e.g., restricting electric power, gas, telephone service).
  1. When considering restricting communication services, a supervisor should make the determination that there is reason to believe an emergency situation exists involving

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immediate danger of death or great bodily harm and that an interruption to communication services is necessary to protect public safety (Penal Code § 11471). The supervisor must ensure the Department obtains a court order, in accordance with Penal Code § 11472, prior to requesting the interruption. ~~In the -1.~~ In the case of an extreme emergency when there is insufficient time to obtain an order prior to the request, application for the order must be submitted within six hours after initiating the interruption (Public Utilities Code § 7908).

- If six hours is not possible, then the application for the court order shall be made at the first reasonably available opportunity, but no later than 24 hours in accordance with Penal Code § 11475.
- (h) Ensure adequate law enforcement coverage for the remainder of the City during the incident. The supervisor should direct non-essential personnel away from the scene unless they have been summoned by the supervisor or the Communications Center.
- (i) Identify a media staging area outside the outer perimeter and have the department Public Information Officer or a designated temporary media representative provide media access in accordance with the Media Relations Policy.
- (j) Identify the need for mutual aid and the transition or relief of personnel for incidents of extended duration.
- (k) Debrief personnel and review documentation as appropriate.

#### **407.6 SPECIAL RESPONSE TEAM RESPONSIBILITIES**

The Incident Commander will decide, with input from the SRT Commander and approval from the Chief of Police or his/her designee, whether to deploy SRT during a hostage or barricade situation. Once the Incident Commander authorizes deployment, the SRT Commander or the authorized designee will be responsible for the tactical portion of the operation and will coordinate the transfer of the operation from Operations personnel to SRT personnel.

~~If two SRT Commanders are on scene, one shall assume Tactical Command and the other shall assume Incident Command of the hostage or barricade situation. The Incident Commander shall continue supervision of the command post operation, outer perimeter security and evacuation, media access and support for SRT. The Incident Commander and the SRT Commander or the authorized designee shall maintain communications at all times.~~

#### **407.7 ACTIVATION OF ON DUTY OPERATIONS SRT PERSONNEL**

On-duty SRT members assigned to uniformed patrol duty, not otherwise involved in an assignment, will respond to the scene of the incident and support the operation. Notice of this response will be made to the Communication Center by the responding SRT officer as soon as possible.

#### **407.8 ACTIVATION OF ON DUTY NON-OPERATIONS SRT PERSONNEL**

Upon request of the Incident Commander, available on-duty SRT members in assignments other than uniformed patrol duty will respond and support the operation. The Communication

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Center shall be responsible for notifying on-duty SRT personnel of the incident.

**407.9 USE OF FIREARMS**

Notwithstanding the provisions of the Use of Force Policy, and with the prior approval of SRT Command, officers may discharge firearms to shoot out lights or effect some other physical action against an inanimate object when it reasonably appears that such discharge can be performed safely and that it will result in a significant advantage in bringing a critical incident to a successful resolution.

**407.7407.10 REPORTING**

Unless otherwise relieved by a supervisor or Incident Commander, the handling officer at the scene is responsible for the completion and/or coordination of incident reports.

## BERKELEY POLICE DEPARTMENT

DATE ISSUED: February 1, 2012

GENERAL ORDER X-1

SUBJECT: CRITICAL INCIDENT RESPONSE/BARRICADED SUBJECT HOSTAGE  
NEGOTIATION TEAM OPERATIONS

### PURPOSE

- 1 - The purpose of this General Order is to explain basic response procedures to critical incidents, and to establish policies and guidelines governing the organization and operation of the Barricaded Subject Hostage Negotiation Team (hereafter referred to as HNT).

### POLICY

- 2 - The Berkeley Police Department shall exercise control over critical incidents, including, but not limited to, barricaded subject and hostage situations. The Department's goals will be to protect the lives of, and minimize hazards to, all persons related to such events.
  - (a) The Department's goal of protecting the lives of all persons shall include the individual responsible for the critical incident, but not to the extent that the safety of others will be compromised.
  - (b) Given the dynamics and unique nature of a critical incident, as much time as may be necessary will be used to advance the potential of a non-violent resolution to the situation.
  - (c) Nothing in this policy shall preclude the use of reasonable force to protect individuals from injury or death.
- 3 - A specialized unit within the **Operations** Division, the HNT will be trained and equipped to handle the following situations:
  - (a) Barricaded subject and hostage situations;
  - (b) Service of high risk search and/or arrest warrants;
  - (c) Special circumstance search/rescue operations;
  - (d) Special weapon and tactical support for planned or unplanned Departmental operations; and,
  - (e) Special weapon and tactical support for Crowd Management Team (CMT) operations in incidents involving major violence.
- 4 - Operational commitment of the HNT to resolve any incident presumes the perpetrator is armed or has the means to take human life.

## BERKELEY POLICE DEPARTMENT

DATE ISSUED: February 1, 2012

GENERAL ORDER X-1

### DEFINITIONS

- 5 - For the purpose of this Order, a reference to the masculine includes the feminine, and the singular includes the plural:
- (a) Barricaded Subject: A person who has the capacity to inflict, threatens, or has inflicted, bodily harm to himself or others, and who confines or restricts himself to a location from which he will not voluntarily leave.
  - (b) Hostage: An individual held or controlled by another person as security for the performance of certain acts or to achieve specific demands.
  - (c) Barricade Incident: An event involving a barricaded subject.
  - (d) Hostage Incident: An event where one person holds another hostage.
  - (e) Barricaded Subject Hostage Negotiation Team (HNT): Specially selected employees trained to resolve critical incidents, including, but not limited to, barricaded subject and hostage situations.
  - (f) Inner Perimeter: The geographic area immediately surrounding the location occupied by a barricaded subject or hostage taker that is contained by officers.
  - (g) Outer Perimeter: The geographic area outside the Inner Perimeter which is strictly controlled by police personnel.
  - (h) Immediate Danger Zone: The area wherein a barricaded subject or hostage taker can inflict injury or death.
  - (i) Potential Danger Zone: The area beyond the Immediate Danger Zone within the Outer Perimeter, over which it is necessary to maintain control.

### PROCEDURES

#### Team Organization

- 6 - The HNT is organized into the following elements:
- (a) Command Element: Comprised of one HNT Commander who has responsibility for all HNT operations, and two tactical commanders who have responsibility for their respective tactical teams.
  - (b) Negotiator Element: Comprised of one team leader, an assistant team leader, and 6-8 negotiators; has the responsibility to advance the resolution of a critical incident through intelligence gathering and negotiation.

## BERKELEY POLICE DEPARTMENT

DATE ISSUED: February 1, 2012

GENERAL ORDER X-1

- (c) **Tactical Element**: Comprised of two, 12 member tactical teams (designated by the colors "blue" or "gold"); has responsibility for tactical missions, including arrest, containment, evacuation, tactical intelligence gathering, rescue, search, security, and support of other planned department operations.
  - (d) **Tactical Dispatch**: Comprised of Public Safety Dispatchers; may have responsibility for tracking HNT call out status and deployment procedures, establishing communications channels, and maintaining and posting tactical logs and incident events.
  - (e) **Logistics Element**: Comprised of a team leader and three sworn officers; has responsibility for the procurement and maintenance of team equipment and supplies, other projects as assigned by the HNT Commander, and during a team operation, the establishment of the Incident Command Post.
  - (f) **TEMS**: Comprised of sworn officers trained and qualified to the standard of Emergency Medical Technician (EMT); responsible for tactical emergency medical support in HNT operations.
- 7 - The Chief of Police shall assign team personnel in any manner deemed to be in the best interest of the Department.
- 8 - Element Team Leaders, within the scope of their respective duty, are responsible for supervision, leadership, training, equipment maintenance, and overall performance of their Element.

### Selection Process

- 9 - At least every two years, HNT command staff shall establish an HNT eligibility list to accommodate HNT staffing needs.
- (a) The announcement and application filing procedures shall adhere to the procedures set forth in General Order P-15.
- 10 - Unless otherwise specified by the Chief of Police, all applicants shall meet the following criteria to be eligible for appointment to the HNT:
- (a) Have at least three years of law enforcement experience;
  - (b) Have successfully completed Department probation for initial appointment;
  - (c) Have Personnel Appraisal Report ratings of at least "meets requirements" for two years preceding application;
  - (d) Successfully complete a selection board interview.
  - (e) Tactical Element applicants shall be able to pass physical fitness and weapons qualification testing.

\*Highlighted text is new.

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- 11 - The Selection Board will be comprised of, at minimum, HNT Command and/or Team Leader representatives.
  - (a) A Commissioner of the Police Review Commission (PRC) shall be permitted to attend the selection board interviews to monitor the interview process.
- 12 - The Selection Board is responsible for the evaluation of each applicant and submission of recommendations regarding eligibility to the Operations Division Captain.
- 13 - Candidates who are successful in all aspects of the testing process will be placed on an HNT eligibility list, which will remain in effect for no longer than two years.
  - (a) With the exception of appointments to Team command positions, vacancies on the Team shall be filled from the eligibility list based on recommendations from HNT Command Staff to the Patrol Captain.
  - (b) Final selection authority shall rest with the Chief of Police.
- 14 - The Operations Division Captain shall recommend a lieutenant for appointment to the position of HNT Commander based on the lieutenant's overall departmental experience, prior work performance, judgment, and reliability. **The Operations Division Captain shall also recommend a qualified sergeant or lieutenant for the appointment to the position of Tactical Commander based on the same aforementioned factors.**
  - (a) Criteria applicable to consideration of a lieutenant's appointment to the position of HNT Commander should include his/her successful completion of probation at rank, and prior operational experience as a member of HNT.
  - (b) In the event that current Tactical Commanders are not appointed to the position of HNT Comander, the position shall be filled from the rank of captain or lieutenant department-wide.
  - (c) Final authority for selection of any member of the HNT Command Element shall rest with the Chief of Police.

### Training

- 15 - When possible, the Personnel & Training Bureau shall arrange for new HNT Tactical and Negotiator Element members to attend an appropriate POST-approved basic training course no later than 12 months after appointment to the team.

### Physical Fitness Standards

- 16 - Tactical Element members shall be required to meet physical fitness standards designed to ensure individual capability with regard to physical challenges posed

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by tactical operations.

- (a) Authority to establish and maintain the physical fitness standards shall rest with the HNT command staff.
  - (b) HNT command staff, with the approval of the Operations Division Captain, may implement alterations to established physical fitness standards or the testing process.
- 17 - HNT command staff, or their designee(s), will oversee the administration of physical fitness testing, which will be conducted on a semiannual basis.
- (a) The physical fitness test employed by the HNT is at the discretion of the HNT Command staff.
  - (b) A clearly defined scoring scale shall be utilized; a passing score, established by the HNT command staff, shall be conveyed to team members prior to beginning a fitness testing process.
- 18 - If a tactical team member is unable to successfully pass a scheduled physical fitness test, he/she shall be allowed a second opportunity to achieve a passing score no later than 90 days from the initial testing date.
- 19 - Pending participation in a retest described in paragraph 18 of this Order, a tactical team member may continue to participate in HNT training and live operations.
- 20 - If a tactical team member is unable to achieve a passing score after a second attempt at the physical fitness test, he/she shall be decertified and removed from the HNT.
- (a) A team member removed from the HNT due to failure to meet established physical fitness standards may apply for reinstatement at the next department-wide selection process.

### Service Status

- 21 - Unless officially inactive or excused, Team members will ensure their availability for unrestricted participation in all HNT activities.
- 22 - If a team member is unable to perform the duties associated with their HNT assignment for any reason, including, but not limited to, injury or illness, he/she shall promptly notify the HNT Commander.
- 23 - If, due to injury or illness, a team member requests approval to temporarily suspend his/her participation in HNT activities, he/she must provide medical documentation directing restricted or modified duty.
- 24 - In situations where an injury or illness is of such a nature that the recovery time may exceed a period of six months, the team member may be placed on inactive

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status and precluded from participating in HNT activities.

- (a) Team members who are transferred to inactive status shall be placed on the HNT Eligibility List, ahead of candidates pending first appointment, and below previously listed inactive members of similar team assignment.
  - (b) When the inactive team member is eligible for return to "Active" status without duty restriction, and has passed the established physical fitness test in the case of members returning to the tactical element, he/she may be reappointed to their previous team element at the next available vacancy.
- 25 - A team member may be transferred to inactive status due to a conflict with the his/her primary duty assignment (i.e. Internal Affairs, Homicide, etc.), or when otherwise deemed necessary or appropriate, at the discretion of and for a period determined by the Chief of Police.
- 26 - In the event a team member is placed on inactive status, the vacant position may be filled by an appointment from the HNT Eligibility List.
- 27 - A team member who has been on inactive status for longer than twelve consecutive months due to an injury or illness may be removed from the team at the discretion of the Chief of Police.

### Command Structure and Responsibilities

- 28 - In operations conducted prior to the transfer of command authority from the **Operations Division Incident Commander** to a HNT Commander, Departmental chain of command and rank structure shall be adhered to.
- (a) In the event an HNT Commander is unavailable, HNT Command will be comprised of the **Operations Division Incident Commander** and an HNT Tactical Element Team Leader.
- 29 - When command authority has been transferred to a HNT Commander, the chain of command for HNT personnel shall be:
- (a) Incident Commander: Has responsibility to relieve ranking **Operations Division officer** at the scene of the critical incident and assume responsibility for all related field operations.
    - (1) Shall develop and ensure the proper resources to implement a tactical plan to resolve the situation.
    - (2) Reports to the **Operations Captain**, who: ensures the Incident Commander develops and has the resources to implement a plan to resolve the situation; makes notifications to other agencies and individuals when/if appropriate (including the PRC); to provide requisite media liaison; and, reports to the Chief of Police, as necessary.

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- (b) Tactical Commander: Reports to the Incident Commander and is responsible for operations within the inner perimeter.
  - (c) HNT Team Leader: Has responsibility for activities of subordinate HNT members:
    - (1) Tactical Team Leader: Under command of the HNT Tactical Commander, is responsible for the coordination and conduct of actions necessary to implement a tactical plan and assure the success of the assigned mission.
    - (2) Assistant Team Leader: Has responsibility for activities of subordinate HNT members.
    - (3) Negotiator Team Leader: Reports directly to the HNT Incident Commander; has responsibility to direct the establishment and maintenance of communications with a barricaded subject or hostage taker.
- 30 - All team members, whether assigned to the Command, Tactical, Negotiator, Logistics, Dispatch, or TEMS Element of the team, shall be responsible for carrying out all tasks and duties assigned by their supervisors.
- (a) Failure of a team member to perform assigned duties may negatively impact the ability of the entire team to perform it's mission. Accordingly, that member may be subject to disciplinary action, up to and including removal from the team.

### Patrol Response Procedures

- 31 - Upon notification that an actual or potential critical incident exists, on-duty Operations Division personnel shall immediately respond.
- 32 - Operations Division responsibilities include, but are not limited to:
- (a) Protection of all life: hostages/victims, citizens, emergency response personnel, and suspects.
  - (b) Determination if the facts of the event indicate a barricaded subject and/or hostage taking incident exists.
  - (c) Establishment of an Inner Perimeter using as few officers as possible, who are placed to take advantage of cover, avoid crossfire situations, sufficiently contain the location (e.g., isolates the perpetrator), block routes of escape, and control police activity.
  - (d) Evacuation of injured persons, neighbors and by-standers within the Immediate Danger Zone, and contact with citizens in the Potential Danger Zone.

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- (e) Establishment of an Outer Perimeter that controls pedestrian and vehicular traffic.
  - (f) Attempt to establish communication with the subject.
  - (g) Establish an Incident Command Post, place Patrol communications on a separate radio channel, and initiate a chronological log that includes all pertinent incident information (i.e., suspect actions, weapons discharge, etc.).
- 33 - Strict fire discipline shall be maintained, with adherence to Police Regulation 323 and General Order U-2.
- (a) Notwithstanding the provisions of PR 323 and GO U-2, and with the prior approval of HNT Command, officers may discharge firearms to shoot out lights or effect some other physical action against an inanimate object when it reasonably appears that such discharge can be performed safely and that it will result in a significant advantage in bringing a critical incident to a successful resolution.
- 34 - On-duty HNT members assigned to uniformed patrol duty, not otherwise involved in an assignment, will respond to the scene of the incident and provide informational and operational assistance to the scene supervisor.
- (a) Notice of this response will be made to the Communication Center by the responding HNT officer as soon as possible.

### On-Duty HNT Activation / Response Procedures

- 35 - Upon request of the ranking **Operations** Division officer at the scene, available on-duty HNT members in assignments other than uniformed patrol duty will respond and provide required informational and operational assistance.
- (a) When requested, the Communication Center shall direct all on-duty HNT personnel to respond to the critical incident via intra-department voice-call and all police radio frequencies.
  - (b) If HNT Tactical Element officers sufficient to initiate tactical action at or within the Inner Perimeter respond to the on-duty HNT activation, an HNT Commander shall be contacted and directed to respond to the Incident Command Post.
- 36 - Subsequent to arrival at the Incident Command Post and briefing by the **Operations** Division Incident Commander, an HNT Commander shall assume the responsibilities of Incident Commander for the incident.

### General HNT Activation / Response Procedures

- 37 - It shall be the responsibility of the **Operations** Division Watch Commander, the ranking **Operations** Division supervisor, or HNT Commander, if an on-duty HNT

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activation has occurred, to initiate a general activation of the HNT immediately following the determination that one of the following situations exist:

- (a) Barricade incident (as defined in paragraph 5(c) of this Order);
  - (b) Hostage incident (as defined in paragraph 5(d) of this Order); or,
  - (c) Any situation beyond the capacity of on-duty personnel to resolve and which more properly falls within the capabilities of the HNT.
- 38 - Upon determination that the HNT is needed, HNT command shall initiate team notifications, begin personnel/duty assignments, and establish communication with Operations personnel in preparation for the transition of command.
- 39 - Upon determination of HNT Command personnel, the team will assume control of the scene and responsibility for the incident's resolution.
- (a) Negotiator Element personnel will relieve those engaged in communication with the subject and/or assume responsibility for the communication and negotiation process.
  - (b) Tactical Element personnel will relieve initial responding officers and assume control over activities at and within the Inner Perimeter.
  - (c) The HNT Incident or Tactical Commander will relieve the Operations Division Commanding Officer/ Supervisor.
  - (d) The HNT Incident Commander will assume responsibility for the resolution of the incident.

### Planned Operations

- 40 - In planned operations in which HNT personnel are to be utilized, such as high risk search and/or arrest warrant service, the request shall be made through the Operations Division Captain.
- (a) HNT should be notified as soon as practical once a high risk operation has been identified in order to maximize the opportunity for preparation.

### Post-Operational Procedures

- 41 - As soon as practical following the conclusion of the planned or unplanned incident, personnel involved in the Department's response will participate in a debriefing.
- (a) Information received in a post-operational debriefing, as well as from other available sources, shall be documented in an After Action Report.
  - (b) HNT command shall ensure After Action Reports are completed within 72

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hours of the date of the debriefing.

- 42 - Detective Bureau personnel will be assigned to investigate all criminal acts associated with an incident.
  - (a) HNT personnel who witnessed criminal activity, or have first-hand knowledge of facts related to such activity, will submit supplemental reports documenting said information to further the criminal investigation.
- 43 - Should police activity relating to the critical incident require administrative review, HNT personnel shall assist said inquiry pursuant to policies and procedures set forth in law and Departmental Orders.

### HNT Rifle Deployment in Patrol Operations

- 44- Qualified HNT Tactical Element members, when assigned to uniformed **Operations** Division duty, shall carry an HNT rifle during the course of their duty shift.
  - (a) HNT Tactical Element members not assigned to uniformed **Operations** Division duty may carry their assigned HNT rifle during the course of their duty shift.
  - (b) Exception to this policy shall be authorized by the HNT Commander, his/her designee, or in unusual circumstances, the HNT member's **Operations** Division supervisor.
- 45 - The HNT rifle is intended as a supplemental firearm to the pistol and shotgun.
  - (a) Only rifles and ammunition that have been specifically authorized and provided by the Department shall be used.
  - (b) The HNT rifle will be stored, maintained, handled, carried while on-duty in police vehicles, and deployed in accordance with the procedures set forth in General Order F-6.
- 46 - **Operations** Division Supervisors shall be responsible for insuring all qualified HNT Tactical Element members assigned to Patrol duty under their supervision adhere to the above described policies and procedures regarding the carry, deployment and use of HNT rifles during the HNT officer's duty shift.

References: General Order C-64, D-2, F-6, P-12, P-15, P-26 and U-2  
Police Regulations 321 and 323  
Event Management Manual

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## Foreign Diplomatic and Consular Representatives

### 412.1 PURPOSE AND SCOPE

This policy provides guidelines to ensure that members of the Berkeley Police Department extend appropriate privileges and immunities to foreign diplomatic and consular representatives in accordance with international law.

### 412.2 POLICY

The Berkeley Police Department respects international laws related to the special privileges and immunities afforded foreign diplomatic and consular representatives assigned to the United States.

All foreign diplomatic and consular representatives shall be treated with respect and courtesy, regardless of any privileges or immunities afforded them.

### 412.3 CLAIMS OF IMMUNITY

If a member comes into contact with a person where law enforcement action may be warranted and the person claims diplomatic or consular privileges and immunities, the member should, without delay:

- (a) Notify a supervisor.
- (b) Advise the person that his/her claim will be investigated and he/she may be released in accordance with the law upon confirmation of the person's status.
- (c) Request the person's identification card, either issued by the U.S. Department of State (DOS), Office of the Chief of Protocol, or in the case of persons accredited to the United Nations, by the U.S. Mission to the United Nations. These are the only reliable documents for purposes of determining privileges and immunities.
- (d) Contact the DOS Diplomatic Security Command Center at 571-345-3146 or toll free at 866-217-2089, or at another current telephone number and inform the center of the circumstances.
- (e) Verify the immunity status with DOS and follow any instructions regarding further detention, arrest, prosecution and/or release, as indicated by the DOS representative. This may require immediate release, even if a crime has been committed.

Identity or immunity status should not be presumed from the type of license plates displayed on a vehicle. If there is a question as to the status or the legitimate possession of a Diplomat or Consul license plate, a query should be run via the National Law Enforcement Telecommunications System (NLETS), designating "US" as the state.

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#### **412.4 ENFORCEMENT**

If the DOS is not immediately available for consultation regarding law enforcement action, members shall be aware of the following:

- (a) Generally, all persons with diplomatic and consular privileges and immunities may be issued a citation or notice to appear. However, the person may not be compelled to sign the citation.
- (b) All persons, even those with a valid privilege or immunity, may be reasonably restrained in exigent circumstances for purposes of self-defense, public safety or the prevention of serious criminal acts.
- (c) An impaired foreign diplomatic or consular representative may be prevented from driving a vehicle, even if the person may not be arrested due to privileges and immunities.
  - 1. Investigations, including the request for field sobriety tests, chemical tests and any other tests regarding impaired driving may proceed but they shall not be compelled.
- (d) The following persons may not be detained or arrested, and any property or vehicle owned by these persons may not be searched or seized:
  - 1. Diplomatic-level staff of missions to international organizations and recognized family members
  - 2. Diplomatic agents and recognized family members
  - 3. Members of administrative and technical staff of a diplomatic mission and recognized family members
  - 4. Career consular officers, unless the person is the subject of a felony warrant
- (e) The following persons may generally be detained and arrested:
  - 1. International organization staff; however, some senior officers are entitled to the same treatment as diplomatic agents.
  - 2. Support staff of missions to international organizations
  - 3. Diplomatic service staff and consular employees; however, special bilateral agreements may exclude employees of certain foreign countries.
  - 4. Honorary consular officers
  - 5. Whenever an officer arrests and incarcerates, or detains for investigation for over two hours, a person with diplomatic and consular privileges and immunities, the officer shall promptly advise the person that he/she is entitled to have his/her government notified of the arrest or detention (Penal Code § 834c). If the individual wants his/her government notified, the officer shall begin the notification process.

#### **412.5 DOCUMENTATION**

All contacts with persons who have claimed privileges and immunities afforded foreign diplomatic and consular representatives should be thoroughly documented and the related reports forwarded to DOS.



## 412.6 DIPLOMATIC IMMUNITY TABLE

Reference table on diplomatic immunity:

Category	Arrested or Detained	Enter Residence Subject to Ordinary Procedures	Issued Traffic Citation	Subpoenaed as Witness	Prosecuted	Recognized Family Members
Diplomatic Agent	No (note (b))	No	Yes	No	No	Same as sponsor (full immunity & inviolability)
Member of Admin and Tech Staff	No (note (b))	No	Yes	No	No	Same as sponsor (full immunity & inviolability)
Service Staff	Yes (note (a))	Yes	Yes	Yes	No for official acts  Yes otherwise (note (a))	No immunity or inviolability  (note (a))
Career Consul Officer	Yes if for a felony and pursuant to a warrant  (note (a))	Yes  (note (d))	Yes	No for official acts  Testimony may not be compelled in any case	No for official acts.  Yes otherwise (note (a))	No immunity or inviolability
Honorable Consul Officer	Yes	Yes	Yes	No for official acts  Yes otherwise	No for official acts  Yes otherwise	No immunity or inviolability
Consulate Employees	Yes (note (a))	Yes	Yes	No for official acts  Yes otherwise	No for official acts  Yes otherwise (note (a))	No immunity or inviolability  (note (a))
Int'l Org Staff  (note (b))	Yes  (Note (c))	Yes  (Note (c))	Yes	Yes  (note (c))	No for official acts Yes Otherwise (note (c))	No immunity or inviolability
Diplomatic-Level Staff of Missions to Int'l Org	No (note (b))	No	Yes	No	No	Same as sponsor (full immunity & inviolability)
Support Staff of Missions to Int'l Orgs	Yes	Yes	Yes	Yes	No for official acts Yes otherwise	No immunity or inviolability

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Notes for diplomatic immunity table:

- (a) This table presents general rules. The employees of certain foreign countries may enjoy higher levels of privileges and immunities on the basis of special bilateral agreements.
- (b) Reasonable constraints, however, may be applied in emergency circumstances involving self-defense, public safety, or in the prevention of serious criminal acts.
- (c) A small number of senior officers are entitled to be treated identically to diplomatic agents.
- (d) Note that consul residences are sometimes located within the official consular premises. In such cases, only the official office space is protected from police entry.