

Contacts and Temporary Detentions

421.1 PURPOSE AND SCOPE

Best Practice **MODIFIED**

The purpose of this policy is to establish guidelines for temporarily detaining but not arresting persons in the field, conducting field interviews (FI) and pat-down searches, and the taking and disposition of photographs.

421.1.1 DEFINITIONS

Federal

Definitions related to this policy include:

Consensual encounter - When an officer contacts an individual but does not create a detention through words, actions, or other means. In other words, a reasonable individual would believe that his/her contact with the officer is voluntary.

Field interview - The brief detainment of an individual, whether on foot or in a vehicle, based on reasonable suspicion for the purpose of determining the individual's identity and resolving the officer's suspicions.

Field photographs - Posed photographs taken of a person during a contact, temporary detention, or arrest in the field. Undercover surveillance photographs of an individual and recordings captured by the normal operation of a ~~Mobile Audio Video (MAV) system~~, body-worn camera, or public safety camera when persons are not posed for the purpose of photographing are not considered field photographs.

Pat-down search - A type of search used by officers in the field to check an individual for dangerous weapons. It involves a thorough patting-down of clothing to locate any weapons or dangerous items that could pose a danger to the officer, the detainee, or others.

Reasonable suspicion - When, under the totality of the circumstances, an officer has articulable facts that criminal activity may be afoot and a particular person is connected with that possible criminal activity.

Temporary detention - When an officer intentionally, through words, actions, or physical force, causes an individual to reasonably believe he/she is required to restrict his/her movement without an actual arrest. Temporary detentions also occur when an officer actually restrains a person's freedom of movement.

421.2 POLICY

Federal

The Berkeley Police Department respects the right of the public to be free from unreasonable searches or seizures. Due to an unlimited variety of situations confronting the officer, the decision to temporarily detain a person and complete a field interview (FI), pat-down search, or field photograph shall be left to the officer based on the totality of the circumstances, officer safety considerations, and constitutional safeguards.

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Law Enforcement Services Manual

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421.3 FIELD INTERVIEWS

Federal

Based on observance of suspicious circumstances or upon information from investigation, an officer may initiate the stop of a person, and conduct an FI, when there is articulable, reasonable suspicion to do so. A person, however, **shall** not be detained longer than is reasonably necessary to resolve the officer's suspicion.

Nothing in this policy is intended to discourage consensual contacts. Frequent casual contact with consenting individuals is encouraged by the Berkeley Police Department to strengthen community involvement, community awareness, and problem identification.

421.3.1 INITIATING A FIELD INTERVIEW

Federal

When initiating the stop, the officer **should** be able to point to specific facts which, when considered with the totality of the circumstances, reasonably warrant the stop. Such facts include but are not limited to an individual's:

- (a) Appearance or demeanor suggesting that he/she is part of a criminal enterprise or is engaged in a criminal act
- (b) Actions suggesting that he/she is engaged in a criminal activity
- (c) Presence in an area at an inappropriate hour of the day or night
- (d) Presence in a particular area is suspicious
- (e) Carrying of suspicious objects or items
- (f) Excessive clothes for the climate or clothes bulging in a manner that suggest he/she is carrying a dangerous weapon
- (g) Location in proximate time and place to an alleged crime
- (h) Physical description or clothing worn that matches a suspect in a recent crime
- (i) Prior criminal record or involvement in criminal activity as known by the officer

421.4 PAT-DOWN SEARCHES

Federal **MODIFIED**

Once a valid stop has been made, and consistent with the officer's training and experience, an officer may pat a suspect's outer clothing for weapons if the officer has a reasonable, articulable suspicion the suspect may pose a safety risk. The purpose of this limited search is not to discover evidence of a crime, but to allow the officer to pursue the investigation without fear of violence. Circumstances that may establish justification for performing a pat-down search include but are not limited to:

- (a) The type of crime suspected, particularly in crimes of violence where the use or threat of deadly weapons is involved.
- (b) Where more than one suspect must be handled by a single officer.

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- (c) The hour of the day and the location or neighborhood where the stop takes place.
- (d) Prior knowledge of the suspect's use of force and/or propensity to carry weapons.
- (e) The actions and demeanor of the suspect.
- (f) Visual indications which suggest that the suspect is carrying a firearm or other weapon.

Whenever practicable, a pat-down search **should** not be conducted by a lone officer. A cover officer **should** be positioned to ensure safety and **should** not be involved in the search.

421.5 FIELD PHOTOGRAPHS

Best Practice **MODIFIED**

All available databases **should** be searched before photographing any field detainee. If a photograph is not located, or if an existing photograph no longer resembles the detainee, the officer **shall** carefully consider, among other things, the factors listed below.

421.5.1 FIELD PHOTOGRAPHS TAKEN WITH CONSENT

Best Practice

Field photographs may be taken when the subject being photographed knowingly and voluntarily gives consent. ~~When taking a consensual photograph, the officer **should** have the individual read and sign the appropriate form accompanying the photograph.~~

421.5.2 FIELD PHOTOGRAPHS TAKEN WITHOUT CONSENT

Federal

Field photographs may be taken without consent only if they are taken during a detention that is based upon reasonable suspicion of criminal activity, and the photograph serves a legitimate law enforcement purpose related to the detention. The officer must be able to articulate facts that reasonably indicate that the subject was involved in or was about to become involved in criminal conduct. ~~The subject **should** not be ordered to remove or lift any clothing for the purpose of taking a photograph.~~

If, prior to taking a photograph, the officer's reasonable suspicion of criminal activity has been dispelled, the detention must cease and the photograph **should** not be taken.

All field photographs and related reports **shall** be submitted to a supervisor and retained in compliance with this policy.

421.5.3 SUPERVISOR RESPONSIBILITIES

Best Practice

While it is recognized that field photographs often become valuable investigative tools, supervisors **should** monitor such practices in view of the above listed considerations. This is not to imply that supervisor approval is required before each photograph is taken.

Access to, and use of, field photographs **shall** be strictly limited to law enforcement purposes.

421.6 WITNESS IDENTIFICATION AND INTERVIEWS

Best Practice

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Because potential witnesses to an incident may become unavailable or the integrity of their statements compromised with the passage of time, officers **should**, when warranted by the seriousness of the case, take reasonable steps to promptly coordinate with an on-scene supervisor and/or criminal investigator to utilize available members for the following:

- (a) Identifying all persons present at the scene and in the immediate area.
 - 1. When feasible, a recorded statement **should** be obtained from those who claim not to have witnessed the incident but who were present at the time it occurred.
 - 2. Any potential witness who is unwilling or unable to remain available for a formal interview **should** not be detained absent reasonable suspicion to detain or probable cause to arrest. Without detaining the individual for the sole purpose of identification, officers **should** attempt to identify the witness prior to his/her departure.
- (b) Witnesses who are willing to provide a formal interview **should** be asked to meet at a suitable location where criminal investigators may obtain a recorded statement. Such witnesses, if willing, may be transported by Berkeley Police Department members.
 - 1. A written, verbal, or recorded statement of consent **should** be obtained prior to transporting a witness. When the witness is a minor, consent **should** be obtained from the parent or guardian, if available, prior to transport.

421.7 DISPOSITION OF PHOTOGRAPHS

Agency Content

All detainee photographs must be assigned an incident or case number and uploaded to the BPD evidence database or booked into the property room.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: November 1, 1999

GENERAL ORDER R-29

SUBJECT: FIELD INTERVIEWS

PURPOSE

- 1 - The purpose of this General Order is to establish policy and procedures for conducting field interviews and maintaining records of those citizen contacts.

POLICY

- 2 - Field interviews **should** be used only in the pursuit of legitimate goals of the Department and not to harass any individual. Field interviews are a productive tool and source of information for the Department. When used properly, they can discourage criminal activity, identify suspects, and add useful information to Department files.

PROCEDURES

- 3 - The Field Interview Card (referred to in this order as "Form") **shall** be used to record information where persons are stopped and interviewed in the field and where no numbered report is made. Field Interview Cards **should** be completed under the following circumstances:
 - (a) The person contacted is a named suspect in a reported crime, but additional information, such as current address or photograph for a lineup, is needed to complete an ongoing investigation.
 - (b) The person contacted is a possible suspect in a crime, or his/her physical description matches the suspect in a specific crime. A photograph may be taken for identification or elimination purposes.
 - (c) The person committed a minor infraction in the officer's presence and was warned; the Field Interview Card was completed in lieu of arrest.
 - (d) The subject was engaged in suspicious activity which caused the officer's attention to be focused upon him/her. Examples of such activity would include loitering around a closed business or known drug spot without apparent business, erratic driving, attempting to hide from the officer, etc.
- 4 - A supply of the forms will be maintained in the Squad Room with additional forms available in Support Services Division.*
- 5 - The originating officer **shall** legibly print the required information on the form at the time contact is made. The officer **shall** be responsible for determining whether or not there are any outstanding warrants or "wants" on the subject.
 - (a) The officer **should** also search the criminal files to determine whether the subject has a criminal record.

* Highlighted text is new

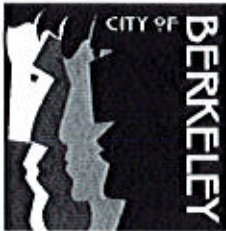
BERKELEY POLICE DEPARTMENT

DATE ISSUED: November 1, 1999

GENERAL ORDER R-29

- (1) If a record is located, the officer **should** indicate by a check mark in the appropriate box at the bottom of the form whether it is a felony or misdemeanor.
 - (2) If the subject has a CORPUS personal file number, the number **should** be written on the lower portion of the form.
 - (3) If there is no record, the word "No" **should** be written in each box.
- (b) The FI form **should** be fully completed before being turned in.
- 6 - The officer **should** promptly place the completed form into the "Stop Card Tray*" located in the Squad Room.
- (a) It **shall** be the responsibility of the Detective **Bureau Secretary*** to remove the completed forms from the tray* and process them properly.
 - (b) The **Detective Bureau Secretary*** will be responsible for entering the forms into the Records Management System.
 - (c) By agreement with the Police Review Commission, Field Interview Cards are purged from the Records Management System after 90 days.
- 7 - In those instances where the officer feels that the person stopped would be of interest to a particular Detective **Bureau*** detail, e.g., Sex, Robbery, etc., the officer **shall** photocopy the form and route the copy to the particular detail.
- (a) Appropriate information **shall** be included in the section titled, "Circumstances of Stop," as well as the notation that a copy has been sent to the concerned detail, e.g., "cc: Sex Detail."
 - (b) The original of the form **shall** be handled as outlined in paragraph 6, above.

Reference: CALEA Standards



Police Review Commission

October 4, 2019

To: Lexipol Subcommittee Members
From: Katherine J. Lee, ^{KL} Police Review Commission Officer
Re: Questions from Commission about policies returned to Subcommittee

Here are the questions Commissioners had at their September 18, 2019 about the policies they decided to return to you:

301 Use of Force Review Board

301.3 and 301.4 – What is the definition of “very serious injury”? Is it defined elsewhere? Synonymous with “great bodily injury”?

301.4.1 – Why “should” and not “shall”?

301.4.2 – The deleted language bottom of p. 2 to top of p. 3 – why deleted?

301.6 – The sentence is missing a word or words at the end.

343 Gun Violence Restraining Orders

343.5 – Why officer “should” and not “shall” consider whether to seek a search warrant?

343.5 – “refuses to surrender any firearm” etc. is vague. Maybe “refuses to surrender any firearm or ammunition in his/her possession” or “under his/her custody or control.” If officer goes to home and sees weapons, is search warrant necessary? [Note: unsure if I understood all concerns being raised. Comm. Leftwich said there has been some difficulty implementing this statewide.]

344 Off-Duty Law Enforcement Actions

344.4, 2nd para. –

“Officers should refrain from carrying firearms when the consumption of alcohol is likely . . .” Unclear whether it means when officer walks into a room where others or going to drink, e.g., a bar; or when the officer is likely to consume.

. . . any officer who has consumer “an amount” of alcohol or “taken any drugs” – should it say “any” amount of alcohol?

"that would tend to" adversely affect officer's senses – not a bright line and seems discretionary; is that the intent?

344.4.1, 2nd para. – Would like clarification on how long officer needs to keep repeatedly identifying self until acknowledged; what if everyone has head under the table?

351 Second Response

General question about the process, especially the Exhibit B posting.

cc: Lt. Rico Rolleri
Sgt. Sam Speelman

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.~~

~~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~~

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

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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.

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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.

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).

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.
- (c)(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.

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.

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 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.

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 **of** by the **police** **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 **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 1st, and there was a reported violation on March 1st, the 120 day period restarts and would ~~conclude~~ **conclude**, absent a subsequent violation, on June 28th. 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.

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 "2nd 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 notice of police intervention** copy of the "Exhibit A" 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~~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 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 "2nd Response" Ordinance can improve, if not restore, the quality of life in neighborhoods adversely ~~affected~~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 1st, and there was a reported violation on March 1st, the 120 day period restarts and would concluded, absent a subsequent violation, on June 28th. 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 "2nd 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

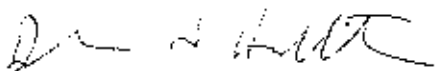
Civil penalties may be assessed against all persons liable for the City's intervention to abate a gathering deemed a public nuisance. The schedule of penalties is as follows:

- 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 "2nd 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

