

Materials for Lexipol Subcommittee meeting of April 10, 2019

4.b. Policies to be reconsidered

| Lexipol # | G.O. | Title (Notes) |
|--------------------------|-----------------------------|--|
| 303 | F-02 | Control Devices and Techniques (PRC Feb. 27 asked for further review) |
| 307 | V-06 | Vehicle Pursuits (Subcomm. Sept. 17 wanted to discuss further) |
| 319 | H-04 | Hate Crimes (PRC Feb. 27 asked for further review) |
| 418 (to be delivered) | Council Res. 51.408-N.S. | Obtaining Air Support (Subcomm. & PRC approved but conflict with Council policy discovered) |
| 429 | C-64 | First Amendment Assemblies (Feb. 27 PRC asked for further review) |
| 506 | T-18 | Disabled Vehicles (PRC Mar. 13 asked for further review) |

5.a. New policies for review

| Lexipol # | G.O. (if any) | Title |
|------------------|----------------------|---------------------------------|
| 304 | | Conducted Energy Device |
| 322 | E-12 | Information Technology Use |
| 329 | A-49 | Major Incident Notification |
| 333 | A-50 | Private Persons Arrest |
| 337 | D-21 | Biological Samples |
| 341 | V-08 | Volunteer Program |
| 342 | | Service Animals |
| 343 | | Gun Violence Restraining Orders |
| 344 | | Off Duty Law Enforcement Action |

Control Devices and Techniques

303.1 PURPOSE AND SCOPE

This policy provides guidelines for the use and maintenance of control devices that are described in this policy.

303.2 POLICY

In order to control subjects who are violent or who demonstrate the intent to be violent, the Berkeley Police Department authorizes officers to use control devices in accordance with the guidelines in this policy and the Use of Force Policy.

303.3 ISSUING, CARRYING AND USING CONTROL DEVICES

Control devices described in this policy may be carried and used by members of this department only if the device has been issued by the Department or approved by the Chief of Police or the authorized designee.

Only officers who have successfully completed department-approved training in the use of any control device are authorized to carry and use the device.

Control devices may be used when a decision has been made to control, restrain or arrest a subject who is violent or who demonstrates the intent to be violent, and the use of the device appears reasonable under the circumstances. When reasonable, a verbal warning and opportunity to comply should precede the use of these devices.

When using control devices, officers should carefully consider potential impact areas in order to minimize injuries and unintentional targets.

303.4 RESPONSIBILITIES

303.4.1 WATCH COMMANDER RESPONSIBILITIES

The Watch Commander may authorize the use of a control device by selected personnel or members of specialized units who have successfully completed the required training.

303.4.2 PERSONNEL AND TRAINING SERGEANT RESPONSIBILITIES

The Personnel and Training Sergeant, or designated instructor, shall control the inventory and issuance of all control devices and shall ensure that all damaged, inoperative, outdated or expended control devices or projectiles munitions are properly disposed of, repaired or replaced.

Every control device will be periodically inspected by the Personnel and Training Sergeant or the designated instructor for a particular control device. The inspection shall be documented.

303.4.3 USER RESPONSIBILITIES

All normal maintenance, charging or cleaning shall remain the responsibility of personnel using the various devices.

Any damaged, inoperative, outdated or expended control devices or munitions, along with documentation explaining the cause of the damage, shall be returned to the Personnel and Training Sergeant for disposition. Damage to City property forms shall also be prepared and forwarded through the chain of command, when appropriate, explaining the cause of damage.

303.5 BATON AND COLLAPSIBLE BATON GUIDELINES

The need to immediately control a suspect must be weighed against the risk of causing serious injury. The head, neck, throat, spine, heart, kidneys and groin should not be intentionally targeted except when the officer reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the officer or others.

When carrying a baton, including a collapsible baton, uniformed personnel shall carry the baton in its authorized holder on the equipment belt. Plainclothes and non-field personnel may carry the baton as authorized and in accordance with the needs of their assignment or at the direction of their supervisor.

303.6 TEAR GAS GUIDELINES

Tear gas may be used for crowd control, crowd dispersal or against barricaded suspects based on the circumstances. Only the ~~Chief of Police Watch Commander, Incident Commander or Crisis Response Unit Commander~~ may authorize the delivery and use of tear gas, and only after evaluating all conditions known at the time and determining that such force reasonably appears justified and necessary. However, tear gas may used without the Chief's authorization when exigent circumstances prevent the request from being made and the delay would likely risk injury to citizens or police personnel (e.g., rocks, bottles, or other projectiles are being thrown and immediate crowd dispersal is necessary). In the event immediate use is necessary, notification to the Chief of Police, or his/her designee, should be made as soon as possible after the deployment.

When practicable, fire personnel should be alerted or summoned to the scene prior to the deployment of tear gas to control any fires and to assist in providing medical aid or gas evacuation if needed.

303.7 OLEORESIN CAPSICUM (OC) GUIDELINES

As with other control devices, oleoresin capsicum (OC) spray and pepper projectiles may be considered for use to bring under control an individual or groups of individuals who are engaging in, or are about to engage in violent behavior. Pepper projectiles and OC spray should not, however, be used against individuals or groups who merely fail to disperse or do not reasonably appear to present a risk to the safety of officers or the public.

303.7.1 OC SPRAY

Uniformed personnel carrying OC (pepper) spray shall carry the device in its holster on the equipment belt or external vest carrier. Plainclothes and non-field personnel may carry OC spray

as authorized, in accordance with the needs of their assignment or at the direction of their supervisor.

303.7.2 PEPPER PROJECTILE SYSTEMS

Pepper projectiles are plastic spheres that are filled with a derivative of OC powder. Because the compressed gas (Less Lethal) launcher delivers the projectiles with enough force to burst the projectiles on impact and release the OC powder, the potential exists for the projectiles to inflict injury if they strike the head, neck, spine or groin. Therefore, personnel using a Less Lethal pepper projectile system should~~Launcher should~~ not intentionally target those areas, except when the officer reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the officer or others.

Officers encountering a situation that warrants the use of a Less Lethal Launcher~~pepper projectile system~~ shall notify a supervisor as soon as practicable. A supervisor shall respond to all ~~pepper projectile system~~ incidents where the suspect has been hit or exposed to the chemical agent. The supervisor shall ensure that all notifications and reports are completed as required by the Use of Force Policy.

~~Each deployment of a pepper projectile system shall be documented. This includes situations where the launcher was directed toward the suspect, whether or not the launcher was used. Unintentional discharges shall be promptly reported to a supervisor and documented on the appropriate report form. Only non-incident use of a pepper projectile system, such as training and product demonstrations, is exempt from the reporting requirement.~~

303.7.3 TREATMENT FOR OC SPRAY EXPOSURE

Persons who have been sprayed with or otherwise affected by the use of OC should be promptly provided with clean water to cleanse the affected areas. Those persons who complain of further severe effects shall be examined by appropriate medical personnel.

303.8 POST-APPLICATION NOTICE

Whenever tear gas or OC has been introduced into a residence, building interior, vehicle or other enclosed area, officers should provide the owners or available occupants with notice of the possible presence of residue that could result in irritation or injury if the area is not properly cleaned. Such notice should include advisement that clean-up will be at the owner's expense. Information regarding the method of notice and the individuals notified should be included in related reports.

303.9 ~~KINETIC ENERGY~~ LESS LETHAL PROJECTILE GUIDELINES

This department is committed to reducing the potential for violent confrontations. Less Lethal~~Kinetic energy~~ projectiles, when used properly, are less likely to result in death or serious physical injury and can be used in an attempt to de-escalate a potentially deadly situation.

303.9.1 DEPLOYMENT AND USE

Only department-approved ~~projectiles~~kinetic energy munitions shall be carried and deployed. Approved ~~projectiles~~ munitions may be used to compel an individual to cease his/her actions

when such projectiles munitions present a reasonable option.

Approved projectiles include:

- (a) "Less Lethal" Rounds: Impact projectiles
- (b) "Pava" Rounds: Impact projectiles containing OC/Pepper spray
- (c) "Marking" Rounds: Impact projectiles containing paint

Officers are not required or compelled to use approved projectilesmunitions in lieu of other reasonable tactics if the involved officer determines that deployment of these projectilesmunitions cannot be done safely. The safety of hostages, innocent persons and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior.

Circumstances appropriate for deployment include, but are not limited to, situations in which:

- (a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved munitionsp projectiles.
- (b) The suspect has made credible threats to harm him/herself or others.
- (c) The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers.
- (d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders.

303.9.2 DEPLOYMENT CONSIDERATIONS

Before discharging projectiles, the officer should consider such factors as:

- (a) Distance and angle to target.
- (b) Type of munitionsp projectiles employed.
- (c) Type and thickness of subject's clothing.
- (d) The subject's proximity to others.
- (e) The location of the subject.
- (f) Whether the subject's actions dictate the need for an immediate response and the use of control devices appears appropriate.

A verbal warning of the intended use of the device should precede its application, unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances. The purpose of the warning is to give the individual a reasonable opportunity to voluntarily comply and to warn other officers and individuals that the device is being deployed.

Officers should keep in mind the manufacturer's recommendations and their training regarding effective distances and target areas. However, officers are not restricted solely to use according to manufacturer recommendations. Each situation must be evaluated on the totality of circumstances at the time of deployment.

The need to immediately incapacitate the subject must be weighed against the risk of causing serious injury or death. The head and neck should not be intentionally targeted, except when the officer reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the officer or others.

303.9.3 SAFETY PROCEDURES

~~Shotguns specifically designated for use with kinetic energy projectiles will be specially marked in a manner that makes them readily identifiable as such.~~

Officers will inspect the Less Lethal Launchershotgun and projectiles at the beginning of each shift to ensure that ~~the the Launchershotgun~~ is in proper working order and the projectiles are of the approved type and appear to be free from defects.

When it is not deployed, the Launchershotgun will be unloaded and properly and securely stored, ~~in the vehicle. When deploying the kinetic energy projectile shotgun, the officer shall visually inspect the kinetic energy projectiles to ensure that conventional ammunition is not being loaded into the shotgun.~~

~~Absent compelling circumstances, officers who must transition from conventional ammunition to kinetic energy projectiles will employ the two-person rule for loading. The two-person rule is a safety measure in which a second officer watches the unloading and loading process to ensure that the weapon is completely emptied of conventional ammunition.~~

303.10 TRAINING FOR CONTROL DEVICES

The Personnel and Training Sergeant shall ensure that all personnel who are authorized to carry a control device have been properly trained and certified to carry the specific control device and are retrained or recertified as necessary.

- (a) Proficiency training shall be monitored and documented by a certified, control-device weapons or tactics instructor.
- (b) All training and proficiency for control devices will be documented in the officer's training file.
- (c) Officers who fail to demonstrate proficiency with the control device or knowledge of this agency's Use of Force Policy will be provided remedial training. If an officer cannot demonstrate proficiency with a control device or knowledge of this agency's Use of Force Policy after remedial training, the officer will be restricted from carrying the control device and may be subject to discipline.

303.11 REPORTING USE OF CONTROL DEVICES AND TECHNIQUES

Any application of a control device or technique listed in this policy shall be documented in the related incident report and reported pursuant to the Use of Force Policy.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: September 16, 2004

GENERAL ORDER F-2

SUBJECT: FIREARMS, AMMUNITION, AND NON-LETHAL WEAPONS:
TRAINING, QUALIFICATION, AND SPECIFICATIONS

PURPOSE

- 1 - The purpose of this General Order is to establish procedures for training, qualification, and specifications for firearms, ammunition and non-lethal weapons.

POLICY

- 2 - All employees are expected to follow rules, regulations, and procedures regarding weapons specifications, qualification, and training.

PROCEDURES

- 3 - Lethal and Non-lethal weapons training is mandatory for assigned employees.
 - (a) Each Supervisor shall ensure that employees under his/her supervision attend training sessions as scheduled.

TRAINING AND QUALIFICATION

- 4 - The guidelines for training and qualification are as follows:
 - (a) Firearms and Ammunition:
 - (1) **While on-duty, sworn officers shall carry only firearms authorized by the Berkeley Police Department.**
 - (2) **Authorized firearms, including Optional Duty Pistols (ODP's) must be registered and on file with the Firearms Training Unit.**
 - (3) Authorized firearms are those with which the officer has qualified, received departmental training in safe usage, and comply with departmental specifications.
 - (4) The Personnel and Training Bureau shall schedule regular training and qualification sessions for duty, off-duty, auxiliary and specialized firearms, which will be evaluated on a pass/remediate basis. Officers, at minimum, shall qualify with firearms as follows:
 - (a) Barricaded Subject/Hostage Negotiation Team, firearms, quarterly. **Qualification during HNT training sessions may suffice for departmental qualifications, providing that qualification takes place within the same quarter.**
 - (b) On-duty service **pistol, shotgun, and patrol rifle if**

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assigned, semi-annually.

- (c) Off-duty and auxiliary firearms, annually.
- (5) Any officer who fails to attend firearms qualifications, or who fails to achieve the qualifying standard with their duty firearm in accordance with departmental testing procedures, shall be retested until he/she qualifies. As noted in MOU Section 45.3, "Employees who are not able to achieve the minimum standard within a reasonable period of time will be immediately assigned to work on an intensive basis with range masters who will evaluate the severity of the problem. Consistent inability to meet the standard may be cause for termination."
 - a) Per **Departmental standards**, the FTU will furnish remedial measures and an employee failing to demonstrate proficiency with his/her weapon will not return to duty until such time as proficiency is demonstrated and documented.
- (6) An officer shall not be permitted to carry any off-duty or auxiliary firearm with which he/she has not qualified with at least annually.
- (7) An officer who has taken an extended leave, (6 months or more) or suffered an illness or injury that could affect his/her firearms skills will be required to re-qualify before returning to enforcement duties.
- (b) Non-lethal Weapons:
 - (1) The following non-lethal weapons are authorized:
 - (a) **29" baton**
 - (b) 36" long baton (CMT only)
 - (c) 26" expandable baton
 - (d) Aerosol Gas Dispenser (Oleoresin Capsicum)

FIREARMS SPECIFICATIONS

- 5 - The following Departmental specifications regulate firearms for sworn personnel for uniform **or plainclothes duty** wear.
 - (a) The authorized service pistol shall be the Smith and Wesson self-loading double action pistol in .40 caliber with a minimum barrel length of 4", in blue or stainless steel finish.

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- (b) The authorized Optional Duty Pistols (ODP) shall be Heckler & Koch, Glock and Sigarms, in .40 and .45 caliber only, with a minimum barrel length of 3 ½ “, and a maximum barrel length or 5”. Double action pistols shall be holstered in the double action mode, with the hammer down.

 - (1) The authorized magazine capacity for the ODP shall be not less than a total of seven (7) rounds in a factory supplied magazine. Only Departmentally issued duty ammunition shall be carried.
 - (2) Trigger pulls shall be maintained according to manufacturer specifications.
 - (3) No laser sighting devices shall be used unless expressly authorized in writing, by the Chief of Police.
 - (4) No weapons with a ported slide, barrel or compensator shall be authorized.
 - (5) All manufacturers approved and installed safety devices shall be maintained according to manufacturer recommendations and/or specifications.
 - (c) The modification of any pistol, other than changes in sights or stocks/grips, is expressly prohibited. Removable tactical lights are not considered modifications.
 - (d) The Firearms Training Unit will maintain, on the appropriate form, a record of each weapon approved for use.
 - (e) Firearms Training Unit Armorers shall inspect and approve all pistols intended for duty for mechanical functioning within specifications prior to deployment. Should a pistol be deemed “unsafe,” it will be barred from deployment, until the cause of the unsafe pistol has been remedied, and rechecked and deemed “safe” by the armorers.
- 6 - Holsters, ammunition carriers and necessary auxiliary equipment for ODP's must be supplied by the officer, be specifically made for the pistol in use, be of comparable quality to the Departmentally issued holsters, and be approved by the Department prior to deployment.
- (a) Approved holsters shall be manufactured with at least a primary and a secondary retention device.
 - (b) Unless expressly authorized, holsters for uniform patrol shall be of a

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black basket weave design and shall match the remainder of an officer's duty belt.

- 7 - Officers shall supply magazine pouches for ODP's. (Unless current leather gear accommodates the ODP magazines) Pouches must be of a black basket weave design, be of comparable quality to the Departmentally issued magazine pouches, and be approved by the Department prior to deployment.
- 8 - In the event an ODP malfunctions or is otherwise unavailable for use, the following options for ODP Replacement are as follows:
 - (a) Use another officer's departmentally registered ODP of the same make, model and caliber.
 - (b) Use a second pistol owned by the officer of the same make, model and caliber and registered with the Department.
 - (c) Obtain a "loaner" pistol from the Department, of the same make, model and caliber.
 - (d) If the same make, model and caliber of pistol is not available, the officer shall qualify with another ODP or Departmentally issued firearm.
- 9 - **Patrol Rifle**
 - (a) The authorized Patrol Rifle is an AR-15 style semi-automatic rifle in 5.56mm or .223 caliber issued by the department to selected officers assigned to Patrol or SEU.

OFF-DUTY FIREARMS

- 10 - An "off-duty firearm" is defined as any concealable **primary** handgun normally carried by the sworn officer when not officially in an "**on-duty**" status.

AUXILIARY FIREARMS

- 11 - Approval to carry an auxiliary (secondary) weapon is governed by Police Regulation 319. Employees on duty shall not carry auxiliary weapons, either on their person or in vehicles, without written approval of the Administrative Division Captain.

Auxiliary weapons shall meet the following criteria and be inspected by a **Firearms Training Unit** instructor before being approved for use.

- (a) Weapon and Ammunition:

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- (1) The firearm and ammunition must be of commercial manufacture. The **FTU** will record the manufacturer, caliber and serial number of the weapon on the back of the firearms training record card.
 - (2) The caliber of the auxiliary **weapon** shall not be greater than **.45 caliber**.
- (b) Reliability and Quality:
- (1) An **FTU instructor** will operate the firearm to ascertain any observable defects.
 - (2) An **FTU instructor** will conduct a routine service inspection of the firearm.
 - (3) The officer will, when possible, field strip the firearm for a detailed inspection.
- (c) Method of Carry:
- (1) The weapon shall be held secure and completely hidden in a **short-sleeved** uniform.
- (d) **The officer shall complete a qualification exercise, as provided by the FTU, which will verify security of the weapon's method of carry.**
- (e) The auxiliary weapon application shall be routed to the Administrative Division Captain via the officer's Division Commander for final approval upon successful completion of the qualification exercise.

AMMUNITION

- 12 - The following Departmental specifications regulate service ammunition for sworn personnel:
- (a) The authorized primary service handgun cartridge shall be of a controlled expansion bullet type (hollow point) **that** will release the greatest amount of kinetic energy within the target, and reduce the potential for over-penetration and ricochet.
 - (1) The reference cartridge for the semi-automatic pistols shall be **those issued by and approved for use by the FTU, and authorized by the Chief of Police.**
 - (2) Ammunition for the auxiliary **pistol** shall conform to the bullet type of the service handgun cartridge.

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- (3) Ammunition authorized for service use in the 12-gauge shotgun is the 9 or 12 pellet **Buckshot and Rifled Slug** cartridges.
- (4) **Ammunition authorized for service use for the Patrol Rifle is the 5.56mm or .223 caliber cartridge, provided by the FTU and authorized by the Department prior to deployment.**
- (5) The use of any other ammunition while on-duty is strictly prohibited.

References: Berkeley Police Association MOU
General Order U-2
Police Regulations 318, 320, 321, 322, 323, 324 and 330
Uniform Equipment Manual
Departmental Order of 10/31/03, Patrol Rifle and Deployment Policy

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Vehicle Pursuits

307.1 PURPOSE AND SCOPE

Vehicle pursuits expose innocent citizens, law enforcement officers and fleeing violators to the risk of serious injury or death. The primary purpose of this policy is to provide officers with guidance in balancing the safety of the public and themselves against law enforcement's duty to apprehend violators of the law. Another purpose of this policy is to reduce the potential for pursuit-related collisions. Vehicular pursuits require officers to exhibit a high degree of common sense and sound judgment. Officers must not forget that the immediate apprehension of a suspect is generally not more important than the safety of the public and pursuing officers.

Deciding whether to pursue a motor vehicle is a critical decision that must be made quickly and under difficult and unpredictable circumstances. In recognizing the potential risk to public safety created by vehicular pursuits, no officer or supervisor shall be criticized or disciplined for deciding not to engage in a vehicular pursuit because of the risk involved. This includes circumstances where department policy would permit the initiation or continuation of the pursuit. It is recognized that vehicular pursuits are not always predictable and decisions made pursuant to this policy will be evaluated according to the totality of the circumstances reasonably available at the time of the pursuit.

Officers must remember that the most important factors to the successful conclusion of a pursuit are proper self-discipline and sound professional judgment. Officer's conduct during the course of a pursuit must be objectively reasonable; that is, what a reasonable officer would do under the circumstances. An unreasonable individual's desire to apprehend a fleeing suspect at all costs has no place in professional law enforcement.

307.1.1 VEHICLE PURSUIT DEFINED

A vehicle pursuit is an event involving one or more law enforcement officers attempting to apprehend a suspect, who is attempting to avoid arrest while operating a motor vehicle by using high-speed driving or other evasive tactics, such as driving off a highway, turning suddenly, or driving in a legal manner but willfully failing to yield to an officer's signal to stop.

It shall be the policy of this department that a vehicle pursuit shall be conducted only with red light and siren as required by Vehicle Code § 21055 for exemption from compliance with the rules of the road. The following policy is established to provide officers with guidelines for driving with due regard and caution for the safety of all persons using the highway as required by Vehicle Code § 21056.

307.1.2 DEFINITIONS

Acting Watch Commander: In the absence of a patrol lieutenant, the senior patrol sergeant on duty is the Acting Watch Commander.

Credible Threat: Information known by the officer at the time of initiating the pursuit that provides reasonable suspicion that the suspect, if allowed to escape, poses a threat of serious bodily injury

or serious bodily harm. Sources of this information include, but are not limited to, information provided by victims, witnesses, and dispatchers, computerized criminal history, or confidential reliable informants.

Deadly Weapon: Any gun, knife, club, or other object capable of causing serious bodily injury or death.

Endpoint: The location where a vehicle pursuit ends through recovery of the suspect vehicle.

Marked Unit: A patrol beat car, pool car, sergeant's car, or any car displaying the department emblem on the side doors, and outfitted with forward red emergency light(s) and siren.

Monitoring Supervisor: The supervisory or command staff officer who advises dispatch that he or she is monitoring a pursuit. When possible, this supervisor should be the immediate supervisor of the primary officer.

Motor Unit: A police motorcycle marked with the department emblem, and outfitted with forward red emergency light(s) and siren.

Primary Officer: The officer who initiates a pursuit and/or has taken the position directly behind the fleeing vehicle during a pursuit.

Primary Unit: The vehicle occupied by the primary officer.

Secondary Officer: A cover officer who has advised the dispatcher that he or she is participating in the vehicle pursuit, but is behind the primary unit and assisting the primary officer.

Secondary Unit: A vehicle occupied by a secondary officer.

Serious Bodily Injury: A serious impairment of physical condition including, but not limited to, the following: loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of any bodily member or organ, or a wound requiring extensive suturing or serious disfigurement.

Serious Bodily Harm: For the purposes of this Order, is defined as any mental or emotional condition that may result from being victimized during a serious crime that may not result in visible bodily injury as defined above.

(a) Examples of crimes in this category include, but are not limited to rape, robbery, kidnapping, and other sexual assaults.

Specialized Vehicle: The Mobile Command Vehicle, prisoner transportation vehicles, and any other truck, van, car, or motorcycle not equipped with forward emergency red light(s) and siren.

Unmarked Unit: ~~Any SEU, Any~~ Traffic, Command Staff, or specialized motor vehicle that is not marked with the department emblem, but is outfitted with forward red emergency light(s), and siren.

Vehicle Pursuit: An event involving one or more officers attempting to apprehend or detain a suspect, who is either driving or is a passenger in or on a motor vehicle, and the driver of that motor vehicle is attempting to avoid detention or arrest. The driver may use high speed, evasive tactics, or simply drive in a legal manner, but willfully fail to yield for the officers signal to stop.

Watch Commander: The on-duty Patrol lieutenant.

307.2 OFFICER RESPONSIBILITIES

It shall be the policy of this department that a vehicle pursuit shall be conducted only with red light and siren as required by Vehicle Code § 21055 for exemption from compliance with the rules of the road. The following policy is established to provide officers with guidelines for driving with due

regard and caution for the safety of all persons using the highway as required by Vehicle Code § 21056.

307.2.1 INITIATING A PURSUIT – THRESHOLD STANDARD

A vehicle pursuit may only be initiated when there is reasonable suspicion to detain, or probable cause to arrest, a suspect in a fleeing vehicle during any of the following situations:

- (a) A violent crime involving serious bodily injury or serious bodily harm.
- (b) A violent crime involving the use of a deadly weapon against a person.
- (c) A credible threat of serious bodily injury, serious bodily harm, or use of a deadly weapon against a person.

307.2.1307.2.2 INITIATING / CONTINUING A PURSUIT – FACTORS TO BE CONSIDERED WHEN TO INITIATE A PURSUIT

~~Officers are authorized to initiate a pursuit when it is reasonable to believe that a suspect is attempting to evade arrest or detention by fleeing in a vehicle.~~

~~The following factors individually and collectively shall be considered in deciding whether to initiate a pursuit:~~

~~Seriousness of the known or reasonably suspected crime and its relationship to community safety.
The importance of protecting the public and balancing the known or reasonably suspected offense and the apparent need for immediate capture against the risks to officers, innocent motorists and others.~~

~~Apparent nature of the fleeing suspects (e.g., whether the suspects represent a serious threat to public safety):~~

~~The identity of the suspects has been verified and there is comparatively minimal risk in allowing the suspects to be apprehended at a later time.~~

~~Safety of the public in the area of the pursuit, including the type of area, time of day, the amount of vehicular and pedestrian traffic and the speed of the pursuit relative to these factors.~~

~~Pursuing officers familiarity with the area of the pursuit, the quality of radio communications between the pursuing units and the dispatcher/supervisor and the driving capabilities of the pursuing officers under the conditions of the pursuit.~~

~~Weather, traffic and road conditions that substantially increase the danger of the pursuit beyond the worth of apprehending the suspect.~~

~~Performance capabilities of the vehicles used in the pursuit in relation to the speeds and other conditions of the pursuit.~~

~~Vehicle speeds.~~

~~Other persons in or on the pursued vehicle (e.g., passengers, co-offenders and hostages).~~

~~Availability of other resources such as helicopter assistance.~~

~~The police unit is carrying passengers other than police officers. Pursuits should not be undertaken with a prisoner in the police vehicle.~~

The following factors must be considered while making the decision to initiate, continue, or terminate a pursuit. These factors and conditions should be continually evaluated considering the totality of circumstances by the primary officer, monitoring supervisor, and/or patrol watch commander involved in the pursuit.

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- (a) The seriousness of the original crime or circumstance.
 - (b) The quality and quantity of information leading to the reasonable suspicion to detain or probable cause to arrest that justifies the pursuit as listed in paragraph 20 above.
 - (c) The danger posed to the community and/or victim by the fleeing suspect, should he or she remain at large.
 - (d) Whether the suspect can be identified and will likely be apprehended at a later time, if the pursuit is terminated.
 - (e) The volume of vehicle and pedestrian traffic in the area of the pursuit.
 - (f) The safety of the public in the area where the pursuit is moving (i.e., schools, parks, commercial districts).
 - (g) The speeds involved in the pursuit, and the extent to which the suspect's speed exceeds the flow of traffic.
 - (h) Whether the weather conditions, such as rain or fog, create an unreasonable risk of injury to the public.
 - (i) Road conditions (e.g., slick pavement).
 - (j) Time of day (e.g., visibility at night).
 - (k) The primary officer's familiarity with the surrounding area and his/her driving capabilities.
 - (l) The quality of radio transmissions between pursuing units, the dispatcher, and monitoring supervisor.
 - (m) The capabilities of the police vehicles involved.
 - (n) The availability of assisting units.
 - (o) The safety of pursuing officers.
 - (p) The availability of air support.

307.2.2307.2.3 WHEN TO TERMINATE A PURSUIT

Pursuits should be discontinued whenever the totality of objective circumstances known or which reasonably ought to be known to the officer or supervisor during the pursuit indicates that the present risks of continuing the pursuit reasonably appear to outweigh the risks resulting from the suspect's escape.

The factors listed in Initiating/Continuing a Pursuit of this policy are expressly included herein and will apply equally to the decision to discontinue as well as the decision to initiate a pursuit. Officers and supervisors must objectively and continuously weigh the seriousness of the offense against the potential danger to innocent motorists and themselves when electing to continue a pursuit. In the context of this policy, the term "terminate" shall be construed to mean discontinue or to stop chasing the fleeing vehicle.

In addition to the factors listed in Initiating/Continuing a Pursuit of this policy, the following factors should also be considered in deciding whether to terminate a pursuit:

- (a) Distance between the pursuing officers and the fleeing vehicle is so great that further pursuit

would be futile or require the pursuit to continue for an unreasonable time and/or distance.

- (b) Pursued vehicle's location is no longer definitely known.
- (c) Officer's pursuit vehicle sustains any type of damage that renders it unsafe to drive.
- ~~(d) Extended pursuits of violators for misdemeanors not involving violence or risk of serious harm (independent of the pursuit) are discouraged.~~
- ~~(e)~~(d) There are hazards to uninvolved bystanders or motorists.
- ~~(f)~~(e) If the identity of the offender is known and it does not reasonably appear that the need for immediate capture outweighs the risks associated with continuing the pursuit, officers should strongly consider discontinuing the pursuit and apprehending the offender at a later time.
- ~~(g)~~(f) Pursuit is terminated by a supervisor.

~~307.2.3~~307.2.4 SPEED LIMITS

The speed of a pursuit is a factor that should be evaluated on a continuing basis by the officer and supervisor. Evaluation of vehicle speeds shall take into consideration public safety, officer safety and the safety of the occupants of the fleeing vehicle.

Should high vehicle speeds be reached during a pursuit, officers and supervisors shall also consider these factors when determining the reasonableness of the speed of the pursuit:

- (a) Pursuit speeds have become unreasonably unsafe for the surrounding conditions.
- (b) Pursuit speeds have exceeded the driving ability of the officer.
- (c) Pursuit speeds are beyond the capabilities of the pursuit vehicle thus making its operation unsafe.

307.3 PURSUIT UNITS

Pursuit units should be limited to three vehicles (two units and a supervisor); however, the number of units involved will vary with the circumstances. An officer or supervisor may request additional units to join a pursuit if, after assessing the factors outlined above, it appears that the number of officers involved would be insufficient to safely arrest the suspects. All other officers should stay out of the pursuit, but should remain alert to its progress and location. Any officer who drops out of a pursuit may then, if necessary, proceed to the termination point at legal speeds, following the appropriate rules of the road.

307.3.1 MOTORCYCLE OFFICERS

~~If a motorcycle officer is the initial/primary pursuit unit, it shall exit the pursuit once it is replaced by a A-distinctively marked patrol vehicle equipped with emergency overhead lighting. should replace a police motorcycle as primary and/or secondary pursuit unit as soon as practical.~~

307.3.2 VEHICLES WITHOUT EMERGENCY EQUIPMENT

Vehicles not equipped with red light and siren are generally prohibited from initiating or joining in any pursuit. Officers in such vehicles, however, may become involved in emergency activities

involving serious crimes or life threatening situations. Those officers should terminate their involvement in any pursuit immediately upon arrival of a sufficient number of emergency police vehicles or any police helicopter. The exemptions provided by Vehicle Code § 21055 do not apply to officers using vehicles without emergency equipment.

307.3.3 PRIMARY UNIT RESPONSIBILITIES

The initial pursuing unit will be designated as the primary pursuit unit and will be responsible for the conduct of the pursuit unless it is unable to remain reasonably close enough to the violator's vehicle. The primary responsibility of the officer initiating the pursuit is the apprehension of the suspects without unreasonable danger to him/herself or other persons.

Notify the Communications Center that a vehicle pursuit has been initiated and as soon as practicable provide information including, but not limited to:

- (a) Reason for the pursuit.
- (b) Location and direction of travel.
- (c) Speed of the fleeing vehicle.
- (d) Description of the fleeing vehicle and license number, if known.
- (e) Number of known occupants.
- (f) The identity or description of the known occupants.
- (g) Information concerning the use of firearms, threat of force, injuries, hostages or other unusual hazards.
- (h) [Road conditions](#).

Unless relieved by a supervisor or secondary unit, the officer in the primary unit shall be responsible for the broadcasting of the progress of the pursuit. Unless practical circumstances indicate otherwise, and in order to concentrate on pursuit driving, the primary officer should relinquish the responsibility of broadcasting the progress of the pursuit to a secondary unit or aircraft joining the pursuit.

307.3.4 SECONDARY UNITS RESPONSIBILITIES

The second officer in the pursuit is responsible for the following:

- (a) The officer in the secondary unit should immediately notify the dispatcher of entry into the pursuit.
- (b) Remain a safe distance behind the primary unit unless directed to assume the role of primary officer, or if the primary unit is unable to continue the pursuit.
- (c) The secondary officer should be responsible for broadcasting the progress of the pursuit unless the situation indicates otherwise.

307.3.5 PURSUIT DRIVING TACTICS

The decision to use specific driving tactics requires the same assessment of considerations outlined in the factors to be considered concerning pursuit initiation and termination. The following are tactics for units involved in the pursuit:

- (a) Officers, considering their driving skills and vehicle performance capabilities, will space

themselves from other involved vehicles such that they are able to see and avoid hazards or react safely to maneuvers by the fleeing vehicle.

- (b) Because intersections can present increased risks, the following tactics should be considered:
 - 1. Available units not directly involved in the pursuit may proceed safely to controlled intersections ahead of the pursuit in an effort to warn cross traffic.
 - 2. Pursuing units should exercise due caution when proceeding through controlled intersections.
- (c) As a general rule, officers should not pursue a vehicle driving left of center (wrong way) on a freeway. In the event that the pursued vehicle does so, the following tactics should be considered:
 - ~~1. Requesting assistance from an air unit.~~
 - ~~2.1. Maintaining visual contact with the pursued vehicle by paralleling it on the correct side of the roadway.~~
 - ~~3.2. Requesting other units to observe exits available to the suspects.~~
- (d) Notifying the California Highway Patrol (CHP) and/or other jurisdictional agency if it appears that the pursuit may enter their jurisdiction.
- (e) Officers involved in a pursuit should not attempt to pass other units unless the situation indicates otherwise or they are requested to do so by the primary unit.

307.3.6 TACTICS/PROCEDURES FOR UNITS NOT INVOLVED IN THE PURSUIT

There should be no paralleling of the pursuit route. Officers are authorized to use emergency equipment at intersections along the pursuit path to clear intersections of vehicular and pedestrian traffic to protect the public. Officers should remain in their assigned area and should not become involved with the pursuit unless directed otherwise by a supervisor.

Non-pursuing personnel needed at the termination of the pursuit should respond in a non-emergency manner, observing the rules of the road.

The primary and secondary units should be the only units operating under emergency conditions (red light and siren) unless other units are assigned to the pursuit.

307.3.7 PURSUIT TRAILING

In the event the initiating unit from this agency either relinquishes control of the pursuit to another unit or jurisdiction, that initiating unit may, with permission of a supervisor, trail the pursuit to the termination point in order to provide necessary information and assistance for the arrest of the suspects.

The term trail means to follow the path of the pursuit at a safe speed while obeying all traffic laws and without activating emergency equipment. If the pursuit is at a slow rate of speed, the trailing unit will maintain sufficient distance from the pursuit units so as to clearly indicate an absence of

participation in the pursuit.

307.3.8 AIRCRAFT ASSISTANCE

Police use of helicopters in support of a vehicle pursuit is generally not permitted based on City Council policy. (Resolution No. 51,408 N.S.)

(a) Other agencies may utilize helicopters when they are engaged in a pursuit in Berkeley or when a Berkeley pursuit enters another jurisdiction. In these situations, observations from the aircraft should be used to adjust tactics for the purposes of enhancing safety as well as apprehending the suspect(s).

~~When available, aircraft assistance should be requested. Once the air unit has established visual contact with the pursued vehicle, it should assume control over the pursuit. The primary and secondary ground units should consider the participation of aircraft assistance when determining whether to continue the pursuit.~~

~~The air unit should coordinate the activities of resources on the ground, report progress of the pursuit and provide officers and supervisors with details of upcoming traffic congestion, road hazards, or other pertinent information to evaluate whether or not to continue the pursuit. If ground units are not within visual contact and the air unit determines that it is unsafe to continue the pursuit, the air unit has the authority to terminate the pursuit.~~

307.4 SUPERVISORY CONTROL AND RESPONSIBILITY

It is the policy of this department that available supervisory and management control will be exercised over all vehicle pursuits involving officers from this department.

The field supervisor of the officer initiating the pursuit, or if unavailable, the nearest field supervisor will be responsible for the following:

- (a) Upon becoming aware of a pursuit, immediately ascertaining all reasonably available information to continuously assess the situation and risk factors associated with the pursuit in order to ensure that the pursuit is conducted within established department guidelines.
- (b) Engaging in the pursuit, when appropriate, to provide on-scene supervision.
- (c) Exercising management and control of the pursuit even if not engaged in it.
- (d) Ensuring that no more than the number of required police units needed are involved in the pursuit under the guidelines set forth in this policy.
- (e) Directing that the pursuit be terminated if, in his/her judgment, it is unjustified to continue the pursuit under the guidelines of this policy.
- ~~(f) Ensuring that aircraft are requested if available.~~
- ~~(g)~~(f) Ensuring that the proper radio channel is being used.
- ~~(h)~~(g) Ensuring the notification and/or coordination of outside agencies if the pursuit either leaves or is likely to leave the jurisdiction of this agency.
- ~~(i)~~(h) Controlling and managing BPD units when a pursuit enters another jurisdiction.

Ⓜ① Preparing post-pursuit critique and analysis of the pursuit for training purposes.

307.4.1 WATCH COMMANDER RESPONSIBILITY

Upon becoming aware that a pursuit has been initiated, the Watch Commander should monitor and continually assess the situation and ensure the pursuit is conducted within the guidelines and requirements of this policy. The Watch Commander has the final responsibility for the coordination, control and termination of a vehicle pursuit and shall be in overall command.

The Watch Commander shall review all pertinent reports for content and forward to the Division [CaptainCommander](#).

307.5 COMMUNICATIONS

If the pursuit is confined within the City limits, radio communications will be conducted on the primary channel unless instructed otherwise by a supervisor or communications dispatcher. If the pursuit leaves the jurisdiction of this department or such is imminent, involved units should, whenever available, switch radio communications to an emergency channel most accessible by participating agencies and units.

307.5.1 COMMUNICATION CENTER RESPONSIBILITIES

Upon notification that a pursuit has been initiated, the Communications Center will:

- (a) Coordinate pursuit communications of the involved units and personnel.
- (b) Notify and coordinate with other involved or affected agencies as practicable.
- (c) Ensure that a field supervisor is notified of the pursuit.
- (d) Assign an incident number and log all pursuit activities.
- (e) Broadcast pursuit updates as well as other pertinent information as necessary.
- (f) Notify the Watch Commander as soon as practicable.

307.5.2 LOSS OF PURSUED VEHICLE

When the pursued vehicle is lost, the primary unit should broadcast pertinent information to assist other units in locating suspects. The primary unit will be responsible for coordinating any further search for either the pursued vehicle or suspects fleeing on foot.

307.6 INTER-JURISDICTIONAL CONSIDERATIONS

When a pursuit enters another agency's jurisdiction, the primary officer or supervisor, taking into consideration distance traveled, unfamiliarity with the area and other pertinent facts, should determine whether to request the other agency to assume the pursuit. Unless entry into another jurisdiction is expected to be brief, it is generally recommended that the primary officer or supervisor ensure that notification is provided to each outside jurisdiction into which the pursuit is reasonably expected to enter, regardless of whether such jurisdiction is expected to assist.

307.6.1 ASSUMPTION OF PURSUIT BY ANOTHER AGENCY

Units originally involved will discontinue the pursuit when advised that another agency has assumed the pursuit and assistance of the Berkeley Police Department is no longer needed. Upon

discontinuing the pursuit, the primary unit may proceed upon request, with or at the direction of a supervisor, to the termination point to assist in the investigation.

The role and responsibilities of officers at the termination of a pursuit initiated by this department shall be coordinated with ~~appropriate consideration of~~ the units from the agency assuming the pursuit.

Notification of a pursuit in progress should not be construed as a request to join the pursuit. Requests to or from another agency to assume a pursuit should be specific. Because of communication limitations between local agencies and CHP units, a request for CHP assistance will mean that they will assume responsibilities for the pursuit. For the same reasons, when a pursuit leaves the freeway and a request for assistance is made to this department, the CHP should relinquish control.

307.6.2 PURSUITS EXTENDING INTO THIS JURISDICTION

The agency that initiates a pursuit shall be responsible for conducting the pursuit. Units from this department should not join a pursuit unless specifically requested to do so by the agency whose officers are in pursuit. The exception to this is when a single unit from the initiating agency is in pursuit. Under this circumstance, a unit from this department may join the pursuit until sufficient units from the initiating agency join the pursuit.

When a request is made for this department to assist or take over a pursuit from another agency that has entered this jurisdiction, the supervisor should consider whether the crime precipitating the pursuit and the ongoing circumstances of the pursuit are within our policy and the availability of BPD Personnel. ~~these additional following factors:~~

~~Ability to maintain the pursuit~~

~~Circumstances serious enough to continue the pursuit~~

~~Adequate staffing to continue the pursuit~~

~~The public's safety within this jurisdiction~~

~~Safety of the pursuing officers~~

~~As soon as practicable, a supervisor or the Watch Commander should review a request for assistance from another agency. The Watch Commander or supervisor, after consideration of the above factors, may decline to assist in, or assume the other agency's pursuit.~~

~~If the monitoring supervisor elects to take over the pursuit, he or she shall confirm the decision with the outside agency directly, if available, or through the Communication Center, and then direct BPD officers into the primary and secondary positions.~~

~~When any outside agency pursuit ends in our jurisdiction, the monitoring supervisor shall proceed to the endpoint, and make contact with the outside agency's supervisor or primary officer on scene. In absence of the monitoring supervisor, the first BPD officer to arrive should determine what if any assistance is needed, and begin to coordinate the response of other BPD units if necessary.~~

The supervisors at the endpoint should determine each agency's responsibility for reporting, transporting, booking, and prosecution using the guidelines listed above.

~~Assistance to a pursuing allied agency by officers of this department will terminate at the City limits provided that the pursuing officers have sufficient assistance from other sources. Ongoing participation from this department may continue only until sufficient assistance is present.~~

~~In the event that a pursuit from another agency terminates within this jurisdiction, officers shall provide appropriate assistance to officers from the allied agency including, but not limited to, scene control, coordination and completion of supplemental reports and any other assistance requested or needed. All media inquiries should be directed to the initiating agency.~~

307.7 PURSUIT INTERVENTION

Pursuit intervention is an attempt to terminate the ability of a suspect to continue to flee in a motor vehicle through tactical application of technology, road spikes, blocking, ~~boxing~~, PIT (Pursuit Intervention Technique), ramming ~~or roadblock~~ procedures. In this context, ramming shall be construed to mean maneuvering the police unit into contact with the pursued vehicle to mechanically disable or forcibly position it such that further flight is not possible or practicable.

307.7.1 WHEN USE OF RAMMING IS AUTHORIZED

~~Use of pursuit intervention tactics should be employed only after approval of a supervisor. In deciding whether to use intervention tactics, officers/supervisors should balance the risks of allowing the pursuit to continue with the potential hazards arising from the use of each tactic to the public, the officers and persons in or on the pursued vehicle. With these risks in mind, the decision to use any intervention tactic should be reasonable in light of the circumstances confronting the officer at the time of the decision. It is imperative that officers act within the bounds of legality, good judgment and accepted practices.~~

The use of a police vehicle to block, ram, or use a PIT (pursuit intervention technique), or otherwise interfere with a fleeing vehicle, is authorized only in extreme circumstances as outlined in the Use of Force Policy:

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

It is imperative that officers act within the bounds of legality, good judgment and accepted practices.

307.7.2 DEFINITIONS

Blocking or vehicle intercept ~~A slow-speed coordinated maneuver where two or more patrol vehicles simultaneously intercept and block the movement of a suspect vehicle, the driver of which~~

may be unaware of the impending enforcement stop, with the goal of containment and preventing a pursuit. Blocking is not a moving or stationary road block.

Boxing-in—A tactic designed to stop a violator's vehicle by surrounding it with law enforcement vehicles and then slowing all vehicles to a stop.

Pursuit Intervention Technique (PIT)—A low-speed maneuver designed to cause the suspect vehicle to spin out and terminate the pursuit.

Ramming—The deliberate act of impacting a violator's vehicle with another vehicle to functionally damage or otherwise force the violator's vehicle to stop.

Roadblocks—A tactic designed to stop a violator's vehicle by intentionally placing an emergency vehicle or other immovable object in the path of the violator's vehicle.

Spikes or tack strips—A device that extends across the roadway designed to puncture the tires of the pursued vehicle.

307.7.3 307.7.2 USE OF FIREARMS

The use of firearms to disable a pursued vehicle is not generally an effective tactic and involves all the dangers associated with discharging firearms. Officers should not utilize firearms during an ongoing pursuit unless the conditions and circumstances dictate that such use reasonably appears necessary to protect life. Nothing in this section shall be construed to prohibit any officer from using a firearm to stop a suspect from using a vehicle as a deadly weapon.

307.7.4 INTERVENTION STANDARDS

307.7.5 307.7.3 APPROVAL OF INTERVENTION TACTICS STANDARDS

Any pursuit intervention tactic, depending upon the conditions and circumstances under which it is used, may present dangers to the officers, the public or anyone in or on the vehicle being pursued. Certain applications of intervention tactics may be construed to be a use of deadly force and subject to the requirements for such use. Officers shall consider these facts and requirements prior to deciding how, when, where and if an intervention tactic should be employed.

(a) Blocking or vehicle intercept should only be considered in cases involving felony suspects or impaired drivers who pose a threat to public safety when officers reasonably believe that attempting a conventional enforcement stop will likely result in the driver attempting to flee in the vehicle. Because of the potential risks involved, this technique should only be employed by officers who have received training in such tactics after giving consideration to the following:

1. The need to immediately stop the suspect vehicle or prevent it from leaving substantially outweighs the risks of injury or death to occupants of the suspect vehicle, officers, or other members of the public.
2. All other reasonable intervention techniques have failed or reasonably appear

ineffective.

3. ~~Employing the blocking maneuver does not unreasonably increase the risk to officer safety.~~

4. ~~The target vehicle is stopped or traveling at a low speed.~~

5. ~~At no time should civilian vehicles be used to deploy this technique.~~

(b)(a) Only those officers trained in the use of the Pursuit Intervention Technique (PIT) will be authorized to use this procedure and only then with approval of a supervisor upon consideration of the circumstances and conditions presented at the time, including the potential for risk of injury to officers, the public and occupants of the pursued vehicle. Im pretty sure we are not allowed to PIT.

(c) ~~Ramming a fleeing vehicle should be done only after other reasonable tactical means at the officer's disposal have been exhausted. This tactic should be reserved for situations where there does not appear to be another reasonable alternative method. This policy is an administrative guide to direct officers in their decision-making process before ramming another vehicle. When ramming is used as a means to stop a fleeing vehicle, one or more of the following factors should be present:~~

1. ~~The suspect is an actual or suspected felon who reasonably appears to represent a serious threat to the public if not apprehended.~~

2. ~~The suspect is driving with willful or wanton disregard for the safety of other persons or is driving in a reckless and life-endangering manner.~~

3. ~~If there does not reasonably appear to be a present or immediately foreseeable serious threat to the public, the use of ramming is not authorized.~~

(d)(b) ~~As with all intervention techniques, Pursuing officers should obtain supervisor approval before attempting any pursuit intervention tactic to box a suspect vehicle during a pursuit. The use of an intervention tactic such a technique must be carefully coordinated with all involved units, taking into consideration the circumstances and conditions presented at the time as well as the potential risk of injury to officers, the public and occupants of the pursued vehicle.~~

(e)(c) The use of spike strips should be approved in advance by a supervisor and deployed only when it is reasonably certain that only the pursued vehicle will be affected by their use. Officers should carefully consider the limitations of such devices as well as the potential risks to officers, the public and occupants of the pursued vehicle. If the pursued vehicle is a motorcycle, a vehicle transporting hazardous materials, or a school bus transporting children, officers and supervisors should weigh the potential consequences against the need to immediately stop the vehicle.

(f) ~~Because roadblocks involve a potential for serious injury or death to occupants of the pursued vehicle if the suspect does not stop, the intentional placement of roadblocks in the direct path of a pursued vehicle is generally discouraged and should not be deployed without prior~~

~~approval of a supervisor and only then under extraordinary conditions when all other reasonable intervention techniques have failed or reasonably appear ineffective and the need to immediately stop the pursued vehicle substantially outweighs the risks of injury or death to occupants of the pursued vehicle, officers or other members of the public.~~

~~307.7.6~~307.7.4 CAPTURE OF SUSPECTS

Proper self-discipline and sound professional judgment are the keys to a successful conclusion of a pursuit and apprehension of evading suspects. Officers shall use only that amount of force, which reasonably appears necessary under the circumstances, to properly perform their lawful duties.

Unless relieved by a supervisor, the primary officer should coordinate efforts to apprehend the suspects following the pursuit. Officers should consider safety of the public and the involved officers when formulating plans to contain and capture the suspects.

307.8 REPORTING REQUIREMENTS

The following reports should be completed upon conclusion of all pursuits:

- (a) The primary officer should complete appropriate crime/arrest reports.
- (b) The Watch Commander shall ensure that an Allied Agency Vehicle Pursuit Report (form CHP 187A) is filed with the CHP not later than 30 days following the pursuit (Vehicle Code § 14602.1). The primary officer should complete as much of the required information on the form as is known and forward the report to the Watch Commander for review and distribution.
- (c) After first obtaining the available information, a field supervisor shall promptly complete a Supervisor's Log, briefly summarizing the pursuit, and submit it to his/her manager. This log should minimally contain the following information:
 1. Date and time of pursuit
 2. Length of pursuit
 3. Involved units and officers
 4. Initial reason for pursuit
 5. Starting and termination points
 6. Disposition (arrest, citation), including arrestee information if applicable
 7. Injuries and/or property damage
 8. Medical treatment
 9. Name of supervisor at scene
 10. A preliminary determination whether the pursuit appears to be in compliance with this policy and whether additional review or follow-up is warranted

307.8.1 REGULAR AND PERIODIC PURSUIT TRAINING

In addition to initial and supplementary Police Officer Standard Training (POST) training on pursuits required by Penal Code § 13519.8, all sworn members of this department will participate

no less than annually in regular and periodic department training addressing this policy and the importance of vehicle safety and protecting the public at all times, including a recognition of the need to balance the known offense and the need for immediate capture against the risks to officers and others (Vehicle Code § 17004.7(d)).

307.8.2 POLICY REVIEW

Each sworn member of this department shall certify in writing that they have received, read and understand this policy initially and upon any amendments. The POST attestation form, or an equivalent form, may be used to document the compliance and should be retained in the member's training file.

307.9 APPLICATION OF VEHICLE PURSUIT POLICY

This policy is expressly written and adopted pursuant to the provisions of Vehicle Code § 17004.7, with additional input from the POST Vehicle Pursuit Guidelines.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: December 20, 2010

GENERAL ORDER V-6

SUBJECT: VEHICLE PURSUITS

PURPOSE

- 1 - The purpose of this Order is to set forth the responsibilities of all police personnel who are involved in any phase of a vehicle pursuit, and establish the objective standards that must be used by an officer to decide whether to initiate, continue, or terminate a pursuit. The policy set forth in this Order is intended to reduce potential hazards to the public and to pursuing officers generated by police pursuits of fleeing suspects while maximizing the opportunity for apprehension.

DEFINITIONS

- 2 - Acting Watch Commander: The senior patrol sergeant on duty is the acting watch commander, in the absence of a patrol lieutenant.
- 3 - Credible Threat: Information known by the officer at the time of initiating the pursuit that provides reasonable suspicion that the suspect, if allowed to escape, poses a threat of serious bodily injury or serious bodily harm. Sources of this information include, but are not limited to; information provided by victims, witnesses, and dispatchers, computerized criminal history, or confidential reliable informants.
- 4 - Deadly Weapon: Any gun, knife, club, or other object capable of causing serious bodily injury or death.
- 5 - Endpoint: The location where a vehicle pursuit ends through recovery of the suspect vehicle.
- 6 - Marked Unit: A patrol beat car, pool car, sergeant's car, or any car displaying the department emblem on the side doors, and outfitted with forward red emergency light(s) and siren.
- 7 - Monitoring Supervisor: The supervisory or command staff officer who advises dispatch that he or she is monitoring a pursuit. When possible, this supervisor should be the immediate supervisor of the primary officer.
- 8 - Motor Unit: A police motorcycle marked with the department emblem, and outfitted with forward red emergency light(s) and siren.
- 9 - Primary Officer: The officer who initiates a pursuit and/or has taken the position directly behind the fleeing vehicle during a pursuit.
- 10 - Primary Unit: The vehicle occupied by the primary officer.

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- 11 - Secondary Officer: A cover officer who has advised the dispatcher that he or she is participating in the vehicle pursuit, but is behind the primary unit and assisting the primary officer.
- 12 - Secondary Unit: A vehicle occupied by a secondary officer.
- 13 - Serious Bodily Injury: A serious impairment of physical condition including, but not limited to, the following: loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of any bodily member or organ, or a wound requiring extensive suturing or serious disfigurement.
- 14 - Serious Bodily Harm: For the purposes of this Order, is defined as any mental or emotional condition that may result from being victimized during a serious crime that may not result in visible bodily injury as defined above.
 - (a) Examples of crimes in this category include, but are not limited to rape, robbery, kidnapping, and other sexual assaults.
- 15 - Specialized Vehicle: The Mobile Command Vehicle, prisoner transportation vehicles, and any other truck, van, car, or motorcycle not equipped with forward emergency red light(s) and siren.
- 16 - Unmarked Unit: Any Drug Task Force, Traffic, Command Staff, or specialized unit motor vehicle that is not marked with the department emblem, but is outfitted with forward red emergency light(s), and siren.
- 17 - Vehicle Pursuit: An event involving one or more officers attempting to apprehend or detain a suspect, who is either driving or is a passenger in or on a motor vehicle, and the driver of that motor vehicle is attempting to avoid detainment or arrest. The driver may use high speed, evasive tactics, or simply drive in a legal manner, but willfully fail to yield for the officers signal to stop.
- 18 - Watch Commander: The on-duty Patrol lieutenant.

POLICY

- 19 - Berkeley Police Officers may initiate and/or continue a vehicle pursuit, only when the potential danger to the public posed by the fleeing suspect remaining at large, is greater than the potential danger to the public created by the pursuit itself. Strict supervisory control shall be maintained from the onset of any pursuit, and continue through the termination of a pursuit or the endpoint. **All sworn personnel shall certify in writing that they have received, read, and understand the Department's vehicle pursuit policy.**

INITIATING A PURSUIT – THRESHOLD STANDARD

- 20 - A vehicle pursuit may only be initiated when there is reasonable suspicion to detain, or probable cause to arrest, a suspect in a fleeing vehicle during any of

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the following situations:

- (a) A violent crime involving serious bodily injury or serious bodily harm.
- (b) A violent crime involving the use of a deadly weapon against a person.
- (c) A credible threat of serious bodily injury, serious bodily harm, or use of a deadly weapon against a person.

INITIATING / CONTINUING A PURSUIT – FACTORS TO BE CONSIDERED

- 21 - The following factors must be considered while making the decision to initiate, continue, or terminate a pursuit. These factors and conditions should be continually evaluated considering the totality of circumstances by the primary officer, monitoring supervisor, and/or patrol watch commander involved in the pursuit.
- (a) The seriousness of the original crime or circumstance.
 - (b) The quality and quantity of information leading to the reasonable suspicion to detain or probable cause to arrest that justifies the pursuit as listed in paragraph 20 above.
 - (c) The danger posed to the community and/or victim by the fleeing suspect, should he or she remain at large.
 - (d) Whether the suspect can be identified and will likely be apprehended at a later time, if the pursuit is terminated.
 - (e) The volume of vehicle and pedestrian traffic in the area of the pursuit.
 - (f) The safety of the public in the area where the pursuit is moving (i.e., schools, parks, commercial districts).
 - (g) The speeds involved in the pursuit, and the extent to which the suspect's speed exceeds the flow of traffic.
 - (h) Whether the weather conditions, such as rain or fog, create an unreasonable risk of injury to the public.
 - (i) Road conditions (e.g., slick pavement).
 - (j) Time of day (e.g., visibility at night).
 - (k) The primary officer's familiarity with the surrounding area and his/her driving capabilities.
 - (l) The quality of radio transmissions between pursuing units, the dispatcher, and monitoring supervisor.

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- (m) The capabilities of the police vehicles involved.
- (n) The availability of assisting units.
- (o) The safety of pursuing officers.
- (p) The availability of air support.

PURSUIT RESTRICTIONS

- 22 - Every officer participating in a vehicle pursuit shall adhere to the policies governing emergency vehicle operations set forth in General Order V-4.
- 23 - Number of vehicles - all pursuits should be limited to 3 pursuing units (1 primary unit and 2 secondary units) and a monitoring supervisor.
 - (a) If, due to the seriousness of the crime, number of suspects, or other circumstances, the monitoring supervisor feels additional units are necessary, he/she may direct additional units to assist.
- 24 - Type of vehicles - whenever possible, marked units should occupy the primary and secondary positions in a pursuit.
 - (a) When an unmarked vehicle or motor unit is involved in a pursuit, they shall withdraw when marked units are in position to take over.
 - (b) Specialized vehicles, off road motorcycles, or any other vehicle not outfitted with proper emergency equipment, shall not initiate or participate in a pursuit.
- 25 - Primary or secondary officers are the only units authorized to drive Code-3 in a pursuit, unless others are directed to do so by the monitoring supervisor or watch commander. (reference General Order V-4(5)(e))
 - (a) The monitoring supervisor and watch commander may to drive Code-3 at their discretion as authorized in General Order V-4(6).
- 26 - When actively involved in a pursuit, officers shall have emergency lights and siren activated at all times. If a pursuing unit's emergency lights or siren fails during a pursuit, or a unit's radio contact completely fails, that officer shall immediately withdraw from the pursuit.
- 27 - No officer shall attempt to pass other police units involved in a pursuit unless the passing officer is directed to do so by the primary unit or the monitoring supervisor.
- 28 - Officers with prisoners, victims, witnesses, or other civilian passengers in their vehicles, shall not become involved in pursuits.

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- 29 - Firearms shall not be discharged at or from a moving vehicle unless the circumstances fall within the provisions of General Order U-2.
- 30- Police use of helicopters in support of a vehicle pursuit is generally not permitted based on City Council policy. (Resolution No. 51,408 N.S.)
 - (a) Other agencies may utilize helicopters when they are engaged in a pursuit in Berkeley or when a Berkeley pursuit enters another jurisdiction. In these situations, observations from the aircraft should be used to adjust tactics for the purposes of enhancing safety as well as apprehending the suspect(s).

TERMINATING A PURSUIT – STANDARD

- 31 - The monitoring supervisor, patrol watch commander, or primary officer may terminate a vehicle pursuit at any time. The primary officer shall terminate a pursuit when the standard requiring termination of the pursuit arises, or upon being ordered by a supervisor.
- 32 - A pursuit shall be terminated when:
 - (a) Considering all the factors outlined in paragraph 21, the primary officer, monitoring supervisor, or patrol watch commander, should reasonably conclude that the immediate danger to bystanders and other drivers created by the vehicle pursuit itself is greater than potential danger to the public and/or victim posed by the fleeing suspect remaining at large.
- 33 - A pursuit should be terminated when:
 - (a) The suspect can be identified to the point where later apprehension will likely be accomplished, and the pursuing officers reasonably believe that the public and/or victim are not placed in greater danger by the suspect remaining at large.

TERMINATING A PURSUIT – PROTOCOL

- 34 - Whenever a pursuit is ordered terminated, the order shall:
 - (a) Be broadcast over the radio.
 - (b) All primary and secondary officers shall acknowledge the order, deactivate all emergency equipment and return to normal driving.

PURSUIT INTERVENTION AND TIRE DEFLATION DEVICES

- 35 - The use of a police vehicle to block, ram, or use a PIT (pursuit intervention technique), or otherwise interfere with a fleeing vehicle, is authorized only in extreme circumstances as outlined in General Order U-2.

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- 36 - When practical, the use of tire deflation devices to stop a fleeing vehicle may be authorized by the monitoring supervisor or watch commander and shall be deployed in accordance with T&I Bulletin #257.

PURSUIT ENDPOINT PROTOCOL

- 37 - When a pursuit ends, the primary officer is responsible for coordinating the response of other units until relieved by a supervisor.
- 38 - The monitoring supervisor shall proceed directly to the endpoint of any pursuit in our jurisdiction to confer with the primary officer and provide for supervision/coordination of responding units.
- 39 - Officers shall employ vehicle contact and subject control tactics appropriate for and commensurate with the circumstances surrounding the initiation, conduct and conclusion of the vehicle pursuit, and person(s) immediately associated with the pursued vehicle.
- (a) When appropriate, officers should follow the High Risk Vehicle Stop guidelines from Training and Information Bulletin #171.

PURSUIITS THAT LEAVE OUR CITY

- 40 - When a pursuit leaves our city and enters another agency's jurisdiction, the monitoring supervisor shall decide whether to continue, terminate, or relinquish the pursuit, considering the factors listed in paragraph 21.
- 41 - The monitoring supervisor shall ensure the primary officer has a sufficient number of secondary officers in position to provide cover. Once this is established, the monitoring supervisor should direct all other units to remain within the city limits. Notification of the pursuit shall be made to the agency of jurisdiction as information only. Any request to assist or take over the pursuit shall be made by the monitoring supervisor.
- 42 - If the monitoring supervisor wishes to continue the pursuit, but due to the circumstances wants assistance from the agency of jurisdiction, a formal request for such assistance shall be made directly to the agency (e.g., telephone, radio, etc.), if available, or through the Communication Center. The jurisdiction should be told specifically what we are asking for and provided with any other information requested.
- 43 - If the monitoring supervisor wishes the pursuit to continue, but due to the circumstances wants the neighboring agency to take over the pursuit, the request should be made directly to the agency, if available, or through the Communication Center. The other agency should be told the reason for the pursuit and any related officer safety information. When confirmation is received that the neighboring agency agrees to take over the pursuit, the monitoring supervisor shall ensure that their units are in position to take over prior to

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relinquishing the pursuit.

- 44 - Once the pursuit is relinquished, it becomes the assuming agency's responsibility. BPD officers shall not re-enter the pursuit without approval of the monitoring supervisor. The primary officer and monitoring supervisor shall trail the pursuit to the endpoint and assist the assuming agency with any information necessary for the arrest of the suspect. If the distance to the endpoint makes this impractical, the initiating officer should arrange to meet the arresting officer at the jail or other detention facility where the arrested party will be taken.
- 45 - BPD shall assume responsibility for prosecution of the original crime that resulted in the pursuit.
- 46 - Other non-traffic violations witnessed during the pursuit by the assuming agency shall be prosecuted by that agency.
- 47 - If numerous serious violations occur during the pursuit, the agency witnessing the most serious crime should retain custody of the suspect.

PURSUIT THAT ENTER OUR CITY

- 48 - When a pursuit from another jurisdiction enters our city, a patrol team sergeant shall advise the dispatcher that he or she is monitoring the pursuit. If this does not occur, the patrol watch commander or acting watch commander is responsible for monitoring the pursuit. Officers shall only drive Code-3 in response to or otherwise join the pursuit if directed to do so by the monitoring supervisor.
- 49 - If the outside agency does not request BPD assistance, the monitoring supervisor shall drive toward the area of the pursuit and be prepared to direct units in the event a request is made, or other circumstances arise that require our assistance.
- 50 - If the outside agency does not wish to relinquish a pursuit, but requests BPD assistance, the monitoring supervisor shall:
 - (a) Confirm the request directly, if available, or via the Communication Center.
 - (b) Determine if the crime or circumstance precipitating the pursuit conforms to this Order, and direct our officers as necessary to:
 - (1) Join the pursuit as secondary officers if it meets our criteria.
 - (2) Drive toward the area of the pursuit and be in position to assist as needed at the endpoint, if it does not meet our criteria.

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- 51 - If the outside agency makes a formal request for BPD to take over their pursuit, the monitoring supervisor shall confirm the request via dispatch. Mere notification of a pursuit from an outside agency shall not be considered a request to take over or participate. In considering the decision to take over, the monitoring supervisor shall consider the following:
- (a) Whether the crime precipitating the pursuit and the ongoing circumstances of the pursuit are within our policy.
 - (b) The availability of BPD personnel.
- 52 - If the monitoring supervisor elects to take over the pursuit, he or she shall confirm the decision with the outside agency directly, if available, or through the Communication Center, and then direct BPD officers into the primary and secondary positions.
- 53 - When any outside agency pursuit ends in our jurisdiction, the monitoring supervisor shall proceed Code-3 at his or her discretion to the endpoint, and make contact with the outside agency's supervisor or primary officer on scene. In absence of the monitoring supervisor, the first BPD officer to arrive should determine what if any assistance is needed, and begin to coordinate the response of other BPD units if necessary.
- (a) The supervisors at the endpoint should determine each agency's responsibility for reporting, transporting, booking, and prosecution using the guidelines listed above.
 - (b) All media inquiries should be directed to the initiating agency.

SUMMARY OF RESPONSIBILITIES

- 54 - Primary officer:
- (a) Determine that the threshold standard for initiating a vehicle pursuit is met.
 - (b) Make the appropriate initial radio broadcasts:
 - (1) Request Code-33 to limit radio traffic.
 - (2) When the air has been cleared, advise the dispatcher that you have initiated a pursuit and provide the crime or circumstance justifying it.
 - (3) Broadcast your current location, suspect vehicle description, direction of travel, and speed.
 - (4) Listen for a supervisor to acknowledge the pursuit.

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- (5) Continue to update above information and any officer safety information such as weapons, number of occupants, etc.
 - (c) Continually evaluate the necessity of the pursuit against developing circumstances considering the factors outlined in paragraph 21.
 - (d) Transfer radio responsibilities to a secondary unit when one is in position behind you, if practical.
 - (e) Coordinate the response of other officers at the endpoint of the pursuit, if necessary.
 - (f) Operate the patrol vehicle in a safe manner, maintaining safe distances, and utilizing lights and siren at all times while engaged in the pursuit.
- 55 - Secondary officer:
- (a) Notify the dispatcher when you join a pursuit and verify your position.
 - (b) Provide cover and assistance to the primary unit during the pursuit.
 - (c) Assume responsibility for maintaining radio contact and for providing updated information regarding pursuit speeds, direction, and conditions.
 - (d) Be prepared to stop and assist any victim of injury or accident that occurs during a pursuit, if the primary officer has sufficient cover.
 - (e) If the primary officer does not have sufficient cover, the secondary officer shall request another unit to respond to the accident or injury.
- 56 - Monitoring supervisor: (usually a patrol sergeant)
- (a) Upon becoming aware of a pursuit by an officer on your team, immediately notify the communications center that you are monitoring the pursuit.
 - (b) Determine if the pursuit conforms to the criteria of this Order.
 - (1) Terminate the pursuit if the pursuit does not conform to this Order.
 - (c) Continually evaluate the necessity of the pursuit against the factors outlined in paragraph 21, and take appropriate action as circumstances unfold.
 - (d) Ensure that proper number and type of police units are involved in the pursuit.
 - (e) Ensure that radio communications are maintained with pursuing units and that proper radio procedures are followed.

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- (f) Ensure that affected neighboring agencies are notified.
- (g) Ensure that the provisions of this order are followed if the pursuit moves into other jurisdictions.
- (h) Follow the pursuit to the endpoint, assume responsibility for controlling police activity at the scene, and ensure department policies are followed.
- (i) Ensure that all necessary documentation relating to the incident are properly filled out and turned in prior to the primary officer going off duty.
- (j) Complete the CHP Form 187A and insure it is forwarded to the California Highway Patrol by fax or mail.
- (k) Document the circumstances of the pursuit in the daily log and attach copies of relevant documentation (e.g. CHP Form 187A, police report, etc.) for review by the Watch Commander and Chain of Command.
- (l) If any issues arose during the pursuit or aftermath that upon review are in violation of policy or a potential problem, the supervisor shall take steps as soon as possible after the incident to provide training, advice, or initiate additional administrative review.
- (m) Notify the watch commander or acting watch commander if:
 - (1) Any person suffers an injury requiring medical attention during a pursuit.
 - (2) A collision occurs during a pursuit.
 - (3) Major property damage occurs as a result of a pursuit.
 - (4) Policy violations occur during a pursuit.

57 - Watch commander: (or acting watch commander)

- (a) Ensure that a patrol sergeant acts as the monitoring supervisor during any pursuit.
- (b) Monitor the pursuit along with the supervisor.
- (c) Act as the monitoring supervisor when patrol sergeants fail or are unavailable to do so, or for any pursuit initiated by a patrol sergeant.
- (d) Terminate any pursuit that does not conform to this Order.
- (e) Make any necessary chain of command notifications if a serious accident or injury results from the pursuit.

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- (f) Coordinate with, and assist the monitoring supervisor as necessary.
- (g) Review the monitoring supervisor's daily log report of the vehicle pursuit as well as any relevant documentation attached thereto for compliance with this Order and route to the Chief of Police via the chain of command.
 - (1) Initiate additional administrative review, if appropriate, when the conduct of the pursuit does not conform to this Order.

58 - Dispatcher:

- (a) Upon being advised of a pursuit by an officer, immediately activate the emergency tone and begin a Code-33.
- (b) Wait for a patrol team sergeant to advise that he/she is monitoring the pursuit. If there is no response after a reasonable interval, advise a supervisor of the pursuit.
- (c) Monitor the pursuit, maintain and observe the Code-33, repeating only pertinent information like location, direction, or any officer safety information, until the pursuit ends and Code-34 is declared.
- (d) Run the license plate of the vehicle or name of the suspect if it is known.
- (e) Broadcast any relevant wants regarding the suspect or officer safety information only. (If there are no hits, and only registered owner information is available, hold it until it is requested.)
- (f) Anticipate when a pursuit may leave the City and notify the appropriate jurisdiction.
- (g) Immediately dispatch an officer to any collision or other injury resulting from the pursuit.

References: California Vehicle Code §§165(b)(1), 17004.7, 14602.1, 21055, 21056
and 21807
California Penal Code §13519.8
City of Berkeley Council Resolution No. 51,408 N.S.
General Orders C-2, P-14, P-26, P-29, R-3, R-31, U-2 and V-4
Training and Information Bulletins 171 and 257
California Law Enforcement Vehicle Pursuit Guidelines
Alameda County Law Enforcement Inter-Agency Vehicular Pursuit
Guidelines

Hate Crimes

319.1 PURPOSE AND SCOPE

The purpose of this policy is to meet or exceed the provisions of Penal Code § 13519.6(c) and provides members of this department with guidelines for identifying and investigating incidents and crimes that may be motivated by hatred or other bias.

319.1.1 DEFINITIONS

Hate crimes - A criminal act committed in whole or in part, because of one or more of the following actual or perceived characteristics of the victim (Penal Code § 422.55; Penal Code § 422.56; Penal Code § 422.57):

- (a) Disability
- (b) Gender
- (c) Nationality
- (d) Race or ethnicity
- (e) Religion
- (f) Sexual orientation
- (g) Association with a person or group with one or more of these actual or perceived characteristics
- (h) Examples of hate crimes include, but are not limited to:
 - 1. Interfering with, oppressing or threatening any other person in the free exercise or enjoyment of any right or privilege secured by the constitution or laws because of one or more of the actual or perceived characteristics of the victim (Penal Code § 422.6).
 - 2. Defacing a person's property because of one or more of the actual or perceived characteristics of the victim (Penal Code § 422.6(b)).
 - 3. Terrorizing a person with a swastika or burning cross (Penal Code § 11411).
 - 4. Vandalizing a place of worship (Penal Code § 594.3).

The federal Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act expands federal hate crimes to include crimes motivated by a victim's actual or perceived sex, sexual orientation, gender identity or disability (18 USC § 249).

Victim - Includes, but is not limited to, a community center, educational facility, entity, family, group, individual, office, meeting hall, person, place of worship, private institution, public agency, library or other victim or intended victim of the offense (Penal Code § 422.56).

319.2 POLICY

The Berkeley Police Department recognizes and places a high priority on the rights of all

individuals guaranteed under the state and federal constitution and incorporated in state and federal law.

319.3 PREVENTION AND PREPARATION

While it is recognized that not all crime can be prevented, this department is committed to taking a proactive approach to preventing and preparing for likely hate crimes by, among other things:

- (a) Make an affirmative effort to establish contact with persons and groups within the community, who are likely targets of hate crimes and forming networks that address prevention and response.
- (b) Accessing assistance by, among other things, activating the California Department of Justice Hate Crime Rapid Response Protocol when necessary.
- (c) Providing victim assistance and community follow-up as outlined below.
- (d) Educating community and civic groups about hate crime laws.
- (e) Establishing a community relations liaison to work with community organizations and leaders to coordinate public meetings, local group meetings and school assemblies on recognizing, preparing for and preventing hate crimes.

319.4 HATE CRIME vs. HATE INCIDENT

Many acts of hate violence fall under the category of a hate crime, which is punishable by law. However, not all hate incidents are hate crimes. For example, verbal name calling, although offensive, is not a crime and must be accompanied by a viable threat of violence and the ability to carry out the threat.

For a hate incident to be categorized as a hate crime, it must violate a criminal law. A hate crime might include threatening phone calls, physical assaults, destruction of property, bomb threats, and/or the disturbance of religious meetings.

A hate incident that does not constitute a hate crime might include hate speech, display of offensive materials on one's property, the distribution of hate materials in public places, and the posting of hate materials that does not result in property damage. Even if a hate incident does not rise to the level of a hate crime, the victim will still need support and assistance and may have an actionable civil claim as well.

319.5 CRIMINAL STATUTES

The key criminal statutes on hate crimes are

- (a) Penal Code § 422.6 which provides that it is a misdemeanor to both (a) threaten or injure an individual or (b) damage property because of the real or perceived beliefs or characteristics of the other person; and
- (b) Penal Code § 422.7 which provides that it is a felony to both (a) threaten or injure an individual (when the injury could or does result in great bodily injury) or (b) damage property

(when the damage is in excess of \$950) because of the real or perceived beliefs or characteristics of the other person.

319.4319.6 INVESTIGATIONS

Whenever any member of this department receives a report of a suspected hate crime or other activity that reasonably appears to involve a potential hate crime, the following should occur:

- (a) Assigned officers should promptly contact the victim, witness, or reporting party to investigate the matter further as circumstances may dictate
- (b) A supervisor should be notified of the circumstances as soon as practical.
- (c) Once in-progress aspects of any such situation have been stabilized (e.g., treatment of victims, apprehension of present suspects at the scene, etc.), the assigned officers should take all reasonable steps to preserve evidence that establishes a possible hate crime.
- (d) Based upon available information, officers should take appropriate action to mitigate further injury or damage to potential victims or the community.
 - 1. Officers should contact the property owner to remove any evidence that cannot be physically removed (i.e., painted words or signs on a wall) by the officer once the offense is documented.
- (e) The assigned officers should interview available witnesses, victims and others to determine what circumstances, if any, indicate that the situation may involve a hate crime.
 - 1. No victim of or a witness to a hate crime who is not otherwise charged with or convicted of a crime under state law may be detained for or turned over to federal authorities exclusively for any actual or suspected immigration violation (Penal Code § 422.93(b))
 - 2. Statements of victims and witnesses should be audio or video recorded if practicable (see the Portable Audio/Video Recorders Policy).
- (f) Depending on the situation, the assigned officers or supervisor may request additional assistance from detectives or other resources to further the investigation
- (g) The assigned officers will include all available evidence indicating the likelihood of a hate crime in the relevant reports. All related reports should be clearly marked as "Hate Crimes" and, absent prior approval of a supervisor, should be completed and submitted by the assigned officers before the end of the shift
- (h) The assigned officers will provide the victims of any suspected hate crime with a brochure on hate crimes (Penal Code § 422.92). Such brochures will also be available to members of the general public upon request. The assigned officers should also make reasonable efforts to assist the victims by providing available information on local assistance programs and organizations
- (i) The assigned officers and supervisor should take reasonable steps to ensure that any such situation does not escalate further and should provide information to the victim regarding

legal aid (e.g., Possible Temporary Restraining Order through the District Attorney or City Attorney Penal Code § 136.2 or Civil Code § 52.1 as indicated).

319.6.1 SUPERVISOR RESPONSIBILITY

The supervisor should confer with the initial responding officers to identify reasonable and appropriate preliminary actions. The supervisor should:

- (a) Review related reports to verify whether the incident is appropriately classified as a hate crime for federal and state bias crime-reporting purposes.
- (b) Notify other appropriate personnel in the chain of command, depending on the nature and seriousness of the offense and its potential inflammatory and related impact on the community.
- (c) Consider the need for further action to be taken for the protection of the victims or vulnerable sites, such as assigning an officer at specific locations that could become targets or increase neighborhood surveillance.
- (d) Ensure that members who are responsible for the conduct and maintenance of information on criminal groups are notified and that they make appropriate inquiries and entries into criminal intelligence systems (see Criminal Organizations Policy).

319.6.2 DETECTIVE BUREAU RESPONSIBILITY

If a hate crime case is assigned to the Detective Bureau, the assigned detective will be responsible:

- (a) Coordinating further investigation with the District Attorney and other appropriate law enforcement agencies.
- (b) Maintaining contact with the victims and other involved individuals as needed.
- (c) Maintaining statistical data and tracking on suspected hate crimes as indicated for required reporting to the Attorney General (Penal Code § 13023). See the Records Management Policy.
- (d) Make reasonable efforts to identify additional witnesses.
- (e) Utilize available criminal intelligence systems as appropriate (see Criminal Organizations Policy).
- (f) Provide the supervisor and the Public Information Officer with information that can be responsibly reported to the media.
 - 1. When appropriate, the PIO should reiterate that the hate crime will not be tolerated and will be taken seriously.

319.5319.7 TRAINING

All members of this department will receive POST approved training on hate crime recognition and investigation as provided by Penal Code § 13519.6. Training should also include recognition

of bias motivators such as ranges of attitudes and perceptions toward a specific characteristic or group.

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GENERAL ORDER H-4

SUBJECT: HATE CRIME POLICY AND PROCEDURES

PURPOSE

- 1 - The purpose of this General Order is to establish a policy and procedure for handling crimes and incidents that are motivated by hatred or prejudice arising from differences in race, religion, gender, ethnic background, culture, or sexual orientation.

POLICY

- 2 - The policy of the Berkeley Police Department is to ensure that the rights guaranteed by Federal, State, and Local laws, and the U. S. Constitution are protected for all people regardless of their race, gender, ethnic background, national origin, religious belief, sex, age, disability, sexual orientation, or political affiliation. When such rights are infringed upon by violence, threats, or other harassment, the Department will use all resources necessary to rapidly identify the persons responsible for criminal offenses, arrest them and bring them before the courts.
- 3 - All criminal acts of racial, religious or political hate motivated violence or threats will be viewed as serious, and the investigation of them will be given high priority. Such acts generate fear and concern among victims and the public, and have the potential for recurring, escalating, and possibly causing counter-violence.
- 4 - All reported incidents that are non-criminal and that are motivated by race, gender, ethnicity, religion, sexual orientation, or political affiliation will be investigated as high priority and documented by a police report. Such incidents may have the potential to reoccur and escalate into a criminal offense.

DEFINITION

- 5 - The California Attorney General's Office most recent edition on "Law Enforcement Guidelines for Hate Crime Policy", defines "hate crime " as "any criminal act or attempted criminal act directed against a person or persons by another based upon the victim's actual or perceived race, nationality, religion, sexual orientation, gender, mental disability, or physical disability. A hate crime includes any criminal act or attempted criminal act against the property of a public agency or a private institution because it is identified or associated with a person or group of an identifiable race, nationality, religion, sexual orientation, gender, mental disability, or physical disability. "

REPORTING AND INVESTIGATION PROCEDURES

- 6 - Communications Center
 - (a) Upon receipt of a report of a possible/suspected hate motivated crime or incident, the Communications personnel shall:

* Highlighted text is new

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- (1) Dispatch a field unit as soon as reasonably practical in accordance with the Communications Center Procedures Manual.
- (2) Notify an area Patrol Sergeant of the reported incident.

7 - Patrol Officer

- (a) When a Patrol Officer responds to a report of a hate-motivated crime or incident, the officer shall:
 - (1) Arrest the responsible(s) if applicable.
 - (2) Advise their Patrol Supervisor of the situation.
 - (3) Attempt to effectively calm the victim by being empathetic and supportive.
 - (4) Conduct a thorough preliminary investigation consistent with Department policy and procedure.
 - (5) Provide assistance to the victim by giving them referral information such as counseling and other appropriate support and assistance agencies.
 - (6) Designate hate-motivated crime or incident by writing "Hate Crime Incident" across the top of the report form.
 - (7) Include information on the report form indicating why the motivation appears all or in part to be based on differences in race, religion, ethnicity or sexual orientation.

8 - Patrol Supervisor

- (a) The Patrol Supervisor, upon being notified of a possible hate-motivated crime or incident, shall:
 - (1) Respond to the scene, interview the patrol officer, and confirm whether or not a hate-motivated crime or incident has occurred.
 - (2) Take whatever steps are necessary to ensure that the situation does not escalate.
 - (3) Assist in calming the victim by being empathetic and supportive.
 - (4) Insure that a thorough preliminary investigation is conducted by the assigned officer.
- (b) The Patrol Supervisor shall notify the Watch Commander, Duty Command Officer, or on-call Captain, as appropriate.

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- (c) The Patrol Supervisor shall include a summary of the incident in the Supervisor's Daily Report.
- 9 - Patrol Watch Commander
- (a) The Patrol Watch Commander, upon being notified of a possible hate-motivated crime or incident, shall:
 - (1) Discuss the incident with the Patrol Sergeant, as appropriate.
 - (2) Notify any other person(s) deemed appropriate due to the circumstances of the crime or non-criminal incident.
 - (b) The Patrol Watch Commander shall report the incident in his/her Watch Commander's Daily report, as appropriate.
- 10 - Support Services Division - Detective Bureau
- (a) If the type of crime requires a follow-up, the investigator assigned the case shall:
 - (1) Conduct a thorough follow-up investigation consistent with Department policy and procedure.
 - (2) Keep the **Support Services Division Lieutenant*** informed of the progress of the investigation.
 - (3) Prepare the case for prosecution in court, if a suspect is known.
 - (b) The **Support Services Division Lieutenant*** shall ensure all necessary follow investigations are completed.
- 11 - Support Services Division - Report Review Sergeant
- (a) The **Support Services Division Lieutenant*** shall insure that all hate-motivated crime or incident statistics are recorded and **reported*** in accordance with State and Federal laws.
- 12 - Public Information Officer
- (a) The Public Information Officer shall serve as the liaison between the Department and the press and community, religious, and civic leaders.
- 13 - Community Services Bureau
- (a) The Community Services Bureau Lieutenant shall meet with neighborhood group as necessary, to allay fears, reduce the potential for counter-violence, and provide safety and protection information.

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- (b) The Community Services Bureau Lieutenant shall assist the victim and victim family, as needed.

References: General Orders C-2, D-2, M-1
Police Regulation 232
Training & Information Bulletin #201
California Penal Code Sections 136.2, 139, 190.2(a) (16), 302,
422.6(a) (b) (c), 422.7, 427.9, 538 (c), 594.1, 594.3, 640.8,
1170.75, 1170.8, 1170.85, 11411 (a), 11410, 11411, 11412, and
11413
California Civil Code Sections 51.0, 51.5, 51.7, 52.0 and 52.1

First Amendment Assemblies

429.1 PURPOSE

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

429.2 MISSION STATEMENT

The mission of the Berkeley Police Department in crowd situations is to facilitate free expression, de-escalate violence and resolve conflict peacefully with the overall goal of ensuring public safety and protecting First Amendment rights of free speech and assembly.

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

429.3 POLICY

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

The Department shall make it a priority to establish lines of communication with the demonstrators both before and during the crowd situation. The Department shall consider social media as one means of communication.

In the event that a crowd situation is unlawful, and lack of immediate police action to may lead to the escalation of criminal behavior and violence, the Berkeley Police Department will take steps to restore order.

- (a) Steps to restore order may include monitoring with minimal police presence, a strong police presence, selective arrest of those committing crimes or a dispersal order.
- (b) Prior to issuing a dispersal order, BPD shall make efforts to safely arrest those committing crimes while preserving the rights of citizens to demonstrate.
- (c) Opportunities to de-escalate from crowd control to crowd management tactics should be continually evaluated by considering all available resources and deploying them flexibly.

429.4 USE OF FORCE

Employees who employ force in a crowd control situation shall do so in conformance with policy set forth in the Use of Force Policy.

- (a) Pain compliance techniques (e.g., gum nerve, buckle nerve pressure, etc.), impact weapons and chemical agents should not be used on persons participating in a crowd

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situation who are committing an unlawful act with passive resistance (e.g., sitting or lying down to block a doorway) solely to effectuate a custodial arrest.

1. Verbal commands to stand followed by control holds (e.g., wrist lock, twist lock, etc.) with reasonable pressure may be utilized to attempt to require an arrestee who is sitting or lying down to stand up to effectuate a custodial arrest.
 2. If an arrestee who is sitting or lying down continues to refuse to stand up in response to verbal commands followed by pressure applied from a control hold, the officer should use drag, carry, or roll techniques to effectuate the custodial arrest.
 3. Once an arrestee is standing in a self-supporting manner, the officer may counter an arrestee's lapse into passive resistance (e.g., attempting to fall or sit down) with control holds that would likely prevent such a movement.
- (b) Officers attempting to move a crowd or individual should not strike anyone who is unable to move back for reasons out of their control (i.e., physical disability, crowd surge, being pinned against a fixed object, etc.)
- (c) Sworn officers should employ particular applications of force (e.g., a specific baton strike, such as a "rake" or "jab") as may be directed by their chain of command, when its use is intended to accomplish a desired crowd control objective.
1. Officers shall not intentionally strike a person with any baton to the head, neck, throat, kidneys, spine or groin except when the person's conduct is creating an immediate threat of serious bodily injury or death to an officer or any other person.
 2. Officers on a skirmish line shall not use batons to collectively push a crowd in a particular direction prior to dispersal orders being given unless exigent circumstances exist. This requirement does not apply to officers on a skirmish line who are using force in compliance with *Graham v. Conner*.
- (d) Officers are not precluded from using authorized force, as appropriate, to address the actions of a particular person(s).
- (e) Less-lethal munitions shall only be fired at a specific target and officers shall be mindful of the increased risk of hitting an unintended target due to unexpected movement of members of the crowd. Officers may never use less-lethal munitions indiscriminately against a crowd or group of people.

Personnel deployments during demonstrations should include clear and specific objectives.

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

Less-than-lethal munitions, chemical agents (including OC spray), and/or smoke shall only be deployed in crowd situations as outlined in the Use of Force Policy. For planned events, inventories shall be conducted before and at the conclusion of the incident. Outside agency inventories shall also be tracked.

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The Field Commander shall determine the type and quantity of chemical agents to be used. After use of chemical agent, the Field Commander shall re-evaluate the scene to determine if additional chemical agents are needed.

429.5 USE OF VEHICLES

BPD shall enhance mobility and flexibility by using police vehicles such as trained bicycle officers and motorcycle officers, in addition to foot patrols, to maintain peaceful crowd management. Parking Enforcement Officers will only be used for traffic control purposes.

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

- (a) Specialized police vehicles shall not be used to contact demonstrators for the purpose of physically pushing people back or forcibly dispersing them from an area.
- (b) Specialized police vehicles may be in a MFF line with other marked vehicles as a visual deterrent.

429.6 DEFINITIONS

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

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

Crowd Control: Law enforcement response to a pre-planned event or spontaneous event, activity or occurrence that has become unlawful or violent and may require arrests and/or the dispersal of the crowd. These strategies include but are not limited to skirmish lines, mobile field force techniques, targeted and mass arrests and the use of force generally.

Crowd Management: Strategies and tactics employed before, during and after a gathering for the purpose of maintaining the event's lawful activities. These strategies include, but are not limited to: communication with leaders before and during the event, police presence and event participation, blocking traffic to facilitate a march, and bicycle officers monitoring the crowd.

Demonstration: A public assembly of persons to exhibit thoughts, ideas or opinions.

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

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

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

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

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

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

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

Persons who lock arms, use lockdown devices, or physically resist officers in any other way are not considered "passive".

Permitted Event: Any demonstration or event wherein organizers have obtained all applicable permits or licenses.

Platoon: Any group of officers, usually 36 or more in number, organized into 3 or more squads. Each platoon will have a commander, usually a lieutenant, who is responsible for the actions of the platoon in the field.

Protected First Amendment Activity: Various forms of expression including, but not limited to, speech, assembly, marching, holding signs, street theater, distribution of literature, or displaying banners.

- (a) Freedom of speech and assembly are rights protected by the First Amendment of the United States Constitution, and Article 1 Sections 2 & 3 of the California Constitution subject to reasonable time, place and manner regulations, such as, compliance with lawful permit requirements and traffic regulations.

Riot: Any group of two or more people, acting together, who use force, violence, or the threat of force or violence, to disturb the public peace (Penal Code § 405).

Riot Gear: Police equipment visible to the public and generally associated with crowd control, such as, helmets, batons, flex-cuffs, special uniforms, specialized vehicles, etc.

Spontaneous Event: Any unplanned event that develops, usually as a result of some catalyst, such as sporting events, parties, concerts, court rulings, festivals, major political events, major news events, or any combination thereof.

Squad: A group of sworn officers, usually 12 in number, with an identified squad leader responsible for the actions of the squad.

Squad Leader: A sworn officer, usually a sergeant, responsible for the movement and actions of a squad.

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Team: A group of four sworn officers within a squad, inclusive of an identified leader responsible for the actions of the team.

Team Leader: A sworn officer, sometimes a sergeant, responsible for the movement and actions of a team of officers within a squad.

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

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

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

429.7 PLANNED EVENTS

- (a) At such time as a special event or crowd situation comes to the attention of police department personnel, the Operations Division Captain or Watch Commander shall be notified, and forwarded all information regarding the event.
- (b) The Incident Command System (ICS) shall be used for managing all crowd situations. ICS should include the appointment of an Incident Commander, and be structured to sufficiently distribute responsibilities allowing for all necessary tasks to be accomplished with a manageable span of control.
- (c) The Incident Commander shall, whenever possible, establish a liaison with the group or groups involved, and other potential stakeholders.
 1. Stakeholders may include event organizers, business owners or their employees, or private residents that may be affected by an event.
 - i. Stakeholder involvement is critical to the overall success of managing any crowd event, but may be especially helpful during planned demonstrations where civil disobedience is expected.
 - ii. If a leader or cooperative event organizer is not identified, the Incident Commander shall ensure that attempts to communicate with the group and establish a liaison will continue to the extent reasonable.
- (d) Once assigned to a preplanned event, the Incident Commander shall make an initial assessment of the personnel needed to appropriately manage the event based on the information available at the time.
 1. Initial assessment may include on-duty personnel in the Operations Division and other divisions within the Department.
 2. If available on-duty personnel will not be sufficient to manage an event, consideration should be given to calling in off duty personnel and requesting mutual aid resources from surrounding police agencies.

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- (e) Once sufficient details of the event are known to accurately estimate the scope of response, and required personnel are identified, the Incident Commander shall work with Division Captains to secure their participation.
- (f) Once all personnel required to work the event are identified and committed to an event, the Incident Commander shall ensure a written Operations Plan is completed, time and circumstances permitting.
 - 1. An Operations Plan shall contain sufficient detail to allow an uninvolved party who reads it to understand the nature of the event, department policy involved, planned response and the department resources dedicated to it.
 - 2. The Operations Plan shall include specific guidelines and priorities to consider when making deployment decisions and shall reflect the department's commitment to crowd management.
 - 3. Upon approval by the Operations Captain and signed by the Chief of Police, the original Operations Plan shall be **scanned into the Professional Standards folder (within the Department's internal GDrive)** and copies distributed to all appropriate personnel.

429.8 SPONTANEOUS EVENTS

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

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6. Identify and broadcast the location of the Incident Command Post, operational staging areas, and routes to and from.
- (d) The Incident Commander should consider the following factors when making decisions regarding the police response:
1. The overall level of risk to both participants and the general public who may be inadvertently caught up in the event.
 2. The level of disruption to those not involved in, but impacted by the event.
 3. The level of vehicular traffic.
 4. The number of people involved in the event and their behavior.
 5. The personnel and equipment available for the task.
- (e) The Incident Commander may use on-duty personnel from other divisions or units to assist in the police response to a spontaneous event.
- (f) The Incident Commander shall direct necessary on-duty personnel to a static event and make response assignments as required, which may include, but are not limited to:
1. Assign personnel to monitor the event only.
 2. Use personnel to maintain order at the event and/or divert uninvolved, affected traffic away from the area.
- (g) If the event is mobile, the Incident Commander should consider response actions appropriate to manage or control the behavior and activities of the crowd, options including, but not limited to:
1. Let the group proceed with no police presence.
 2. Assign officers to facilitate the mobile event by providing traffic control.
 3. Attempt to direct the path of the mobile event by denying access to certain roadways.
 4. Allow the mobile event to proceed, but deny access to certain locations that would create a public safety hazard, such as, roadways to bridge approaches and roadways in busy commercial districts.
 5. Declare the event an unlawful assembly if circumstances qualify, and allow the group to disperse, make arrests, or use force to disperse the group for the purpose of restoring public order.
- (h) There is no required order of response; the Incident Commander shall be responsible for continually assessing the event and adjusting the response strategies and tactics accordingly. Opportunities to de-escalate from crowd control to crowd management tactics should be continually evaluated by considering all available resources and deploying them flexibly.
- (i) The Incident Commander shall remain responsible for the police response to a planned or spontaneous crowd event until relieved by a higher ranking officer, or the position is relinquished to another officer who officially assumes the responsibility.

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1. Any change of command shall be broadcast on the radio frequency used to manage the police response.

429.9 GENERAL EVENT PROCEDURES

- (a) Employees dispatched or pre-assigned to a crowd situation shall be in a department-approved uniform appropriate for their assignment.
 1. Employees shall ensure their name and badge number are visible upon their uniform, and badge number is visible on their helmet, if worn.
- (b) Officers dispatched or pre-assigned to a crowd situation shall have immediately available relevant department-issued safety equipment, (i.e., helmet, chemical agent mask, etc.).
- (c) Specialized weapons and equipment (i.e., patrol rifles, less-than-lethal munition launchers, chemical agent masks, etc.) shall be deployed at the discretion of the Incident Commander. The Incident Commander shall be responsible for assuring that there is an inventory of less-lethal munitions, CS gas, and/or smoke prior to deployment, including any outside agencies assisting BPD. Absent exigent circumstances, such less-lethal munitions, CS gas and smoke shall not be deployed prior to determination of an accurate inventory.
- (d) The Incident Commander shall ensure personnel receive an operational briefing, whether in person or via radio, prior to their deployment.
 1. Information communicated in an operational briefing shall include, at minimum:
 - (a) The nature of the event.
 - (b) The mission and operational goal(s) of the department.
 - (c) The chain of command managing the event.
 - (d) The individual's assignment and any special equipment he/she may require to accomplish it.
 - (e) When possible, the identity and appearance of all undercover personnel involved in the police response.
 - Undercover personnel should be present at operational briefings for planned events.
- (e) Undercover personnel shall adhere to laws and policies governing information gathering by law enforcement.
- (f) Verbal requests or commands should be used before and when advancing on a crowd.
 1. Commands should be simple and stated clearly, giving members of the crowd an opportunity to comply before force is used. (Examples: "Step back!" or "Move onto the sidewalk!")
- (g) Employees in a crowd situation shall conduct themselves in a professional and courteous manner, answering questions when appropriate.

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- (h) When practical, as part of an implemented crowd control plan, police personnel should attempt to identify and separate from the crowd individuals who are violating the law.
 - 1. Efforts to take an offender into custody in a crowd situation should strive to minimize the risk to uninvolved persons, to the extent reasonably possible.
- (i) Visual recording devices should be used to document the activities of police personnel and the people involved in a crowd situation.
 - 1. Activities that should be documented via visual recording device include, but are not limited to:
 - i. Criminal activity (misdemeanor or felony);
 - ii. Violation of a Permit condition, City Ordinance, or traffic violation.
 - iii. Use of force by officers.
 - iv. Arrests by officers.
 - v. Any person who, by words or action, is inciting violence.
 - vi. Dispersal orders issued by police.
- (j) Employees shall adhere to information release and media liaison protocols set forth in the Records Maintenance and Release policy and the Media Relations policy, respectively.
 - 1. The Incident Commander shall ensure legitimate “credentialed” members of the media are provided access to areas available to them by law.
 - 2. A person who claims to be a member of the media, but who does not possess a bona fide media credential, has no special privilege and shall be treated like any other citizen with regard to event area access.

429.10 DISPERSAL ORDERS

- (a) The Incident Commander at any crowd situation shall make the determination as to when or if a crowd, whose behavior poses a clear and present danger of imminent violence, will be declared an unlawful assembly.
- (b) Unless otherwise directed or required, the following dispersal order text shall be used by Berkeley Police Department personnel in crowd control situations:
 - 1. “I am () () with the Berkeley Police Department. I hereby declare this to be an unlawful assembly, and in the name of the people of the State of California, command all those assembled at () to leave the area immediately. If you do not leave, you are in violation of section 409 of the California Penal Code, and may be arrested or subject to other police action. Other police action may include the use of less lethal projectiles, baton strikes, or use of tear gas, which may pose a risk of serious injury. The following routes of dispersal are available: () You have () to leave the area.”
- (c) Except when exigent circumstances exist and doing so would place officers or the public at risk, a dispersal order shall be issued prior to forcibly dispersing a crowd.

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- (d) The Incident Commander, or his/her designee, shall issue a dispersal order:
 - 1. As close to the crowd as practical;
 - 2. In a manner clearly audible to persons in the crowd;
 - i. Use sound amplification systems when necessary;
 - ii. When practical, shall record the dispersal order to establish that the orders were audible to the crowd.
 - iii. When practical, employ officers stationed around the perimeter of the crowd to ensure the dispersal order is clearly audible.
 - 3. In more than one language if possible, depending on the needs of the crowd.
- (e) Additional dispersal orders may be given following a reasonable period of time to allow for crowd dispersal. Ongoing dispersal orders should be avoided.
- (f) If after a dispersal order is given, a crowd is discovered in a different location, the new location should be evaluated to determine if it is an ongoing unlawful assembly.

429.11 MASS ARRESTS

- (a) When considering the arrest of multiple people at a crowd control event, the Incident Commander should evaluate preparedness of the following operational elements:
 - 1. **Resource Availability:** Sufficient personnel should be available to maintain order, accomplish intended arrests and subsequent processing, and maintain control of the arrestees through a booking process, if necessary.
 - 2. **In-Field Arrest Processing:** Equipment and logistics should be available to facilitate in-field processing of mass arrests.
 - 3. **Transportation:** In the event arrestees are not released in-field on citation, vehicles should be available to facilitate necessary transportation to a custodial facility.
 - 4. **Booking/Jail Capacity:** The custodial facility to which arrestees are transported should have the capacity to receive and maintain custody of persons not released on citation.
 - 5. **Documentation:** Arresting personnel must ensure arrestees are identified and photographed, arrests are effectively documented, and associated paperwork is properly directed for administrative processing.

429.12 MUTUAL AID

- (a) An official request for mutual aid resources shall adhere to procedures set forth the Mutual Aid Policy.
 - 1. Emergency requests for immediate assistance may be made directly to local agencies.

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- (b) The Chief of Police or his/her designee shall contact the liaison from the Alameda County Sheriff's Department to coordinate a plan for mutual aid resources and response.
 - 1. This plan should include the number of officers potentially needed, any special equipment requested, and an expected response time if called out.
 - 2. Absent exigent circumstances, responding mutual aid personnel shall be briefed prior to deployment and should be given clear and specific objectives.
- (c) In preparation for mutual aid forces, the Incident Commander shall ensure that liaison officers from BPD are assigned to work with the outside agency to assist with response routes into the staging area, parking vehicles, checking in with the staging area supervisor, communications and response to event location.
- (d) MFF organization should be employed when integrating mutual aid personnel into local crowd event response, or when responding to another jurisdiction as a mutual aid unit.
 - 1. Personnel should be formed into squads or teams that are easily integrated into squads and platoons.
- (e) When responding to another jurisdiction as a mutual aid unit, personnel will have with them enough vehicles and equipment to allow the deployed team or squad to patrol a designated area, use less-than-lethal munitions or authorized chemical agents, if necessary, and have enough food and water to last for a reasonable operational period until relieved.

429.13 POST-EVENT

Once a normal work schedule has resumed, the Incident Commander shall ensure that an After Action Report is prepared within 72 hours after the resumption of the Incident Commander's normal work schedule. Should an extension be necessary in order to properly and fully complete the report, such a request may be made to the Chief of Police.

- (a) An After Action Report shall document arrests, injuries, property damage, personnel costs, inventories of less lethal munitions, CS gas and smoke, and an overall critique of the police preparation and response.
- (b) An After Action Report should include information in sufficient detail to help others prepare for the event if it, or a similar event, should occur in the future.

429.14 TRAINING

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

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

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SUBJECT: FIRST AMENDMENT ASSEMBLIES

PURPOSE

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

Mission Statement

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

POLICY

- 3 - In the event a crowd situation is determined to be a peaceful protest or demonstration, wherein participants are exercising their rights to free speech in a lawful manner, the policy of the Berkeley Police Department shall be to facilitate the event to the extent possible.
- 4 - The department shall make it a priority to establish lines of communication with the demonstrators both before and during the crowd situation. The department shall consider social media as one means of communication.
- 5 - In the event that a crowd situation is unlawful, and lack of immediate police action to may lead to the escalation of criminal behavior and violence, the Berkeley Police Department will take steps to restore order.
 - (a) Steps to restore order may include monitoring with minimal police presence, a strong police presence, selective arrest of those committing crimes, or a dispersal order.
 - (b) Prior to issuing a dispersal order, BPD shall make efforts to safely arrest those committing crimes while preserving the rights of citizens to demonstrate.
 - (c) Opportunities to de-escalate from crowd control to crowd management tactics should be continually evaluated by considering all available

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resources and deploying them flexibly.

Use of Force

- 6 - Employees who employ force in a crowd control situation shall do so in conformance with policy set forth in General Order U-2.
- (a) Pain compliance techniques (e.g., gum nerve, buckle nerve pressure, etc.), impact weapons, and chemical agents should not be used on persons participating in a crowd situation who are committing an unlawful act with passive resistance (e.g., sitting or lying down to block a doorway) solely to effectuate a custodial arrest.
 - (1) Verbal commands to stand followed by control holds (e.g. wrist lock, twist lock, etc.) with reasonable pressure may be utilized to attempt to require an arrestee who is sitting or lying down to stand up to effectuate a custodial arrest.
 - (2) If an arrestee who is sitting or lying down continues to refuse to stand up in response to verbal commands followed by pressure applied from a control hold, the officer should use drag, carry, or roll techniques to effectuate the custodial arrest.
 - (3) Once an arrestee is standing in a self-supporting manner, the officer may counter an arrestee's lapse into passive resistance (e.g., attempting to fall or sit down) with control holds that would likely prevent such a movement.
 - (b) Officers attempting to move a crowd or individual should not strike anyone who is unable to move back for reasons out of their control (i.e., physical disability, crowd surge, being pinned against a fixed object, etc.)
 - (c) Sworn officers should employ particular applications of force (e.g., a specific baton strike, such as a "rake" or "jab") as may be directed by their chain of command, when its use is intended to accomplish a desired crowd control objective.
 - (1) Officers shall not intentionally strike a person with any baton to the head, neck, throat, kidneys, spine or groin except when the person's conduct is creating an immediate threat of serious bodily injury or death to an officer or any other person.
 - (2) Officers on a skirmish line shall not use batons to collectively push a crowd in a particular direction prior to dispersal orders being given unless exigent circumstances exist. This requirement does not apply to officers on a skirmish line who are using force in compliance with *Graham v. Conner*.

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- (d) Officers are not precluded from using authorized force, as appropriate, to address the actions of a particular person(s).
 - (e) Less-lethal munitions shall only be fired at a specific target and officers shall be mindful of the increased risk of hitting an unintended target due to unexpected movement of members of the crowd. Officers may never use less-lethal munitions indiscriminately against a crowd or group of people.
- 7 - Personnel deployments during demonstrations should include clear and specific objectives.
 - 8 - In squad or team movement, the type and scope of force used shall be at the discretion of the Incident Commander, Field Commander, Squad or Team Leader.
 - 9 - Less-than-lethal munitions, chemical agents (**including** OC spray), and/or smoke shall only be deployed in crowd situations as outlined in General Order U-2. For planned events, inventories shall be conducted before and at the conclusion of the incident. Outside agency inventories shall also be tracked.
 - 10 - The Field Commander shall determine the type and quantity of chemical agents to be used. After use of chemical agent, the Field Commander shall re-evaluate the scene to determine if additional chemical agents are needed.

Use of Vehicles

- 11 - BPD shall enhance mobility and flexibility by using police vehicles such as trained bicycle officers and motorcycle officers, in addition to foot patrols, to maintain peaceful crowd management. Parking Enforcement Officers will only be used for traffic control purposes.
- 12 - Specialized police vehicles (e.g., police motorcycles, off-road motorcycles, parking enforcement vehicles, mobile command vehicles, etc.) may be used in crowd situations at the discretion of the Incident Commander.
 - (a) Specialized police vehicles shall not be used to contact demonstrators for the purpose of physically pushing people back or forcibly dispersing them from an area.
 - (b) Specialized police vehicles may be in a MFF line with other marked vehicles as a visual deterrent.

DEFINITIONS

- 13 - Control Hold: Any Department approved hold, designed to allow an officer to

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control the movement of a subject (e.g., twist lock, rear wrist lock, finger lock, etc.).

- 14 - Counter Demonstration: An assembly of persons in conflict with a different demonstration at the same location.
- 15 - Crowd Control: Law enforcement response to a pre-planned event or spontaneous event, activity or occurrence that has become unlawful or violent and may require arrests and/or the dispersal of the crowd. These strategies include but are not limited to skirmish lines, mobile field force techniques, targeted and mass arrests and the use of force generally.
- 16 - Crowd Management: Strategies and tactics employed before, during and after a gathering for the purpose of maintaining the event's lawful activities. These strategies include, but are not limited to: communication with leaders before and during the event, police presence and event participation, blocking traffic to facilitate a march, and bicycle officers monitoring the crowd.
- 17 - Demonstration: A public assembly of persons to exhibit thoughts, ideas, or opinion.
- 18 - Incident Commander: A sworn officer, usually a lieutenant or captain, responsible for all personnel assigned to an event.
 - (a) During the initial stages of a spontaneous event, the Incident Commander will be the highest ranking or senior officer available to take charge, until relieved of responsibilities by a higher ranking officer.
- 19 - Mobile Field Force (MFF): A statewide tactical concept that utilizes groups of trained officers with standard marked police vehicles and equipment, who have the capability to respond to crowd events that are highly mobile or that break up and quickly reform in other locations.
- 20 - Non-Permitted Event: Any demonstration, whether spontaneous or planned, wherein organizers have not obtained permits or licenses that are lawfully required under the circumstances.
- 21 - Operations Commander: A sworn officer, usually a lieutenant or sergeant, responsible for the movement and actions of a platoon, squad, or other identified group of officers at the scene of an event.
- 22 - Pain Compliance Technique: Any technique designed to inflict pain for the purpose of motivating a person to comply with verbal commands (e.g., buckle nerve, gum nerve, sternum rub).
- 23 - Passive Resistance: When an individual does not follow the lawful verbal commands of a police officer, but does not physically resist in any way (i.e., a

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person who goes completely limp, sits down and refuses to stand or walk, or who may stand with arms at their sides without attempting to strike at or physically resist officers.)

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

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- 34 - Time, Place, or Manner Restrictions: Reasonable restrictions on protected activity imposed by law (e.g., an applicable permit) intended to serve a specific governmental interest (e.g., public safety), with regard to the time, location, or manner in which protected activity is to be conducted.
- 35 - Unlawful assembly: Two or more persons, assembled together to commit an unlawful act, or do a lawful act in a violent, boisterous, or tumultuous manner. (ref. PC §407)
- (a) The prohibition in PC §407 against persons in an assembly doing a lawful act in a violent, boisterous or tumultuous manner is limited only to situations where the conduct poses a clear and present danger of imminent violence. (ref. *In re Brown* (1973) 9 Cal. 3d 612, 623)

PROCEDURE

Planned Events

- 36 - At such time as a special event or crowd situation comes to the attention of police department personnel, the Patrol Division Captain or Patrol Watch Commander shall be notified, and forwarded all information regarding the event.
- 37 - The Incident Command System (ICS) shall be used for managing all crowd situations. ICS should include the appointment of an Incident Commander, and be structured to sufficiently distribute responsibilities allowing for all necessary tasks to be accomplished with a manageable span of control.
- 38 - The Incident Commander shall, whenever possible, establish a liaison with the group or groups involved, and other potential stakeholders.
- (a) Stakeholders may include event organizers, business owners or their employees, or private residents that may be affected by an event.
- (1) Stakeholder involvement is critical to the overall success of managing any crowd event, but may be especially helpful during planned demonstrations where civil disobedience is expected.
- (2) If a leader or cooperative event organizer is not identified, the Incident Commander shall ensure that attempts to communicate with the group and establish a liaison will continue to the extent reasonable.
- 39 - Once assigned to a preplanned event, the Incident Commander shall make an initial assessment of the personnel needed to appropriately manage the event based on the information available at the time.
- (a) Initial assessment may include on-duty personnel in the Patrol Division

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and other divisions within the department.

- (b) If available on-duty personnel will not be sufficient to manage an event, consideration should be given to calling in off duty personnel and requesting mutual aid resources from surrounding police agencies. (ref. paragraphs 67-71 of this Order)
- 40 - Once sufficient details of the event are known to accurately estimate the scope of response, and required personnel are identified, the Incident Commander shall work with Division Commanders to secure their participation.
- 41 - Once all personnel required to work the event are identified and committed to an event, the Incident Commander shall ensure a written Operations Plan is completed, time and circumstances permitting.
- (a) An Operations Plan shall contain sufficient detail to allow an uninvolved party who reads it to understand the nature of the event, department policy involved, planned response, and the department resources dedicated to it. (ref. General Order P-23)
 - (b) The Operations Plan shall include specific guidelines and priorities to consider when making deployment decisions and shall reflect the department's commitment to crowd management.
 - (c) Upon approval by the Patrol Captain and signed by the Chief of Police, the original Operations Plan shall be routed to the Bureau of Internal Controls in the Office of the Chief, and copies distributed to all appropriate personnel.

Spontaneous Events

- 42 - Sworn officers shall respond to a reported spontaneous crowd situation to assess immediate hazards to public safety.
- 43 - The ranking sworn officer, or senior officer, shall assume the role and responsibilities of Incident Commander, and take the following immediate actions:
- (a) Broadcast the type of event, if known, and estimated number of participants.
 - (b) Report known or imminent public safety hazards.
 - (c) Request sufficient on-duty personnel resources to address life-threatening public safety emergencies.

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- 44 - The on-duty Patrol Division Watch Commander, or if absent or unavailable, the senior Patrol Division Sergeant, shall respond to the event scene and take the following actions:
- (a) Assume the role and responsibilities of Incident Commander.
 - (b) Assess the potential risks to public safety.
 - (c) Assess whether or not a static event has the potential to go mobile, either on foot in the form of a march, or in vehicles.
 - (d) Assess the number of officers and type of equipment required to maintain order and their manner of response.
 - (e) Assess the potential need for outside resources:
 - (1) On-duty personnel from other police agencies.
 - (2) Fire Department personnel and resources.
 - (3) Media relations personnel.
 - (f) Identify and broadcast the location of the Incident Command Post, operational staging areas, and routes to and from.
- 45 - The Incident Commander should consider the following factors when making decisions regarding the police response:
- (a) The number of people involved in the event and their behavior.
 - (b) The level of vehicular traffic.
 - (c) The level of disruption to those not involved in, but impacted by the event.
 - (d) The overall level of risk to both participants and the general public who may be inadvertently caught up in the event.
 - (e) The personnel and equipment available for the task.
- 46 - The Incident Commander may use on-duty personnel from other Divisions or units to assist in the police response to a spontaneous event.
- 47 - The Incident Commander shall direct necessary on-duty personnel to a static event and make response assignments as required, which may include, but are not limited to:
- (a) Assign personnel to monitor the event only.

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- (b) Use personnel to maintain order at the event and/or divert uninvolved, affected traffic away from the area.
- 48 - If the event is mobile, the Incident Commander should consider response actions appropriate to manage or control the behavior and activities of the crowd, options including, but not limited to:
- (a) Let the group proceed with no police presence.
 - (b) Assign officers to facilitate the mobile event by providing traffic control.
 - (c) Attempt to direct the path of the mobile event by denying access to certain roadways.
 - (d) Allow the mobile event to proceed, but deny access to certain locations that would create a public safety hazard, such as, roadways to bridge approaches and roadways in busy commercial districts.
 - (e) Declare the event an unlawful assembly if circumstances qualify, and allow the group to disperse, make arrests, or use force to disperse the group for the purpose of restoring public order.
- 49 - There is no required order of response; the Incident Commander shall be responsible for continually assessing the event and adjusting the response strategies and tactics accordingly. Opportunities to de-escalate from crowd control to crowd management tactics should be continually evaluated by considering all available resources and deploying them flexibly.
- 50 - The Incident Commander shall remain responsible for the police response to a planned or spontaneous crowd event until relieved by a higher ranking officer, or the position is relinquished to another officer who officially assumes the responsibility.
- (a) Any change of command shall be broadcast on the radio frequency used to manage the police response.

General Event Procedures

- 51 - Employees dispatched or pre-assigned to a crowd situation shall be in a department-approved uniform appropriate for their assignment.
- (a) Employees shall ensure their name and badge number are visible upon their uniform, and badge number is visible on their helmet, if worn.
- 52 - Officers dispatched or pre-assigned to a crowd situation shall have immediately available relevant department-issued safety equipment, (i.e., helmet, chemical agent mask, etc.).

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- 53 - Specialized weapons and equipment (i.e., patrol rifles, less-than-lethal munition launchers, chemical agent masks, etc.) shall be deployed at the discretion of the Incident Commander. The Incident Commander shall be responsible for assuring that there is an inventory of less-lethal munitions, CS gas, and/or smoke prior to deployment, including any outside agencies assisting BPD. Absent exigent circumstances, such less-lethal munitions, CS gas and smoke shall not be deployed prior to determination of an accurate inventory.
- 54 - The Incident Commander shall ensure personnel receive an operational briefing, whether in person or via radio, prior to their deployment.
- (a) Information communicated in an operational briefing shall include, at minimum:
- (1) The nature of the event.
 - (2) The mission and operational goal(s) of the department.
 - (3) The chain of command managing the event.
 - (4) The individual's assignment and any special equipment he/she may require to accomplish it.
 - (5) When possible, the identity and appearance of all undercover personnel involved in the police response.
 - (i) Undercover personnel should be present at operational briefings for planned events.
- 55 - Undercover personnel shall adhere to laws and policies governing information gathering by law enforcement.
- 56 - Verbal requests or commands should be used before and when advancing on a crowd.
- (a) Commands should be simple and stated clearly, giving members of the crowd an opportunity to comply before force is used. (Examples: "Step back!" or "Move onto the sidewalk!")
- 57 - Employees in a crowd situation shall conduct themselves in a professional and courteous manner, answering questions when appropriate.
- 58 - When practical, as part of an implemented crowd control plan, police personnel should attempt to identify and separate from the crowd individuals who are violating the law.
- (a) Efforts to take an offender into custody in a crowd situation should strive to minimize the risk to uninvolved persons, to the extent reasonably possible.

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- 59 - In conformance with procedures set forth in General Order V-10, visual recording devices should be used to document the activities of police personnel and the people involved in a crowd situation.
- (a) Activities that should be documented via visual recording device include, but are not limited to:
- (1) Criminal activity (misdemeanor or felony);
 - (2) Violation of a Permit condition, City Ordinance, or traffic violation.
 - (3) Use of force by officers.
 - (4) Arrests by officers.
 - (5) Any person who, by words or action, is inciting violence.
 - (6) Dispersal orders issued by police.
- 60 - Employees shall adhere to information release and media liaison protocols set forth in General Orders R-23 and P-29, respectively.
- (a) The Incident Commander shall ensure legitimate "credentialed" members of the media are provided access to areas available to them by law.
- (b) A person who claims to be a member of the media, but who does not possess a bona fide media credential, has no special privilege and shall be treated like any other citizen with regard to event area access.

Dispersal Orders

- 61 - The Incident Commander at any crowd situation shall make the determination as to when or if a crowd, whose behavior poses a clear and present danger of imminent violence, will be declared an unlawful assembly.
- 62 - Unless otherwise directed or required, the following dispersal order text shall be used by Berkeley Police Department personnel in crowd control situations:
- (a) "I am *(rank)* *(name)* with the Berkeley Police Department. I hereby declare this to be an unlawful assembly, and in the name of the people of the State of California, command all those assembled at *(location)* to leave the area immediately. If you do not leave, you are in violation of section 409 of the California Penal Code, and may be arrested or subject to other police action. Other police action may include the use of less lethal projectiles, baton strikes, or use of tear gas, which may pose a risk of serious injury. The following routes of dispersal are available: *(state options available)* You have *(state time expectation)* to leave the area."

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- 63 - Except when exigent circumstances exist and doing so would place officers or the public at risk, a dispersal order shall be issued prior to forcibly dispersing a crowd.
- 64 - The Incident Commander, or his/her designee, shall issue a dispersal order:
- (a) As close to the crowd as practical;
 - (b) In a manner clearly audible to persons in the crowd;
 - (1) Use sound amplification systems when necessary;
 - (2) When practical, shall record the dispersal order to establish that the orders were audible to the crowd.
 - (3) When practical, employ officers stationed around the perimeter of the crowd to ensure the dispersal order is clearly audible.
 - (c) In more than one language if possible, depending on the needs of the crowd.
- Additional dispersal orders may be given following a reasonable period of time to allow for crowd dispersal. (Ongoing dispersal orders should be avoided.)
- 65 - If after a dispersal order is given, a crowd is discovered in a different location, the new location should be evaluated to determine if it is an ongoing unlawful assembly.

Mass Arrests

- 66 - When considering the arrest of multiple people at a crowd control event, the Incident Commander should evaluate preparedness of the following operational elements:
- (a) Resource Availability: Sufficient personnel should be available to maintain order, accomplish intended arrests and subsequent processing, and maintain control of the arrestees through a booking process, if necessary.
 - (b) In-Field Arrest Processing: Equipment and logistics should be available to facilitate in-field processing of mass arrests.
 - (c) Transportation: In the event arrestees are not released in-field on citation, vehicles should be available to facilitate necessary transportation to a custodial facility.
 - (d) Booking/Jail Capacity: The custodial facility to which arrestees are transported should have the capacity to receive and maintain custody of

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persons not released on citation.

- (e) Documentation: Arresting personnel must ensure arrestees are identified and photographed, arrests are effectively documented, and associated paperwork is properly directed for administrative processing.

Mutual Aid

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

Post-Event

- 72 - **Once a normal work schedule has resumed**, the Incident Commander shall ensure that an After Action Report is prepared within 72 hours **after the**

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resumption of the Incident Commander's normal work schedule. Should an extension be necessary in order to properly and fully complete the report, such a request may be made to the Chief of Police.

- (a) An After Action Report shall document arrests, injuries, property damage, personnel costs, inventories of less lethal munitions, CS gas and smoke and an overall critique of the police preparation and response.
- (b) An After Action Report should include information in sufficient detail to help others prepare for the event if it, or a similar event, should occur in the future.

Training

- 73 - When possible, training in crowd management and crowd control shall be incorporated into general departmental in-service training.
- 74 - When possible prior to a major pre-planned event, update training should be provided to all assigned officers.

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

Disabled Vehicles

506.1 PURPOSE AND SCOPE

Vehicle Code § 20018 provides that all law enforcement agencies having responsibility for traffic enforcement may develop and adopt a written policy to provide assistance to motorists in disabled vehicles within their primary jurisdiction.

506.2 OFFICER RESPONSIBILITY

When an on-duty officer observes a disabled vehicle on the roadway, the officer should make a reasonable effort to provide assistance. If that officer is assigned to a call of higher priority, the dispatcher should be advised of the location of the disabled vehicle and the need for assistance. The dispatcher should then assign another available officer to respond for assistance as soon as practical.

506.3 EXTENT OF ASSISTANCE

In most cases, a disabled motorist will require assistance. After arrangements for assistance are made, continued involvement by department personnel will be contingent on the time of day, the location, the availability of departmental resources, and the vulnerability of the disabled motorist.

506.3.1 MECHANICAL REPAIRS

Department personnel shall not make mechanical repairs to a disabled vehicle. The use of push bumpers to relocate vehicles to a position of safety is not considered a mechanical repair.

506.3.2 RELOCATION OF DISABLED VEHICLES

The relocation of disabled vehicles by members of this department ~~by pushing or pulling a vehicle~~ should only occur when the conditions reasonably indicate that immediate movement is necessary to reduce a hazard presented by the disabled vehicle.

506.3.3 RELOCATION OF DISABLED MOTORIST

The relocation of a disabled motorist should only occur with the person's consent, and should be suggested when conditions reasonably indicate that immediate movement is necessary to mitigate a potential hazard. The department member may stay with the disabled motorist or transport him/her to a safe area to await pickup.

~~506.4 PUBLIC ACCESS TO THIS POLICY~~

~~This written policy is available upon request.~~

BERKELEY POLICE DEPARTMENT

DATE ISSUED: August 31, 1990

GENERAL ORDER T-18

SUBJECT: ASSISTANCE TO DISABLED MOTORISTS

PURPOSE

- 1 - The purpose of this Order is to establish a written policy for officers in providing information and directions to motorists, and requiring officers to provide assistance to drivers of disabled motor vehicles as required by California Vehicle Code Section 20018.

POLICY

- 2 - The policy of the Berkeley Police Department is for uniformed personnel to stop and render appropriate assistance to motorists.

PROCEDURES

- 3 - When a uniformed officer observes or becomes aware of a disabled or stranded motorist, the employee shall stop and render assistance to minimize the possibility of harm or injury.
- 4 - Emergency assistance shall include:
 - (a) Providing immediate fire or medical assistance;
 - (b) Summoning emergency road service;
 - (c) Protecting vehicles stranded in hazardous locations by means of warning devices, emergency lights or flares, and
 - (d) Waiting with the stranded motorist until help arrives or transporting the person to a place of safety.
- 5 - Officers shall not:
 - (a) Push cars either with police vehicles or by hand;
 - (b) Use police vehicles to jump start stalled vehicles;
 - (c) Change tires or make minor repairs/adjustments, and
 - (d) Open locked vehicles except in emergencies.
- 6 - Uniformed personnel enroute to an emergency call, who observe or become aware of a stranded motorist, shall notify the Communications Center of the location of the motorist and request that a patrol unit be assigned to provide assistance.
 - (a) If possible, the officer should advise the stranded motorist that another officer will be sent to assist.

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- (b) Communications Center personnel shall promptly assign another officer to provide assistance.

- 7 - The policy of the Berkeley Police Department is not to provide escorts unless prior approval has been received from the Watch Commander. **Section 21057 CVC states that officers are expressly prohibited from using siren or driving at an illegal speed when serving as an escort. Exceptions to this rule are during war time, state of emergency, or local emergency as defined in Government Code Section 8558.**
 - (a) **Local emergencies include conditions of disaster or extreme peril to the safety of life and property. Examples are fire, storm, epidemic, riot, air pollution, hazardous materials, sudden and severe energy shortage, earthquake, or Governor's warning of earthquake prediction.**
 - (b) **Watch Commanders should not authorize escorts except when emergency conditions exist.**

- 8 - Requests for traffic safety publications or other materials may be referred to the Traffic Bureau, California State Automobile Association office, or Department of Motor Vehicles office.

Department of Motor Vehicle SR-1 forms (State of California Report of Traffic Accident) are maintained at the Front Counter.

References: CALEA Standards
California Vehicle Code Sections 20018, 21057 and 21705
General Order T-3

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