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<td>Second Response – PRC returned to Subcomm. Sept. 18. Subcomm. reviewed a substantially revised 351/1202 Oct. 23. Revision directly quotes the Second Response Ord. and describes Exhibits A and B. (*T&amp;I/B 249 was in Sept. 4 PRC Lexipol packet and not reprinted here; old 351 almost identical.)</td>
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Outside Agency Assistance

327.1 PURPOSE AND SCOPE
The purpose of this policy is to provide guidance to members when requesting or responding to a request for mutual aid or when assisting another law enforcement agency.

327.2 POLICY
It is the policy of the Berkeley Police Department to promptly respond to requests for assistance by other law enforcement agencies, subject to available resources and consistent with the applicable laws and policies of this department.

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

327.3 MUTUAL AID

(a) The California Law Enforcement Mutual Aid Plan is contained in a compendium titled, “Agreements, Understandings and Policies Existing between the Berkeley Police Department and Other Law Enforcement Agencies”.

A copy of the current compendium is publicly available online through the City of Berkeley website.

327.327.4 ASSISTING OUTSIDE AGENCIES

Generally, requests for any type of assistance from another agency should be routed to the Watch Commander’s office for approval. In some instances, a memorandum of understanding or other established protocol may exist that eliminates the need for approval of individual requests.

When another law enforcement agency requests unplanned or emergency assistance from this department, the Watch Commander may authorize, if available, an appropriate number of personnel to assist. Members are reminded that their actions when rendering assistance must conform with applicable laws and be consistent with the policies of this department.

Officers may respond to a request for emergency assistance, however, they shall notify a
supervisor of their activity as soon as practicable.

Arrestees Persons arrested during an incident taking place outside the City of Berkeley may be temporarily detained by this department until arrangements for transportation are made by the outside arresting agency. Probation violators who are temporarily detained by this department the Berkeley Police Department will not ordinarily be booked at this department the Berkeley City Jail. Only in exceptional circumstances, and subject to supervisor approval, will this department provide transportation of arrestees to other facilities on behalf of another agency.

When transportation assistance is rendered, a report shall be prepared and submitted by the handling member unless otherwise directed by a supervisor.

327.3.1 INITIATED ACTIVITY

Best Practice

Any on-duty officer who engages in law enforcement activities of any type that are not part of a mutual aid request and take place outside the jurisdiction of the Berkeley Police Department shall notify his/her supervisor or the Watch Commander and the Communications Center as soon as practicable. This requirement does not apply to special enforcement details or multi-agency units that regularly work in multiple jurisdictions.

327.4327.5 REQUESTING OUTSIDE ASSISTANCE

Best Practice

If assistance is needed from another agency, the member requesting assistance should, if practicable, first notify a supervisor. The handling member or supervisor should direct assisting personnel to where they are needed and to whom they should report when they arrive.

The requesting member should arrange for appropriate radio communication capabilities, if necessary possible and available, so that communication can be coordinated between assisting personnel.

327.6327.6 REPORTING REQUIREMENTS

Best Practice

Incidents of outside assistance or law enforcement activities that are not documented in a crime report shall be documented in an Incident Report general case report or as directed by the Watch Commander and routed to the Chief of Police through the chain of command.

327.6327.7 MANDATORY SHARING

Best Practice

Equipment and supplies purchased with federal funds or grants that require such equipment and supplies be shared with other agencies should be documented and updated as necessary by the Support Services Division Captain Commander or his/her the authorized designee. The documentation should include:

(a) The conditions relative to sharing.
(b) The training requirements for:

1. The use of the supplies and equipment.
2. The members trained in the use of the supplies and equipment.

(c) Any other requirements for use of the equipment and supplies. Copies of the documentation should be provided to the Communications Center and the Watch Commander to ensure use of the equipment and supplies is in compliance with the applicable sharing agreements.

(c) The Personnel and Training Sergeant should maintain documentation that the appropriate members have received the required training.

327.8 MUTUAL AID DETERMINATIONS
All requests for pre-planned mutual aid will be made via the Alameda County Sheriff's Office, and all responses to pre-planned mutual aid will result from mutual aid notification from the Alameda County Sheriff's Office. Emergency requests for Mutual Assistance may be routed directly to or from a law enforcement agency.

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

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

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

(a)(b) It is the responsibility of the Alameda County Sheriff's Office to provide assistance and coordination to control the problem (California Government Code Section 26602).

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

327.9 MUTUAL AID REQUEST PROCEDURES
To request pre-planned Mutual Aid from through the Alameda County Sheriff's Office, the Chief of Police or his/her designee must:

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

(b) Contact the Alameda County Sheriff's Office Emergency Services Unit, 667-7755, 667-7721 and verbally request mutual aid.

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

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

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

A more complete list of coordination considerations can be found in the California Law Enforcement Mutual Aid Plan.

(e) An estimate of the number of available personnel in each agency is maintained by the Alameda County Sheriff's Office Department. The Alameda County Sheriff's Office Department will poll local agencies to obtain the necessary number of officers and resources requested at the time of each incident.

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

327.10 STATE MUTUAL AID -

The Law Enforcement Division of the State of California Office of Emergency Services (OES) is responsible for coordination of State resources in support of local law enforcement during "unusual occurrences" such as disorders, demonstrations, riots, and natural or war caused disturbances. Authority is granted to OES under Article 5, Chapter 7, of the California Government Code. A 24-hour communications center is maintained at the Office of Emergency Services in Sacramento. A representative of the Law Enforcement Division can be reached at any hour of the day or night by calling (1-916) 427-4235 or 427-4341. (916) 845-8700

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

1. The California Highway Patrol: Provide traffic control and maintenance of law and order.

2. The State Military Department, which includes the California Army and Air National Guard, the State Military Reserve and the Naval Militia: Provide military support to
local jurisdictions only after a request for same is made by the Chief Executive (City Manager) of a City or County Sheriff, and only after the disturbance is beyond the capabilities of local law enforcement mutual aid forces.

3. The Department of Justice: Provide legal advice and intelligence.

4. The Department of Corrections: Provide support for local law enforcement (with resources).

5. Office of the California State Police: Provide personnel who remain under the command of the State Police.

327.11 FEDERAL MUTUAL AID REQUESTING FEDERAL MUTUAL AID ASSISTANCE.

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

PURPOSE

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

POLICY

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

MUTUAL AID


(a) The California Law Enforcement Mutual Aid Plan is contained in a compendium titled, "Agreements, Understandings and Policies Existing between the Berkeley Police Department and Other Law Enforcement Agencies".

(1) Copies are publicly available online through the City of Berkeley website.

PROCEDURES

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

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

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

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

(b) It is the responsibility of the Alameda County Sheriff to provide assistance and coordination to control the problem (California Government Code Section 26602).

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

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

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

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

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

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

(1) The dates and times that mutual aid personnel are required.

(2) The number of personnel needed to assist.

(3) The staging area for responding personnel to meet.
under the command of the State Police.

REQUESTING FEDERAL MUTUAL AID ASSISTANCE

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


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

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

(e) The compendium is publicly available from the City of Berkeley website.

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

(b) The Berkeley Police Department will provide a report to Berkeley City Council summarizing all requests, responses, and denials of requests for Mutual Aid that involve civil disobedience offenses and First Amendment activity – submitted in conjunction with the agreements contained in the above referenced compendium which is submitted annually as per BMC Sections 2.04.150 - 2.04.210
(4) Mass processing procedures for persons arrested.
(5) Transportation plans for persons arrested.
(6) Operation of temporary detention facilities, if needed.
(e) An estimate of the number of available personnel in each agency is maintained by the Alameda County Sheriff's Department. The Alameda County Sheriff's Department will poll local agencies to obtain the necessary number of officers requested at the time of each incident.

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

REQUESTING STATE MUTUAL AID ASSISTANCE

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

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

(1) The California Highway Patrol: Provide traffic control and maintenance of law and order.

(2) The State Military Department, which includes the California Army and Air National Guard, the State Military Reserve and the Naval Militia: Provide military support to local jurisdictions only after a request for same is made by the Chief Executive (City Manager) of a City or County Sheriff, and only after the disturbance is beyond the capabilities of local law enforcement mutual aid forces.

(3) The Department of Justice: Provide legal advice and intelligence.

(4) The Department of Corrections: Provide support for local law enforcement (with resources).

(5) Office of the California State Police: Provide personnel who remain
Gun Violence Restraining Orders

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

343.1.1 DEFINITIONS
Definitions related to this policy include:

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

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

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

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

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

343.4 SERVICE OF GUN VIOLENCE RESTRAINING ORDERS
An officer serving any gun violence restraining order shall:

(a) Verbally ask the subject of the order if he/she has any firearm, ammunition, or magazine in his/her possession or under his/her custody or control (Penal Code § 18160).

(b) Request that any firearms or ammunition be immediately surrendered and issue a receipt
for the surrendered items (Penal Code § 18120).

(c) Take into temporary custody any firearm or other deadly weapon discovered in plain view or pursuant to consent or other lawful search (Penal Code § 18250) and issue the restrained person a Property Receipt.

(d) Inform the restrained person of any scheduled hearing regarding the order (Penal Code § 18160).

(e) Submit the original proof of service form to Records Management so that it may be transmitted to the issuing court as soon as practicable but within one business day (Penal Code § 18115).

(f) As soon as practicable, but by the end of his/her shift, submit a copy of the proof of service to Telecom the Public Safety Business Manager for prompt entry into the California Restraining and Protective Order System (Penal Code § 18115).

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

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

343.4.1 SERVICE OF ORAL GUN VIOLENCE RESTRAINING ORDERS

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

(a) Serve the order on the restrained person in the manner outlined above, if the restrained person can reasonably be located.

(b) File a copy of the order with the court as soon as practicable after issuance.

(c) Ensure the order is provided to the Records Management for entry into the computer database system for protective and restraining orders maintained by the Department of Justice.

343.5 SEARCH WARRANTS

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

(a) The officer serving the warrant shall take custody of any firearm or ammunition that is controlled, possessed or owned by the person who is the subject of the gun violence restraining order, including any discovered pursuant to the warrant, a consensual search or other lawful search.

(b) If the location being searched is jointly occupied and the firearm or ammunition is owned by a person other than the restrained person, the firearm or ammunition should not be seized if the following conditions are met:

1. The firearm or ammunition can be stored in a manner that does not allow the
restrained person to have control or access.

2. There is no evidence that the owner unlawfully possesses the firearm or ammunition.

(c) If a locked gun safe belonging to someone other than the subject of a gun violence restraining order is discovered, the officer shall not search the contents of the safe unless the owner consents or there is a valid search warrant for the safe. Any search of the safe must be done in the owner’s presence.

343.6 SUPPORT SERVICES BUREAU LIEUTENANT OR DESIGNEE
The Support Services Bureau Lieutenant or designee/Public Safety Business Manager is responsible for ensuring:

(a) Proof of service of any gun violence restraining order served by an officer or received from the clerk of the court is entered in the computer database system for protective and restraining orders maintained by the Department of Justice within one business day of service if served by an officer, or within one business day of receipt of proof of service if served by a person other than a law enforcement officer (Penal Code § 18115).

(b) Oral orders are entered into the California Restraining and Protective Order System (Penal Code § 18140).

(c) Copies of receipts of surrendered firearms or ammunition issued by other agencies for gun violence restraining orders issued by the Department are properly maintained (Penal Code § 18120).

343.7 COURT-ORDERED FIREARMS AND AMMUNITION SURRENDERS
Authorized members shall accept firearms and ammunition from any individual who is the subject of a gun violence restraining order. The member receiving any firearm or ammunition shall:

(a) Record the individual’s name, address and telephone number.

(b) Record the serial number of the firearm.

(c) Prepare an incident report and property report.

(d) Provide a property receipt to the individual who surrendered the firearms and ammunition.

(e) Package and submit the firearms and ammunition in accordance with the Property and Evidence Policy.

343.8 RELEASE OF FIREARMS AND AMMUNITION
Firearms and ammunition that were taken into temporary custody or surrendered pursuant to a gun violence restraining order shall be returned to the restrained person upon the expiration of the order and in accordance with Penal Code § 18120 and the Property and Evidence Policy.
Off-Duty Law Enforcement Actions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

420.1 PURPOSE AND SCOPE
This policy provides guidelines to assist officers in making the decision to initiate or continue the pursuit of suspects on foot.

420.2 POLICY
It is the policy of this department that officers, when deciding to initiate or continue a foot pursuit, continuously balance the objective of apprehending the suspect with the risk and potential for injury to department members, the public or the suspect.

Officers are expected to act reasonably, based on the totality of the circumstances.

420.3 DECISION TO PURSUE
The safety of department members and the public should be one of the primary considerations when determining whether a foot pursuit should be initiated or continued. Officers must be mindful that immediate apprehension of a suspect may not be more important than the safety of the public and department members, depending on the seriousness of the suspect’s actions and danger he or she may immediately pose to the public if not immediately apprehended.

Officers may be justified in initiating a foot pursuit of any individual the officer reasonably believes is about to engage in, is engaging in or has engaged in criminal activity. The decision to initiate or continue such a foot pursuit, however, must be continuously re-evaluated in light of the circumstances presented at the time.

Mere flight by a person who is not suspected of criminal activity shall not serve as justification for engaging in an extended foot pursuit without the development of reasonable suspicion regarding the individual’s involvement in criminal activity or being wanted by law enforcement.

Deciding to initiate or continue a foot pursuit is a decision that an officer must make quickly and under unpredictable and dynamic circumstances. It is recognized that foot pursuits may place department members and the public at significant risk. Therefore, no officer or supervisor shall be criticized or disciplined for deciding not to engage in a foot pursuit because of the perceived risk involved.

If circumstances permit, surveillance and containment are generally the safest tactics for apprehending fleeing persons. In deciding whether to initiate or continue a foot pursuit, an officer should continuously consider reasonable alternatives to a foot pursuit based upon the circumstances and resources available, such as:

(a) Containment of the area.
(b) Saturation of the area with law enforcement personnel, including assistance from other
agencies.

(c) A canine search.

(d) Thermal imaging or other sensing technology.

(e) Air support.

(f) Apprehension at another time when the identity of the suspect is known or there is information available that would likely allow for later apprehension, and the need to immediately apprehend the suspect does not reasonably appear to outweigh the risk of continuing the foot pursuit.

420.4 GENERAL GUIDELINES
When reasonably practicable, officers should consider alternatives to engaging in or continuing a foot pursuit when:

(a) Directed by a supervisor to terminate the foot pursuit; such an order shall be considered mandatory

(b) The officer is acting alone.

(c) Two or more officers become separated, lose visual contact with one another, or obstacles separate them to the degree that they cannot immediately assist each other should a confrontation take place. In such circumstances, it is generally recommended that a single officer keep the suspect in sight from a safe distance and coordinate the containment effort.

(d) The officer is unsure of his/her location and direction of travel.

(e) The officer is pursuing multiple suspects and it is not reasonable to believe that the officer would be able to control the suspect should a confrontation occur.

(f) The physical condition of the officer renders him/her incapable of controlling the suspect if apprehended.

(g) The officer loses radio contact with the dispatcher or with assisting or backup officers.

(h) The suspect enters a building, structure, confined space, isolated area or dense or difficult terrain, and there are insufficient officers to provide backup and containment. The primary officer should consider discontinuing the foot pursuit and coordinating containment pending the arrival of sufficient resources.

(i) The officer becomes aware of unanticipated or unforeseen circumstances that unreasonably increase the risk to officers or the public.

(j) The officer reasonably believes that the danger to the pursuing officers or public outweighs the objective of immediate apprehension.

(k) The officer loses possession of his/her firearm or other essential equipment.

(l) The officer or a third party is injured during the pursuit, requiring immediate assistance, and there are no other emergency personnel available to render assistance.
(m) The suspect’s location is no longer definitely known.
(n) The identity of the suspect is established or other information exists that will allow for the suspect’s apprehension at a later time, and it reasonably appears that there is no immediate threat to department members or the public if the suspect is not immediately apprehended.
(o) The officer’s ability to safely continue the pursuit is impaired by inclement weather, darkness or other environmental conditions.

420.5 RESPONSIBILITIES IN FOOT PURSUITS

420.5.1 INITIATING OFFICER RESPONSIBILITIES

Unless relieved by another officer or a supervisor, the initiating officer shall be responsible for coordinating the progress of the pursuit. When acting alone and when practicable, the initiating officer should not attempt to overtake and confront the suspect but should attempt to keep the suspect in sight until sufficient officers are present to safely apprehend the suspect.

Early communication of available information from the involved officers is essential so that adequate resources can be coordinated and deployed to bring a foot pursuit to a safe conclusion. Officers initiating a foot pursuit should, at a minimum, broadcast the following information as soon as it becomes practicable and available:

(a) Location and direction of travel
(b) Call sign identifier
(c) Reason for the foot pursuit, such as the crime classification
(d) Number of suspects and description, to include name if known
(e) Whether the suspect is known or believed to be armed with a dangerous weapon

Officers should be mindful that radio transmissions made while running may be difficult to understand and may need to be repeated.

Absent extenuating circumstances, any officer unable to promptly and effectively broadcast this information should terminate the foot pursuit. If the foot pursuit is discontinued for any reason, immediate efforts for containment should be established and alternatives considered based upon the circumstances and available resources.

When a foot pursuit terminates, the officer will notify the dispatcher of the suspect’s location and the status of the pursuit termination (e.g., suspect in custody, lost sight of suspect), and will direct further actions as reasonably appear necessary, to include requesting medical aid as needed for officers, suspects or members of the public.

420.5.2 ASSISTING OFFICER RESPONSIBILITIES

Whenever any officer announces that he/she is engaged in a foot pursuit, all other officers should minimize non-essential radio traffic to permit the involved officers maximum access to the radio frequency.
420.5.3 SUPERVISOR RESPONSIBILITIES
Upon becoming aware of a foot pursuit, the supervisor shall make every reasonable effort to ascertain sufficient information to direct responding resources and to take command, control and coordination of the foot pursuit. The supervisor should respond to the area whenever possible; the supervisor does not, however, need not be physically present to exercise control over the foot pursuit. The supervisor shall continuously assess the situation in order to ensure the foot pursuit is conducted within established department guidelines.

The supervisor shall terminate the foot pursuit when the danger to pursuing officers or the public appears to unreasonably outweigh the objective of immediate apprehension of the suspect.

Upon apprehension of the suspect, the supervisor shall promptly proceed to the termination point to direct the post-foot pursuit activity.

420.5.4 THE COMMUNICATIONS CENTER RESPONSIBILITIES
Upon notification or becoming aware that a foot pursuit is in progress, the dispatcher is responsible for:

(a) Clearing the radio channel of non-emergency traffic.
(b) Coordinating pursuit communications of the involved officers.
(c) Broadcasting pursuit updates as well as other pertinent information as necessary.
(d) Ensuring that a field supervisor is notified of the foot pursuit.
(e) Notifying and coordinating with other involved or affected agencies as practicable.
(f) Notifying the Watch Commander as soon as practicable.
(g) Assigning an incident number and logging all pursuit activities.

420.6 429 REPORTING REQUIREMENTS
The initiating officer shall document the incident. Documentation may be accomplished via an MDT, Field Interview, Incident or Case report. The following information should be contained in the report:

(a) Date and time of the foot pursuit.
(b) Initial reason and circumstances surrounding the foot pursuit.
(c) Course and approximate distance of the foot pursuit.
(d) Alleged offenses.
(e) Involved vehicles and officers.
(f) Whether a suspect was apprehended as well as the means and methods used.
   1. Any use of force shall be reported and documented in compliance with the Use of Force Policy.
(g) Arrestee information, if applicable.
(h) Any injuries and/or medical treatment.
(i) Any property or equipment damage.
(j) Name of the supervisor at the scene or who handled the incident.

Assisting officers taking an active role in the apprehension of the suspect shall complete supplemental reports as necessary or as directed.

The supervisor reviewing the report will make a preliminary determination that the pursuit appears to be in compliance with this policy or that additional review and/or follow-up is warranted.

In any case in which a suspect is not apprehended and there is insufficient information to support further investigation, a supervisor may authorize that the initiating officer need not complete a formal report.
Mobile Data Terminal Use

424.1 PURPOSE AND SCOPE
The purpose of this policy is to establish guidelines for the proper access, use and application of the Mobile Data Terminal (MDT) system in order to ensure appropriate access to confidential records from local, state and national law enforcement databases, and to ensure effective electronic communications between department members and the Communications Center.

424.2 POLICY
Berkeley Police Department members using the MDT shall comply with all appropriate federal and state rules and regulations and shall use the MDT in a professional manner, in accordance with this policy.

424.3 PRIVACY EXPECTATION
Members forfeit any expectation of privacy with regard to messages accessed, transmitted, received or reviewed on any department technology system (see the Information Technology Use Policy for additional guidance).

424.4 RESTRICTED ACCESS AND USE
MDT use is subject to the Information Technology Use and Protected Information policies.

Members shall not access the MDT system if they have not received prior authorization and the required training. Members shall immediately report unauthorized access or use of the MDT by another member to their supervisors or Watch Commanders.

Use of the MDT system to access law enforcement databases or transmit messages is restricted to official activities, business-related tasks and communications that are directly related to the business, administration or practices of the Department. In the event that a member has questions about sending a particular message or accessing a particular database, the member should seek prior approval from his/her supervisor.

Sending derogatory, defamatory, obscene, disrespectful, sexually suggestive, harassing or any other inappropriate messages on the MDT system is prohibited and may result in discipline.

It is a violation of this policy to transmit a message or access a law enforcement database under another member’s name or to use the password of another member to log in to the MDT system unless directed to do so by a supervisor. Members are required to log off the MDT or secure the MDT when it is unattended. This added security measure will minimize the potential for unauthorized access or misuse.

424.4.1 USE WHILE DRIVING
Use of the MDT by the vehicle operator should be limited to times when the vehicle is stopped.
Information that is required for immediate enforcement, investigative, tactical or safety needs should be transmitted over the radio.

Short transmissions, such as a license plate check, are permitted if it reasonably appears that it can be done safely. In no case shall an operator attempt to send or review lengthy messages while the vehicle is in motion.

424.5 DOCUMENTATION OF ACTIVITY
Except as otherwise directed by a supervisor or other department-established protocol, all calls for service assigned by a dispatcher should be communicated by voice over the police radio and electronically via the MDT unless security or confidentiality prevents such broadcasting.

MDT and voice transmissions are used to document the member's daily activity. To ensure accuracy:

(a) All contacts or activity shall be documented at the time of the contact.
(b) Whenever the activity or contact is initiated by voice, it should be documented by a dispatcher.
(c) Whenever the activity or contact is not initiated by voice, the member shall document it via the MDT.

424.5.1 STATUS CHANGES
All changes in status (e.g., arrival at scene, meal periods, in service) will be transmitted over the police radio.

Members responding to in-progress calls should advise changes in status over the radio to assist other members responding to the same incident.

424.6 EQUIPMENT CONSIDERATIONS

424.6.1 MALFUNCTIONING MDT
Whenever possible, members will not use vehicles with malfunctioning MDTs. Whenever members must drive a vehicle in which the MDT is not working, they shall notify the Communications Center. It shall be the responsibility of the dispatcher to document all information that will then be transmitted verbally over the police radio.

424.6.2 BOMB CALLS
When investigating reports of possible bombs, members should not communicate on their MDTs when in the evacuation area of a suspected explosive device. Radio frequency emitted by the MDT could cause some devices to detonate.
First Amendment Assemblies

428.1 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.

428.2 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.

428.3 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.

428.4 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
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 the 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.
First Amendment Assemblies

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.

428.5 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.

428.6 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.
First Amendment Assemblies

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.
First Amendment Assemblies

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).

428.7 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.
First Amendment Assemblies

(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.

428.8 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.
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.
First Amendment Assemblies

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

428.9 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.
First Amendment Assemblies

(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.

428.10 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.
First Amendment Assemblies

(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.

428.11 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.

428.12 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.
First Amendment Assemblies

(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.

428.13 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.

428.14 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.
BERKELEY POLICE DEPARTMENT

DATE ISSUED: September 13, 2017

GENERAL ORDER C-64

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
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.
(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
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
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.

**Bold text is new**
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.
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.).
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.”
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
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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Second Response

1202.1 BACKGROUND
In 1993, the Berkeley City Council stated, "Due to inadequate supervision, some large gatherings of people, such as parties, frequently become loud and unruly to the point that they constitute a threat to the peace, health, safety, or general welfare of the public as a result of conduct such as one or more of the following: excessive noise, excessive traffic, obstruction of public streets or crowds who have spilled over into public streets, public drunkenness, the service of alcohol to minors, fights, disturbances of the peace, and litter.

The City of Berkeley is required to make multiple responses to such unruly gatherings in order to restore and maintain the peace and protect public safety. Such gatherings are a burden on scarce City resources and can result in police responses to regular and emergency calls being delayed and police protection to the rest of the City being reduced. In order to discourage the occurrence of repeated loud and unruly gatherings, the persons responsible for the public nuisance created by these gatherings should be fined."

Such gatherings were, and continue to be, a burden on City resources and often result in delayed police responses to regular and emergency calls for service and emergencies.

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

1202.2 THE ORDINANCE
Berkeley Municipal Code §13.48.0240 states it shall be unlawful and a public nuisance to conduct a gathering, which incorporates the following criteria:

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

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

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

1202.3 EXHIBIT A

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

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

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

1202.31202.4 EXHIBIT B

Should the police intervene at a premises with an active "Exhibit A", a new notice shall be posted and a fine imposed against the property by means of an administrative citation. The new notice, referred to in the Ordinance as an "Exhibit B," states that the intervention by the police has been necessitated as a result of a public nuisance caused by an event at the premises. The "Exhibit B" also indicates:

- The date and time of the police intervention,
- Whether the nuisance is the second, third, fourth, etc. at the premises within the last 120 days;
- The fine amount associated with the violation (second - $750, third - $1,500, fourth and subsequent violations - $2,500);
- The 120 day period is extended another 120 days from the date of the "Exhibit B" posting;
- Liability may fall upon any guests causing the public nuisance, all sponsors of the gathering, all residents of the premises, all persons in control of the premises, and all owners of the premises that reside on or adjacent to the premises or are present at the premises when the nuisance occurs.
For every subsequent violation of the Ordinance, a new "Exhibit B" form shall be completed and posted. The residents or persons in control of the property, if present, must be consulted regarding a location where the Notice can be conspicuously and securely posted. When consulted, those persons, as well as sponsors of the nuisance event, if involved in the decision, become responsible for ensuring that the "Exhibit B" is neither removed nor defaced. If either occurs, those responsible for the security of the notice become liable for a civil penalty of $100.00, in addition to any other penalties which may be due under the Ordinance.

4202.41202.5 PROCEDURE - OFFICER

An officer responding to a "loud party", "unruly gathering", etc. type call for service should:

(a) Contact the resident, person in control of the property, or event organizer, and determine if Ordinance enforcement is appropriate.

(b) Complete an "Exhibit A" or "Exhibit B" form. (in duplicate, including the date, time, address, issuing officer, and case number.)

(c) Confer with the resident, person in control of the property, or event organizer and identify a conspicuous and secure location to post the "Exhibit A" form. Should the resident, person in control of the property, or event organizer decline to confer, the officer should choose an appropriate posting location and inform the parties present that removal or defacement of the notice within the 120 day period may result in a $100.00 fine.

(d) Post the duplicate (yellow)-copy of the "Exhibit A" form at the premises and retain the original (white) for the report.

(e) Complete a Case Report to document your observations relevant to the Ordinance violation and responsible parties contacted. The following information should be included and document the following information:

- Known complainant’s identification and report information;
- Identification of parties responsible for the property hosting the gathering/event;
- The overall condition and/or general environment of the premises;
- The number of people involved at the unruly gathering;
- Whether or not alcohol was a factor;
- Any traffic conditions affected by the gathering;
- Any other information that may be relevant to the Ordinance violation; and,
- The exact location the Exhibitnoticeform was posted.

(f) Submit the report in AEGIS, route the original Exhibit form to Records Management and place a copy—in the CSB and Exhibit A or B mailboxform to Records Detail in Support Services Division, and photocopies to the appropriate Community Services Bureau Area Coordinator to ensure proper administrative follow-up.

4202.61202.6 REPEAT VIOLATIONS

Patrol-officers should be aware of what properties in their assigned area have been posted for Ordinance violation(s) and should monitor them for repeat violations within the prescribed term.
If, within 120 days of the initial posting, an officer investigates another unruly gathering as described in the Ordinance, the officers should replace the Exhibit A is still conspicuously posted and not deleted, posting with an Exhibit B, and document their observations and actions (as in #6 above) on a new Case Report and forward a copy of the report should also be forwarded CSB for to the appropriate Area Coordinator for administrative follow-up.

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

1202.61202.7 CSB AREA COORDINATOR FOLLOW-UP PROCEDURES

An Area coordinator receiving a follow up request for a Second Response violation should:
Administrative follow-up of Ordinance violations is the responsibility of the Community Services Bureau Area Coordinator. Up responsibilities include: contacting the Communication Center to ensure the posting is logged into CAD as a "Premise Alert"; mailing of requisite notices of police intervention; and, one or more site inspections to examine the Exhibit A posting.

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

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

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

(d) Conduct additional inspections should be conducted to ensure Ordinance compliance and document any subsequent violations on a Case Report.

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

(f) Provide the City of Berkeley Finance Department with copies of all reports and letters
associated with any Ordinance violation to facilitate billing of the responsible parties.

1202.7 PROCEDURE - CSB

330. Ensure the incident’s CAD event record is updated with relevant contact and form posting information.

330. Identify the property owner(s) as indicated in City property tax assessment records and mail that party a notice of violation and copy of the Exhibit A notice of police intervention form.

330. Set an initial follow up date within three weeks of the initial Exhibit A posting to examine the form. Replace a missing form, if necessary, and document observed violations.

330. Conduct supplemental site inspections, as necessary.

330. If police intervention is necessary after the initial posting of “Exhibit A” and Ordinance violations are discovered, ensure they are documented in a supplemental new “Case” report, complete the “Exhibit B” letter, and mail it to all parties liable for the civil fine (e.g., the event organizer, property residents, and/or property owner.)

330. Provide the City of Berkeley Finance Department with copies of all reports and letters associated with any Ordinance violation to facilitate billing of the responsible parties.

1202.141202.8 CIVIL PENALTIES AND COLLECTION PROCEDURES

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

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

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

1202.151202.9 SUMMARY

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

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

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

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

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

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

The Ordinance explicitly prohibits targeted enforcement against student housing. However, nothing in the Ordinance precludes the City from setting priorities in the use of its resources by employing the Ordinance against events that are the most disruptive, against properties at which disruptive events are held most often, or on the basis of other similar legitimate factors.
351.3 PATROL OFFICER RESPONSIBILITIES
When the police intervene at a gathering which constitutes a nuisance under the Ordinance, a "Notice" must be prominently posted at the premises at which the nuisance occurred. The Notice, referred to in the ordinance as an "Exhibit A," states that the intervention by the police has been necessitated as a result of a public nuisance caused by an event at the premises. The "Exhibit A" also indicates:

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

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

351.4 PROCEDURE - OFFICER Step-by-Step Procedure
1. Contact the resident, person in control of the property, or event organizer, and determine if Ordinance enforcement is appropriate.
2. Complete an "Exhibit A" or "Exhibit B" form (in duplicate, including the date, time, address, issuing officer, and case number.)
3. Confer with the resident, person in control of the property, or event organizer and identify a conspicuous and secure location to post the "Exhibit-A" form. Should the resident, person in control of the property, or event organizer decline to confer, the officer should choose an appropriate posting location and inform the parties present that removal or defacement of the notice within the 120 day period may result in a $100.00 fine.
4. Post the duplicate (yellow) copy of the "Exhibit-A" form at the premises and retain the original (white) for the report.
5. Complete a **NCIR** "Case" **report** to document your observations relevant to the Ordinance violation and responsible parties contacted. The following information should be included:
   - known complainant’s identification and report information;
   - identification of parties responsible for the property hosting the event;
   - the overall condition and/or general environment of the premises;
   - the number of people involved in the unruly gathering;
   - whether or not alcohol was a factor;
   - traffic conditions effected by the gathering;
   - any other information that may be relevant to the Ordinance violation; and,
   - the exact location the notice was posted.

6. **Submit the original report in AEGIS and place a copy of the exhibit in the CSB and Exhibit A or B mailbox form to Records Detail in Support Services Division, and photocopies to the appropriate Community Services Bureau Area Coordinator to ensure proper administrative follow-up.**

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

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

351.5 **ADMINISTRATIVE FOLLOW-UP PROCEDURES**

Administrative follow-up of Ordinance violations is the responsibility of the Community Services Bureau Area Coordinator responsible for the area in which the subject property is located. Follow-up responsibilities include: contacting the Communication Center to ensure the posting is logged into CAD as a "Premise Alert"; mailing of requisite notices of police intervention; and, one or more site inspections to examine the "Exhibit form A posting."
When advised of an “Exhibit A” or “Exhibit B” form posting, the responsible Area Coordinator should work with the Communication Center staff to ensure a Premise Alert has been entered into CAD for the subject property. Minimally, the CAD entry should include: the date/time the “Exhibit A (or B)” form was posted; the name and phone number of the liable person(s) contacted; and, the location where the notice form was posted. Additionally, if regarding an “Exhibit B”, the alert should include the fine amount to be assessed against the property. Having this information available in CAD will help patrol officers enforce the Ordinance should they respond to subsequent loud, unruly parties during the 120 day period. Additionally, requesting the Communication Center staff to revise the CAD event description to “2nd Response” will help with event tracking and future administrative research efforts.

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

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

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

351.6 PROCEDURE - CSB Step-by-Step Procedure

1. Ensure the incident’s CAD event record is updated with relevant contact and form posting information.

2. Identify the property owner(s) as indicated in City property tax assessment records and mail that party a notice of violation and copy of the “Exhibit A” notice of police intervention form.

3. Set an initial follow-up date within three weeks of the initial “Exhibit A” posting to examine the form. Replace a missing form, if necessary, and document observed violations.

4. Conduct supplemental site inspections, as necessary.
5. If police intervention is necessary after the initial posting of “Exhibit A” and Ordinance violations are discovered, ensure they are documented in a supplemental new Case report, complete the “Exhibit B” letter, and mail it to all parties liable for the civil fine (e.g., the event organizer, property residents, and/or property owner.)

6. Provide the City of Berkeley Finance Department with copies of all reports and letters associated with any Ordinance violation to facilitate billing of the responsible parties.

CIVIL PENALTIES AND COLLECTION PROCEDURES

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

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

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

351.7 SUMMARY

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