

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: JULY 9, 2025

NUMBER: 4.17 – LEGAL

SUBJECT: FIRST AMENDMENT ACTIVITY FACILITATION AND
MANAGEMENT

RELATED POLICY: N/A

ORIGINATING DIVISION: SPECIAL EVENTS AND EMERGENCY PLANNING

NEW PROCEDURE: ☐

PROCEDURAL CHANGE: ☒ **MAJOR CHANGES**

SUPERSEDES: DP 4.17 - 08/17/2022 and DP 4.16 – 03/07/2017

I. PURPOSE

This Department procedure establishes guidelines for the coordination, facilitation and management of First Amendment Activities.

II. SCOPE

This procedure applies to all sworn members of the Department.

III. BACKGROUND

The First Amendment to the Constitution of the United States of America states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and to petition the Government for a redress of grievances."

Article 1 of the California Constitution also guarantees the rights to life, liberty, acquiring and possessing property, pursuing safety, happiness, and privacy, as well as the rights to speak freely, to freedom of the press, to petition the government for redress of grievances, and to assemble freely to consult for the common good.

The San Diego Police Department supports all people's fundamental right to peaceably assemble and their right to freedom of speech and expression.

The goal of police involvement at peaceful First Amendment Activities is to preserve the

peace, prevent criminal activity, control traffic, and facilitate the safe exercise of an individual or group's First Amendment rights.

In furtherance of these rights, and to facilitate the safe and peaceful exercise of an individual or group's First Amendment rights, the Department will act swiftly and with resolve to protect human life, property, and maintain peace when confronted with violence, threats of violence, assaults, or other criminal acts.

IV. DEFINITIONS

- A. Authorized News Media – representatives are those persons possessing current, valid credentials issued by SDPD or any bona fide law enforcement agency, or other identification establishing regular news media affiliation or employment. (DP 1.30 & 8.09)
 - 1. "Freelance" reporters or photographers possessing a valid San Diego Police Department media credential will be deemed as authorized news media representatives, or other identification establishing regular news media affiliation or employment. (DP 8.09)
- B. Crowd Control - Crowd control is defined as those techniques used to address unlawful public assemblies, including crowd containment or movement, dispersal tactics, and arrests.
- C. Crowd Management - Techniques used to manage public assemblies before, during, and after an event, to maintain public safety, preserve the peace, prevent criminal activity, and facilitate the event's lawful status.
- D. Designee - A Designee is a Department member designated by the Incident Commander to carry out a specific task. The Incident Commanders may delegate their authority, but not their responsibility.
- E. First Amendment Activity/Activities - First Amendment Activities include all forms of speech and expressive conduct used to convey ideas or information, express grievances, or otherwise communicate with others, including verbal and non-verbal expression. First Amendment Activities may include public displays of a group's or individual's feeling(s) toward a person(s), idea, or cause, and includes, but is not limited to, marches, protests, student walkouts, assemblies, and sit-ins. Such events and activities usually attract a crowd of persons, including participants, onlookers, observers, media, and other persons who may agree or disagree with the activity's point of view.
 - 1. Common First Amendment Activities include, but are not limited to, speeches, demonstrations, vigils, picketing, distribution of literature, displaying banners or signs, using puppets to convey a message, and other artistic forms of expression. These activities involve the freedom of speech, association, assembly, and the right to petition the government, as guaranteed by the United States Constitution and the California

Constitution.

2. All persons have the right to peacefully march, demonstrate, protest, rally, or perform the other activities protected by the First Amendment of the United States Constitution and California Constitution.
 3. The government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions are content-neutral, without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.
- F. Incident Commander - The Incident Commander is responsible for all incident/event activities. The Incident Commander should be of the rank appropriate for the event. The Incident Commander may change throughout an evolving incident.
- G. Lawful Assembly - A First Amendment Activity, involving two or more persons, which abides by relevant statutory laws and does not involve violence or criminal acts.
- H. Riot - Any use of force or violence, disturbing the public peace, or any threat to use force or violence, if accompanied by the immediate power of execution, by two or more persons acting together, and without the authority of law, is a Riot. (404 PC)
- I. Rout - Whenever two or more persons, assembled and acting together, make any attempt or advance toward the commission of an act which would be a riot if actually committed, such assembly is a Rout. (406 PC)
- J. Supplemental Video Team (SVT) – The Supplemental Video Team is a resource available to the Incident Commander during First Amendment Activity covered under this procedure. The SVT will consist of personnel from the Media Services Unit. The objective will be to use video cameras to capture images, video and audio recordings to supplement information captured from officers' Body Worn Cameras (BWCs). The SVT will adhere to Department Procedure 3.26 - Media Evidence Recovery and Impounding/Preserving Procedures.
- K. Unified Command - Unified Command is a procedure that allows all agencies with the significant geographical, legal or functional responsibility over an incident to avoid operational conflicts, economize resources by locating at a single Incident Command Post or communicate their operational goals and strategies to each other during structured planning meetings.
- L. Unlawful Assembly - Whenever two or more persons assemble to do an unlawful act or do a lawful act in a violent, boisterous, or tumultuous manner, such assembly is an Unlawful Assembly. (407 PC) This section applies to assemblies which are violent, or which pose a clear and present danger of imminent violence.

UPDATED

Because the assembly must in fact be violent or pose an immediate threat of violence, an assembly that is “boisterous or tumultuous” does not establish a violation of the statute.

V. PLANNING FOR FIRST AMENDMENT ACTIVITIES:

A. Pre-planned events

1. When appropriate, and consistent with Department Procedure, 8.04, the Incident Commander shall be responsible for developing a written contingency or incident action plan, consistent with the Department’s goals and objectives to minimize harm, honor constitutional rights, communicate with the event participants, and facilitate First Amendment Activity. This plan may be in a Department Memorandum format or the ICS 201 format. All or parts of the contingency or incident action plan may be exempt from public disclosure pursuant to the California Public Records Act. Each plan shall be marked accordingly.
2. The Incident Command System shall be appropriately used when managing First Amendment events.
3. The Incident Commander or designee shall immediately notify the affected Service Area Lieutenant and Division Captain of potential First Amendment Activities.
4. Consider engaging allied agencies (CHP, SDSO, Fire-Rescue etc.) if the First Amendment Activity could likely affect other jurisdictions or if assistance may become necessary.
5. Stakeholder involvement is essential to the overall success of managing First Amendment Activities. When knowledge exists that a First Amendment Activity may occur, the Incident Commander or designee shall proactively make reasonable attempts to establish and maintain communication and cooperation with representatives or the First Amendment Activity leaders.
6. If communication is established, the Incident Commander or designee shall make reasonable efforts to identify the event's representatives or leaders and identify a primary police liaison. The primary police liaison should be requested to be in continuous contact with an assigned police representative designated by the Incident Commander.
7. In planning for First Amendment Activity, Incident Commanders, or their designees, should consider the following factors in determining the appropriate resources and level of preparation necessary:

- a. What type of First Amendment Activity is expected to occur? (Press conference, demonstration, protests, static event, labor strike, picket line, march, caravan, sit-in/dine-in, etc.)
- b. What is the goal of the First Amendment Activity? (Raise awareness, disrupt a target location, counter another demonstration, engage in criminal activity, etc.)
- c. When will the First Amendment Activity occur? (Day of the week, holiday, time of day/traffic patterns, daytime/nighttime, conflict with other events at the same time.)
- d. Will there be an organizing individual/group, or will this be a crowd without identified leadership?
- e. Has the Department previously worked with the organizers? Have prior First Amendment Activities been lawful ?
- f. Where will the First Amendment Activity likely occur? Will the event affect critical infrastructure like police stations, jails, courthouses, freeways, government buildings, etc.? Will the effect be deliberate or collateral?
- g. If the group intends to be mobile, what will the predicted or planned route(s) be? (First Amendment Activity participants may not provide their own traffic control.)
- h. What will be the projected size of the First Amendment Activity event?
- i. What will the composition of the group be? (Juveniles, students, labor unions, known local groups, known groups from outside the area, unified as to a single cause, or diverse causes and points of view within the group, etc.)
- j. Will the hosting group provide its own marshals or monitors?
- k. Will an opposing group attend the First Amendment Activity event?
- l. Is there a likelihood of improvised or conventional weapons?
- m. Are arrests likely? Will prisoner processing be necessary?
- n. Is civil disobedience planned or likely?
- o. Is unlawful assembly planned or likely?
- p. Is riot planned or likely?

8. The operations plan created to address a First Amendment Activity event should anticipate various scenarios and devise a police contingency plan. All plans shall include de-escalation considerations in compliance with Department Procedure 1.55.
9. The Incident Commander shall balance any anticipated level of disruption to traffic against the goal of facilitating First Amendment Activity, including the practicality of relegating the crowd to sidewalks or an alternate route, the expected duration of the disruption, and the traffic disruption expected in making a mass arrest if demonstrators refuse to leave the street. This balancing does not mean First Amendment Activity participants will be allowed to disrupt commuter traffic and bridge approaches deliberately.
10. Department-Issued ID Only Name Tags
 - a. ID only name tags may only be worn during a Mobile Field Force (MFF) event with Incident Commander approval, consistent with Department Procedure 5.10.

B. Spontaneous Events

1. Spontaneous First Amendment Activities, which occur without prior planning or prior notice to the police, present less opportunity for planning and mitigation efforts. The same policies and procedures concerning crowd management, crowd control, and police responses to criminal activity described below apply to a spontaneous First Amendment Activity.
2. Unless unavailable, a supervisor shall respond to the scene of spontaneous events and assume the role of Incident Commander until relieved by a ranking officer.
3. The Incident Commander shall notify the Watch Commander and, if appropriate, the Service Area Lieutenant.
4. An immediate assessment of the situation is essential for an effective police response. The Incident Commander should evaluate the spontaneous First Amendment Activity using the factors listed above for planned events.

NEW

C. Events Concerning Private Property Rights and at Private Businesses

The California Constitution expands federal First Amendment rights. As a result of this expansion of rights, the California Supreme Court and affirmed by the United States Supreme Court, has ruled that in some circumstances the modern-day shopping mall has assumed the function of the town square where people used to meet and discuss the issues of the day. These gatherings sometimes disturb the

orderly conduct of business at malls and other commercial properties. Property owners and managers often call for police assistance.

The courts recognize the right of property owners to control and use their own property. They also recognize the rights of citizens to exercise their constitutional rights. This has been affirmed in cases like *Robins v. Pruneyard Shopping Center* (1979), where the California Supreme Court ruled that individuals could engage in free speech activities on private property that serves a public function.

The issue is not whether the property is privately owned, but whether, and to what extent, the owner has opened it up for public use. If the property is open for public use and that public use resembles the town hall function of a public meeting place, then the public's right to engage in activities similar to a town hall outweighs the property owner's right to the absolute control of the property.

NEW

1. Nature of the Property

- a. The primary factor in determining the right of the public to enter property for purposes of expressive activity is the nature, purpose, and primary use of the property itself.
- b. Shopping malls contain theaters, plazas, walkways, courtyards, food courts and, in some cases, even stages for public use. The extent and nature of the public's invitation to use the property goes beyond merely making a purchase and leaving. Malls invite and encourage patrons to congregate and spend time together. These factors make them a modern "town center" and "town hall."
- c. Individual retail businesses, such as stand-alone businesses with their own parking facilities, separate from other businesses, do not possess the attributes of a "town hall" public forum and there is no constitutional protection for expressive activity. They do not offer the same inducements to congregate as the "town square." Examples of these types of businesses might include convenience stores, grocery stores, gas stations, car dealers and even "big box" stores, if they are separated from surrounding businesses, where the invitation to the public is to come in and conduct business or purchase merchandise (as opposed to congregating for other purposes). These types of properties MAY be able to pursue a case for civil trespass followed up by a restraining order, however, rarely will these actions rise to the level of criminal trespass.

NEW

2. Content Restrictions

While property owners may be able to impose reasonable time, place, and manner restrictions, they cannot restrict the content of the message being communicated, even if that message may harm the property or store owner's business interests. For example, they cannot prohibit the use of pickets or the passing out of leaflets, even when the pickets or leaflets urge a boycott of the shopping center or stores within the center.

NEW

3. Businesses Not Open to the Public

Most of the cases discussing expressive activity involve retail establishments. There are many other types of businesses, such as office buildings, and manufacturing and research facilities, which are not open to the public. They are not the equivalent of a public forum for expressive activity, with the exception of labor activity, and may be prohibited on those properties. Incidents of trespassing that occur on these properties are generally described in Penal Code section 602(o).

NEW

4. Officer Considerations in Evaluating Private Property Concerns

Disputes between property owners and persons wishing to use the property for expressive activity are civil disputes. The majority of these calls involve disputes that are civil in nature. The sole purpose of police officers at these disputes is to preserve the peace. Therefore, officers should keep in mind the following points when responding to calls for service involving expressive activity on private property or private businesses:

- a. While private business owners may create reasonable time, place, and manner restrictions for the use of their property, these rules are not law. Therefore, police officers have no lawful authority to enforce them.
- b. Non-compliance with these restrictions, by itself, is not a crime. A person who is merely on the privately owned property of a business for the purpose of engaging in expressive activity, in violation of the business owner's rules, is not committing a crime.
- c. A person who is merely on the privately owned property of a business for the purpose of engaging in expressive activity, in violation of the business owner's rules, does not become a trespasser by virtue of his continued presence, unless the person engages in activity that obstructs the business or interferes with or intimidates the business' employees or customers.
- d. A business owner seeking to remove or restrict persons engaged in expressive activity must obtain a restraining order, or injunction,

from a civil court prior to police enforcement. A person engaged in expressive activity who remains on the property in violation of such a court order may then be subject to arrest and removal.

- e. Labor activity is a form of expressive activity that is lawfully authorized by both federal and state law. People engaged in lawful labor actions are specifically excluded from the trespassing statutes that pertain to certain types of property unless the labor activity is blocking access to or egress from the property or engaging in a separate crime.

NEW

5. Requests for Citizen's Arrests at Private Property Events

- a. Making an arrest or accepting a citizen's arrest should be considered as a last resort when criminal conduct has occurred and enforcement is appropriate. Absent extenuating circumstances, it is best to advise the parties to consult their legal counsel and to pursue civil remedies through the courts.
- b. For a citizen's arrest for trespass to be appropriate the following elements should exist:
 - (1) The conduct of those engaged in expressive activity must have obstructed or interfered with the operation of the business, or interfered with or intimidated the employees or patrons of the property or the businesses on the property, or another arrestable offense (i.e. vandalism) has been committed. It is not enough that an employee or patron was annoyed by having to pass those engaged in the expressive activity or that the patron did not agree with their message. There must have been some conduct that made them afraid to or discouraged their use of the property. This information must be obtained from the patron, not the property manager.
 - (2) The crime must have occurred in the presence of the person making the arrest. It is not enough that the property owner or agent is aware of and has cause to believe that a crime has occurred. The statutory requirement in Penal Code section 837 is that the crime occurred in their presence. If it did not, they cannot make an arrest.
 - (3) If these requirements are met with only one person participating, or a small number of participants who are cooperative with the property owner or employee, follow standard citizen arrest procedures. If these requirements are met with two or more participants that are uncooperative or a large number of participants requiring additional resources, refer to Unlawful Assembly and following sections of this procedure.

VI. LAWFUL ASSEMBLY, DEMONSTRATION OR PROTEST

- A. The goal of police involvement at peaceful First Amendment Activities is to preserve the peace, prevent criminal activity, control traffic, and facilitate the safe exercise of an individual or group's First Amendment rights.
- B. Officers shall remain professional when exposed to the content of the opinions being expressed regardless of the race, gender, sexual orientation, physical disabilities, appearances, or affiliation of anyone exercising their lawful rights. Officers shall be courteous in compliance with Department Policy 9.20.
- C. During peaceful First Amendment Activity, officers may find the occasional individual who engages in criminal conduct that is not reflective of the larger group. In these cases, when feasible, officers should address the individual offender in compliance with other Department procedures while minimally disrupting the larger assembly.

VII. UNLAWFUL ASSEMBLY

- A. An unlawful assembly is defined by California Penal Code 407 as "Whenever two or more persons assemble together to do an unlawful act or do a lawful act in a violent, boisterous, or tumultuous manner, such assembly is an unlawful assembly."
- B. When First Amendment Activity results in unlawful acts or violence, the Incident Commander shall consider the following in determining whether to declare the assembly unlawful:
 - 1. The threat to people or property.
 - 2. The number and nature of unlawful acts within the crowd.
 - 3. The number and nature of violent acts within the crowd.
 - 4. Whether the unlawful or violent acts result from one or two individuals or the larger crowd in general.
 - 5. Whether separate crowds have merged and now the group has internal conflict between participants.
 - 6. Whether contact with the police liaisons/event leaders to negotiate a resolution of the situation is appropriate and effective.
 - 7. Evaluation of whether arresting individuals will be more appropriate than dispersing the entire crowd.

8. Determination if sufficient police resources are available on-scene to manage the incident effectively.
9. The mere failure to obtain a permit, such as a parade permit or sound permit, is not a sufficient basis to declare an unlawful assembly.
10. The sole fact that some of the demonstrators or organizing groups have previously engaged in violent or unlawful acts is not grounds for declaring an assembly unlawful.

C. Declaration of Unlawful Assembly

1. If the Incident Commander deems it is appropriate to declare an unlawful assembly, dispersal orders must be given.
2. For a dispersal order to be valid, a public officer must direct the persons assembled to immediately disperse in the name of the People of the State. (726 PC) The officer is not required to use any particular words. However, the terms used must be sufficient to inform a reasonable person that the officer is acting in an official capacity and ordering people to leave the area. Additionally, the officer must communicate the order in a reasonable way that ensures that the order is heard. (Judicial Council of California Criminal Jury Instructions 2024, Instruction Number 2686).
3. Dispersal orders should not be given until officers are in a position to support/direct crowd movement. Members of the crowd should be given ample means of egress. The Incident Commander should consider persons with mobility issues when evaluating ample means of egress. The dispersal order shall be given at least three (3) times, and when safe, with audible confirmation from officers behind the crowd.
4. The dispersal order shall be given in English and Spanish.
5. The Incident Commander should ensure video recording occurs during unlawful assemblies, consistent with Department Procedures 1.49 and 3.26.
6. Officers shall activate their Body Worn Cameras before dispersal orders begin, consistent with Department Procedure 1.49.
7. Officers shall use the following dispersal order:

“I am (your name and rank), a peace officer of the City of San Diego. I hereby declare this to be an unlawful assembly, and in the name of the People of the State of California, I order all those assembled at (give specific location) to immediately disperse, which means to break up this assembly. If you do not do so, you may be arrested.

You may also be subject to other police action including the use of kinetic energy projectiles and chemical agents, which include CS Tear Gas, OC Pepper Spray, 40mm sponge rounds, irritant filled projectiles, and 12 gauge beanbag rounds. Use of these devices could result in serious injury.

Penal Code section 409 prohibits remaining present at an unlawful assembly, which means you must leave the area I just described. If you remain in the area just described, you will be in violation of Penal Code section 409. The following routes of dispersal are available (provide evacuation routes). It is approximately XXXX hours, and you have XX minutes to leave the area.”

UPDATED

“Yo soy (name and rank) un oficial del departamento de policia de San Diego. Por la presente declaro que esta es una asamblea ilegal y en el nombre del gobierno del estado de California, les ordeno a todos aquellos reunidos (give specific location) que se retiren inmediatamente. Usted puede moverse (give specific locations and best route). Si no hacen eso, ustedes seran arrestados.

Otra accion del policia podria incluir el uso de fuerza que podria infligir dolor significativo o causar lesiones graves. Ejemplos de esta fuerza podrian incluir projectiles de energia cinetica, agentes quimicos irritantes que incluyen, esparcidor lagrimiante, aerosol de pimienta, projectiles de esponja, projectiles llenos de irritante pimienta, y cartuchos calibre 12 llenos de sacos con projectiles.

Codigo Penal, seccion 409 prohíbe permanecer en una asamblea ilegal. Si permanecen en la zona que acabamos de describir, independientemente de su proposito, usted estara en violacion del Codigo Penal 409. Las siguientes rutas de dispersion estan disponibles (provide routes). Tiene (reasonable time) minutos para dispersar.”

8. Incidents commanders shall consider the following methods that may be used to deliver and document dispersal orders (not in priority order):
 - a. Loud speech
 - b. Amplified sound
 - c. Ensuring that the order is heard in remote areas
 - d. Using unmanned aircraft equipped with amplified sound flown to inaccessible areas
 - e. Pre-recorded unlawful assembly messages in multiple languages as appropriate

- f. Display of signage, including electronic signage and billboards, indicating unlawful assembly, dispersal and clearly identified routes of egress
 - g. Gaining the attention of the crowd and documenting affirmative responses of crowd members prior to the declaration of unlawful assembly
 - h. Positioning law enforcement personnel to the rear of a crowd to confirm and document hearing the transmission of the dispersal order
 - i. Acquiring multiple-language capability
 - j. Community alert system(s)
 - k. Provide easy to understand directions that help the crowd disperse so that they clearly understand the desired response
 - l. Using video/audio recording equipment for documentation of the dispersal order, the crowd response and their ability to hear
 - m. Use of social media platforms to send out alerts to specific areas
9. Emergency Medical Services personnel should be staged before the use of crowd dispersal techniques defined below unless exigent circumstances exist. While SDPD does not have jurisdiction over San Diego Fire-Rescue personnel, officers may suggest EMS have proper materials on-site for the situation. For example, officers may suggest ample water be available for decontamination if the use of chemical agents is anticipated.
 10. Unless exigent circumstances exist, crowd dispersal techniques shall not be initiated until the Incident Commander has ensured dispersal announcements have been made to the crowd.
 11. These dispersal announcements must be made using adequate sound amplification equipment to ensure that they are audible over a sufficient area. The dispersal orders should be repeated after the commencement of the dispersal operation so that persons not present at the original broadcast will understand that they must leave the area. Consider using a bullhorn, vehicle Public Address (PA) system, Long-Range Acoustical Device (LRAD), or ABLE.
 12. The Incident Commander should ensure that the name of the individual making the dispersal order and the date, time(s), and location(s) each order was given is recorded.

13. Officers shall document the details of the dispersal order in their probable cause declarations and arrest reports when charging 407/408 PC - Unlawful Assembly or 409 PC - Failure to Disperse.
14. Unless an immediate risk to public safety exists or significant property damage occurs, a reasonable time will be allowed for a crowd to comply with police commands before taking action.
15. The Incident Commander should note if all or part of the crowd responds to the dispersal order and attempts to leave, or whether there is an unwillingness to comply or willful defiance of the dispersal order.
16. If orders to disperse do not result in voluntary movement/compliance by the crowd, the Incident Commander may elect to use crowd dispersal techniques described in section IX of this procedure.
17. When a command decision is made to employ crowd dispersal techniques, continue attempts to obtain voluntary compliance and cooperation through announcements and negotiation. The Incident Commander shall suspend crowd dispersal techniques when a crowd reasonably appears to be dispersing. Crowd dispersal techniques may be re-employed if compliance ceases.
18. When a crowd disperses pursuant to a declaration of unlawful assembly, and the participants subsequently assemble at a different geographic location outside the dispersal area, and are engaged in non-violent and lawful First Amendment Activity, the new assembly cannot be dispersed until the Incident Commander has determined that a new unlawful assembly is occurring. At such time, the Incident Commander will follow the steps outlined above for declaring an unlawful assembly.
19. If unlawful or violent activity continues as the crowd moves, the event should be treated as a continuous unlawful assembly.

VIII. RIOT

- A. California Penal Code section 404(a) states, "Any use of force or violence, disturbing the public peace, or any threat to use force or violence, if accompanied by the immediate power of execution, by two or more persons acting together, and without the authority of law, is a riot."
- B. California Penal Code section 404.6(a) states, "Every person who with the intent to cause a riot does an act or engages in conduct that urges a riot, or urges others to commit acts of force or violence, or the burning or destroying of property, and at a time and place and under circumstances that produce a clear and present and immediate danger of acts of force or violence or the burning or destroying of property, is guilty of incitement to riot."

- C. California Penal Code section 410 states, "If a magistrate or officer, having notice of an unlawful or riotous assembly, mentioned in this Chapter, neglects to proceed to the place of assembly, or as near thereto as he can with safety, and to exercise the authority with which he is invested for suppressing the same and arresting the offenders, he is guilty of a misdemeanor."
- D. In order to reasonably comply with PC 410, it is imperative that the Incident Commander assesses the situation on an ongoing basis to determine if the level of behavior of the crowd rises to the level of a riot. If the Incident Commander determines the elements of a riot have been met, the Incident Commander shall, as reasonable circumstances permit, implement strategies as described in Section VII- Unlawful Assembly, as well as Section IX- Crowd Dispersal Strategies, Objectives and Techniques.

Some factors to consider when responding to a riot include, but are not limited to: the size of the riotous crowd versus available officers, weapons being used by those involved in the riot as compared to those possessed by officers, and capable defensive measures officers may be able to use while interacting with the riotous crowd.

IX. CROWD DISPERSAL STRATEGIES, OBJECTIVES AND TECHNIQUES

- A. Crowd dispersal strategies and techniques shall be consistent with the Department's objectives to minimize harm, honor constitutional rights, communicate with the event participants, and facilitate peaceful First Amendment Activity.
- B. Should negotiation and verbal announcements to disperse not result in the crowd's voluntary movement, officers may employ additional crowd dispersal techniques, but only after orders from the Incident Commander or their designees.
- C. Reasonable force under the totality of the circumstances will be used consistent with DP 1.04.
- D. Some of the permissible techniques to disperse or control a non-compliant crowd includes the following (not in any specific order of use):
 - 1. Display of police officers
 - a. A police formation may be moved as a unit to an area within the crowd's view to assist with crowd management. If a display of police officers, motorcycles, police vehicles, and mobile field forces, combined with a dispersal order, is ineffective, other techniques may be employed.
 - b. Generally, officers should be assigned to teams of sufficient size to be effective.

2. Containment and Arrest for Violent Criminal Activity

- a. If violent criminal activity is occurring, and the crowd has failed to disperse after the required announcements, officers may contain the crowd or a portion of the crowd for purposes of making multiple, simultaneous arrests.
 - (1) As described below, this technique shall not be used in response to non-violent civil disobedience.
 - (2) This technique shall not be used simply to disperse a crowd after an unlawful assembly declaration.
- b. Officers should not be sent into a hostile crowd solely to communicate with them. Officers should not penetrate a crowd for an individual arrest unless the targeted individual is involved in criminal conduct which endangers persons or property. The decision to move into the crowd should generally be under the direction of the Incident Commander or designee.
- c. Persons who make it clear that they seek to be arrested (e.g., sitting down, locking arms) shall be arrested and not subjected to other dispersal techniques.
- d. Arrests of non-violent persons shall be accomplished by verbal commands and persuasion, handcuffing, lifting, carrying, or the use of lesser controlling force, such as control holds, pressure point techniques, and the bent-wrist control hold or the use of OPNs, consistent with Department Procedure 1.04 - Use of Force.
- e. Where remaining demonstrators have been advised that they will be subject to arrest if they choose to remain and still refuse to disperse, a member of the arrest team shall individually advise each demonstrator that he or she is under arrest before the application of any force to remove locking devices or to move the demonstrators.
- f. In the event control holds are necessary, precautions should be taken to assure that arrestees are not injured or subjected to unnecessary or excessive pain, consistent with Department Procedure 1.04.
- g. The decision to use control holds, and the reasons for applying force shall be documented on all appropriate forms and in Blue Team, consistent with Department Procedure 1.04.
- h. On occasion, persons involved in a riot or unlawful assembly go mobile and commit criminal acts such as assault, vandalism, theft, etc., while actively fleeing or avoiding law enforcement. In these

dynamic situations, officers may use techniques that are reasonable and compliant with existing policy, procedure, and law to encircle/contain such groups and affect the appropriate arrests.

3. Police Formations and Use of Batons

- a. If a crowd refuses to disperse after the required announcements, mobile field force formations may be used to move or disperse the crowd.
- b. Batons may be visibly displayed and held in a ready position during formations.
- c. Batons shall only be used as specified in DP 1.04 – Use of Force.

4. Use of Munitions

- a. **See Section X of this Procedure for limitations on the use of munitions.**
- b. Unlawful assemblies are created when some or all involved in the assembly begin to violate local, state, or federal laws. It poses a unique situation for law enforcement to potentially control or arrest a large group of people, acting in concert.
- c. In these situations, less lethal tools may be a force multiplier, making it safer for all involved following the declaration of an unlawful assembly in moving/dispersing the riotous crowd and/or making arrests.
- d. Use of Specialty Munitions (DP 1.36) – Use of specialty munitions shall comply with Department Procedure 1.36. Generally, munitions 1-4, listed below, may be used while on the line and should be a coordinated effort directed by an Incident Commander. Munitions 1-4 may generally be used in coordination with the SWAT Munitions Team.

Authorization for munitions 5 and 6, listed below, shall be obtained by an Assistant Chief level officer and carried out by the SWAT munitions Team Leader

- (1) OC spray (Oleoresin Capsicum)
- (2) 40 mm foam baton rounds
- (3) Pepperballs (OC)
- (4) Flashbangs

- (5) CS gas grenades
- (6) Rubber Sting Balls- defensive maneuver for law enforcement personnel when faced with overwhelming aggression placing officers in immediate physical risk of serious bodily injury or death.

5. Arrests

- a. The Prisoner Processing Unit should be consulted before the event should mass arrests be anticipated.
- b. All arrests shall be based upon probable cause and conducted in compliance with existing Department Procedure 6.02 – Booking Procedures.
- c. All persons subject to arrest during a demonstration or crowd event shall be handcuffed per Department Procedure 6.01 – Handcuffing, Restraining, Searching, and Transporting Procedures.
- d. Officers should be cognizant that flex-cuffs may tighten when arrestees' hands swell or move, sometimes merely in response to pain from the cuffs themselves.
- e. Each unit involved in detention or transportation of arrestees with flex-cuffs should have a flex-cuff cutter and adequate supplies of extra flex-cuffs readily available. When arrestees complain of pain from overly tight flex-cuffs, members shall examine the cuffs to ensure a proper fit.

6. Video Recording by Department Members

- a. The goal of police involvement at peaceful First Amendment activities is to preserve the peace, prevent criminal activity, control traffic, and facilitate the safe exercise of an individual or group's First Amendment rights.
- b. Consistent with Department Procedures 1.49 and 3.26, Department members should refrain from video recording or photographing lawful First Amendment Activity. During lawful First Amendment Activity, officers should operate Body-Worn Cameras (BWCs) in the buffering/Stand-by mode. If officers witness crimes occurring among the demonstrators or believe an arrest is likely, they should begin recording in the Event mode, consistent with Department Procedure 1.49.
- c. When there is a reason to believe that a planned event has the potential for unlawful activity, the Incident Commander should contact the Media Services Unit to coordinate with the

Supplemental Video Team (SVT), consistent with Department Procedure 3.26

- d. Refer to the Media Services Unit Operations Manual for further details regarding the use of the Supplemental Video Team.
- e. If the Incident Commander or designee determines that a lawful assembly has turned into an unlawful assembly, officers should be directed to place BWCs in Event mode to begin recording the unlawful activity. Additionally, the Incident Commander or designee should coordinate with the Supplemental Video Team (SVT) to provide supplemental video documentation of the event.
- f. Any video captured by either Body Worn Camera or the Supplemental Video Team will be properly preserved per Department Procedures 1.49 and 3.26.

X. USE OF ENERGY PROJECTILES AND CHEMICAL AGENTS TO DISPERSE A CROWD (ASSEMBLY BILL 48)

- A. Use of kinetic energy projectiles and chemical agents shall not be used to disperse an assembly, protest, or demonstration, except as authorized by AB 48, which added Section 13652 to the Penal Code. **All sworn members of the Department shall comply with the requirements and standards set forth in Penal Code section 13652.**
- B. Penal Code section 13652 reads as follows:
 - (a) Except as otherwise provided in subdivision (b), kinetic energy projectiles and chemical agents shall not be used by any law enforcement agency to **disperse** any assembly, protest, or demonstration.
 - (b) Kinetic energy projectiles and chemical agents shall only be deployed by a peace officer that has received training on their proper use by the Commission on Peace Officer Standards and Training for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control, and only in accordance with all of the following requirements:
 - (1) De-escalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed.
 - (2) Repeated, audible announcements are made announcing the intent to use kinetic energy projectiles and chemical agents and the type to be used, when objectively reasonable to do so. The announcements shall be made from various locations, if necessary, and delivered in multiple languages, if appropriate.

- (3) Persons are given an objectively reasonable opportunity to disperse and leave the scene.
 - (4) An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and kinetic energy projectiles or chemical agents are targeted toward those individuals engaged in violent acts. Projectiles shall not be aimed indiscriminately into a crowd or group of persons.
 - (5) Kinetic energy projectiles and chemical agents are used only with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable.
 - (6) Officers shall minimize the possible incidental impact of their use of kinetic energy projectiles and chemical agents on bystanders, medical personnel, journalists, or other unintended targets.
 - (7) An objectively reasonable effort has been made to extract individuals in distress.
 - (8) Medical assistance is promptly provided, if properly trained personnel are present, or procured, for injured persons, when it is reasonable and safe to do so.
 - (9) **Kinetic energy projectiles shall not be aimed at the head, neck, or any other vital organs.**
 - (10) **Kinetic energy projectiles or chemical agents shall not be used by any law enforcement agency solely due to any of the following:**
 - (A) **A violation of an imposed curfew.**
 - (B) **A verbal threat.**
 - (C) **Noncompliance with a law enforcement directive.**
 - (11) If the chemical agent to be deployed is tear gas, only a commanding officer at the scene of the assembly, protest, or demonstration may authorize the use of tear gas.
- (c) This section does not prevent a law enforcement agency from adopting more stringent policies.
- (d) For the purposes of this section, the following terms have the following meanings:
- (1) “Kinetic energy projectiles” means any type of device designed as less lethal, to be launched from any device as a projectile that may cause bodily injury through the transfer of kinetic energy and blunt force trauma. For purposes of this section, the term includes, but is

not limited to, items commonly referred to as rubber bullets, plastic bullets, beanbag rounds, and foam tipped plastic rounds.

- (2) “Chemical agents” means any chemical that can rapidly produce sensory irritation or disabling physical effects in humans, which disappear within a short time following termination of exposure. For purposes of this section, the term includes, but is not limited to, chloroacetophenone tear gas, commonly known as CN tear gas; 2-chlorobenzalmalononitrile gas, commonly known as CS gas; and items commonly referred to as pepper balls, pepper spray, or oleoresin capsicum.
- (e) This section does not apply within any county detention facility or any correctional facility of the Department of Corrections and Rehabilitation.

NOTE: This directive does not prohibit officers’ abilities to use appropriate force options to defend themselves or others as defined in Department Procedure 1.04.

XI. RESOURCES

- A. Appropriately managing First Amendment Activity can be resource intensive. Several units within the San Diego Police Department can lend special skills and equipment to facilitate safe First Amendment Activities and a safe resolution to unlawful assemblies and riot scenarios. Each unit abides by Department Directives and the Unit's Operations Manual. Some of these resources include:

1. Air Support Unit
2. Bicycle Teams
3. Criminal Intelligence Unit
4. Emergency Medical Services (Fire-Rescue)
5. Homeland Security/Critical Incident Management Unit
6. Information Services and Data Systems
7. In-Service Training Unit
8. Legal Advisors
9. Media Services Unit
10. Mobile Field Force-Bravo and Delta Platoons
11. Mobile Field Force "Alpha" deployments

12. Mobile Field Force Wave deployments
13. Motors Unit
14. Operational Support Administration
15. Prisoner Processing Unit
16. Special Event Traffic Controllers (SETCs)
17. SWAT
18. SWAT Munitions
19. Traffic Division
20. Unmanned Aerial Systems (UAS) Unit
21. Volunteer Services

XII. PUBLIC INFORMATION AND THE MEDIA (DPs 1.30, 1.31 and 8.09)

- A. The media have a right to cover First Amendment Activity, including the right to record the event on video, film, photographs, and other mediums.
- B. The media shall never be targeted for dispersal or enforcement action because of their media status. Officers shall not request nor require media or other members of the public to stop, pause, or discontinue audio or video recording.
- C. Police Department members shall accommodate the media, to the extent possible and reasonable. When the immediate area surrounding a command post, police line, or rolling closure at the site of First Amendment Activity has been closed, California Penal Code section 409.7 allows duly authorized members of the media access to the closed area. This access applies to a “duly authorized representative” of any news service, online news service, newspaper, or radio or television station, or network.
 1. If access is granted to closed areas, members of the media are still not permitted entry into a command post or allowed to move through police lines and interfere with police actions. These violations may be cause for removing a journalist from a closed area or charging an offense not precluded by 409.7 PC. **Refer to DP 1.30 for further details regarding classification as a duly authorized media representative and PC 409.7.**
 - a. Even after a dispersal order has been given, clearly identified members of the media shall be permitted to carry out their professional duties unless their presence would unduly interfere

with enforcement action. A member of the media shall not be cited for the failure to disperse, a violation of a curfew, or a violation of Penal Code section 148(a)(1) for gathering, receiving, or processing information.

- b. Persons with a known history of participating and coordinating activities at events, interfering with police operations, or engaging in criminal conduct should be referred to a supervisor if they identify themselves as a journalist or member of the media and request access to closed areas.
- D. Members of the media may not interfere with arrests, assault officers, or commit criminal acts under local, state, or federal law. Any criminal offenses by a media member shall be thoroughly documented, detailing specific facts, witnesses, and evidence.

XIII. MUTUAL AID REQUESTS

Refer to Department Procedure 8.10, Critical Incidents - Mutual Aid.

XIV. AFTER ACTION REPORTS

Refer to Department Procedure 8.11, Incident Report Procedures.