

## Commission on Police Practices

### Policy Committee Roundtable Discussion on SDPD's New Protest Policy

**Thursday, March 18, 2021  
6 p.m. – 8 p.m.  
via Zoom Webinar Platform**

### Agenda

This roundtable discussion is open to the public and will be available online via Zoom. Click [HERE](#) to join/participate in this meeting at its scheduled time. Please see the rules/procedures for submitting public comment at the bottom of the agenda. Public comment **will be limited** to the topic of this roundtable discussion which is independent investigations.

This meeting will be posted on YouTube the day after the meeting adjourns and can be accessed by clicking [HERE](#).

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|-----------|---|
| 6:00      | <b>Call to Order/Welcome/Roll Call</b><br>Brandon Hilpert, Policy Committee Chair   |
| 6:05      | <b>Non-Agenda Public Comment</b>  |
| 6:10–6:25 | <b>Overview of Policy Committee's Proposed Recommendations</b><br>Brandon Hilpert, Policy Committee Chair   |
| 6:25–6:30 | <b>Introduction of the Community Roundtable Discussion<br/>and Introduction of Guest Presenters</b><br>Brandon Hilpert, Policy Committee Chair<br>Kate Yavenditti, National Lawyers Guild |
| 6:30–6:45 | <b>San Diego National Lawyers Guild's Legal Observer Program</b><br>Kylee Belanger, Program Coordinator   |
| 6:45–7:00 | <b>Criminal Defense Attorney's Perspective</b><br>Alex Landon, Esq.   |
| 7:00–8:00 | <b>Community Discussion on SDPD's New Protest Policy</b><br>Brandon Hilpert, moderator  |

### Next Steps and Adjournment


#### Materials Provided:

- SDPD Procedure 4.17 First Amendment Activity Facilitation & Management
- CRB/CPP Activities to Date

- CPP Policy Committee Potential Recommendations to SDPD's New Protest Policy –Presented at CPP Policy Committee Meeting on February 25, 2021

**In lieu of in-person attendance, members of the public may participate and provide comment via virtual attendance on zoom or using the webform, as follows:**

**Virtual Testimony:**

Members of the public may provide comment on the comment period for Non-agenda Public Comment or Agenda Public Comment during the meeting, following the  [Public Comment Instructions](#).

**Written Comment through Webform:**

In lieu of in-person attendance, members of the public may submit their comments using the [webform](#). If using the webform, indicate the agenda item number you wish to submit a comment for. Instructions for word limitations and deadlines are noted on the [webform](#). On the [webform](#), members of the public should select Commission on Police Practices (even if the public comment is for a Commission on Police Practices Committee meeting).

The public may attend a meeting when scheduled by following the attendee meeting link provided below. To view a meeting archive video, click [here](#).

Only comments submitted no later than 4pm the day prior to the meeting using the public comment webform will be eligible to be read into the record. If you submit more than one comment on webform per item, only one comment will be read into the record for that item. **Comments received after 4pm the day prior and before 8am the day of the meeting** will be provided to the Commission or Committee and posted online with the meeting materials. All comments are limited to 200 words. Comments received after 8am the day of the meeting, but before the item is called, will be submitted into the written record for the relevant item.

If you attach any documents to your comment, it will be distributed to the Commission or Committee in accordance with the deadlines described above.

**Joining the roundtable discussion on Zoom as an attendee:**

Join from a PC, Mac, iPad, iPhone or Android device:

Please click this URL to join.

<https://sandiego.zoomgov.com/j/1611576950?pwd=d3pZU09XUTBDanlKZ3Yydnc2aWpMZz09>

Passcode: BiYh16

Or join by phone:

Dial(for higher quality, dial a number based on your current location):

US: +1 669 254 5252 or +1 646 828 7666 or +1 669 216 1590 or +1 551 285 1373 or 833 568 8864  
(Toll Free)

Webinar ID: 161 157 6950

Passcode: 544710

International numbers available: <https://sandiego.zoomgov.com/u/adGj4xo9A1>

Or an H.323/SIP room system:

H.323: 161.199.138.10 (US West) or 161.199.136.10 (US East)

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SIP: [1611576950@sip.zoomgov.com](mailto:1611576950@sip.zoomgov.com)

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## **Details and Information Provided at CPP Policy Committee Meeting of February 25, 2021**

### **CRB/CPP Activities to Date**

- May-June 2020 – Policy Committee began researching and reviewing policies from across the country. Including: San Francisco CA, Oakland CA, BART, Washington DC, Seattle WA, Fresno CA, NACOLE  
Reviewed cities that modified policies based on recent events.
- May 2020 – Reached out to ACLU and NAACP San Diego requesting feedback on what they would potentially like to see from a new protest policy.
- June 2020 – Policy Committee met and presented policies from Oakland CA, Washington DC, Seattle WA and Madison WI.
- CRB Executive Committee reviewed SWAT and Mobile Field Force Guide documents that illustrate how SDPD currently addresses protest activities and unlawful assemblies.
- Worked with SDPD to explain the need for a stand-alone policy that lays out how SDPD will respond to protest related activities
- Discussed the pros/cons of officers using BWCs during protest activities.
  - Pros: Proves that there was a legitimate reason for a declaration of unlawful assembly
  - Cons: Public concern about
- Reviewed major policy changes other cities made.
  - Most common elements reflected in policy revisions:
    - Modify or ban the use of chemical agents (OC spray)
    - Modify or ban the use of flash bang devices
    - Modify or ban the use of “rubber bullets”

## CPP Policy Committee Potential Recommendations for SDPD's New Protest Policy (Presented at Policy Committee Meeting of February 25, 2021)

- Restate that de-escalation (1.55) and duty to intervene (1.56) policies remain in full force and effect during protest activities.
- Need to include a section that details juvenile related issues during protests.  
Ex. Restate existing limitations on handcuffing minors, taking minors into custody etc.
- Page 7. VII. A.  
Although this is the legal definition of an unlawful assembly, I'm concerned about the word "boisterous." Would like to see a section that specifically states that a protect activity will not be declared unlawful simply because it is loud.  
Need to see the proof of a clear and present danger of violence (or property damage) for an unlawful assembly to be declared.
- Page 7. VII. C. 2.  
This conflicts with 7 below. Section 2 states "The officer is not required to use any particular words." However, 7 provides specific language required.
- Page 8. VII. C. 3.  
In addition to the dispersal order being given at least 3 times, I would like there to be a minimum of 1 minute (possibly 2 minutes) between each order.  
Officers must/shall have their BWCs activated to record the dispersal order; and officer stationed behind a crowd must/shall also have their BWCs on to record audible confirmation of hearing/receipt of dispersal order.

"Ample means of egress" – (QUESTION: What about individuals who may have mobility difficulties?)

- Page 8. VII. C. 4.  
Orders given in English and Spanish. (QUESTION: What about other languages, communication for those hearing impaired (ASL, or mobile traffic signage for planned protests?) etc.)
- Page 8 VII. C. 7.  
Dispersal order. Include a time requirement for individuals to comply with dispersal order, but not less than 3 minutes to comply.
- Page 8. VII. C. 8  
EMS Staging. In addition to staging EMS, EMS providers must have proper materials on hand for the situation. For example, water for OC decontamination per existing policy 1.06 (Use of Liquid Chemical Agent).
- Page 9. VII. C. 10  
Restate existing BWC policy continues to apply during protest activities. BWC Policy (1.49), section V. K. 8 describes "Demonstrations" and states officers should refrain from recording during peaceful protests.

Consider changes or additions to BWC video retention period. (Perhaps standard retention period days if no unlawful assembly declared. New retention period if not already defined in existing policy.)

- Page 9. VII. C. 13.  
"reasonable time will be allowed for a crowd to comply with police commands before

taking action.” This must specify what “reasonable” is. (Ex. “a reasonable amount of time, but not less than 3 minutes, will be allowed....”). ? Must be out of the scene, or starting to depart.

- Page 11. IX. C. 2. c.

Persons exhibiting “passive resistance” (behavior that consists of a refusal to comply with verbal commands and does not convey a threat to the officer or another person) shall not be subject to the use of “impact weapons,” “impact weapon control holds,” “pain compliance” or “pressure points.” (These are typically allowed under 1.04 Use of Force Matrix.) Reiterate that use of OC agents will NOT be utilized.

Persons exhibiting “active resistance” (behavior that consists of a refusal to comply with verbal commands **AND** conveys a threat to the officer or another person, or consists of physical opposition to attempts of control by the officer)...(QUESTION: What restrictions should come into play?)

- Page 12. IX. C. 4. c.

Listing of authorized munitions during protest activities.

I feel this needs to have significant descriptions as to when and how specialty munitions are utilized. Items 1-4 should be listed in order of increasing use. 40 mm foam baton rounds must be used only as a last resort.

5 “CS gas grenades” (tear gas) need to have explicit references of when the use is permissible.

6 “rubber sting balls” – need clarification on exactly what these are, how and when they can be utilized.

- Page 13. IX. C. 5. d and e.

Flexcuffs – Officers shall replace flex-cuffs should they tighten utilizing the existing fingertip rule per policy 6.01 V. C. (“Inserting a fingertip between the handcuffs and the prisoner’s wrist will ensure sufficient space and reduce the risk of injury.”)

Officers to mark where the initial placement of the flex-cuffs are set.

- Page 13. IX. C. 6. b.

Regarding BWC usage. “should” needs to be replaced with “shall” or “must” (otherwise, it is not required for officers to activate their BWC).

If an enforcement event occurs, officers “shall” or “must” immediately begin recording. Restate that existing BWC policy (1.49) remains in full force and effect during protest activities.

- Page 15. XI.

Add a new section. Officer shall not request nor require media or members of the public to stop/discontinue recording.

**SAN DIEGO POLICE DEPARTMENT  
PROCEDURE**

**DATE:** FEBRUARY 17, 2021

**NUMBER:** 4.17 – LEGAL

**SUBJECT:** FIRST AMENDMENT ACTIVITY FACILITATION AND  
MANAGEMENT

**RELATED POLICY:** DP 4.16

**ORIGINATING DIVISION:** HOMELAND SECURITY / CIMU

**NEW PROCEDURE:** ☒

**PROCEDURAL CHANGE:** ☐

**SUPERSEDES:** NEW PROCEDURE

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**I. PURPOSE**

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

**II. SCOPE**

This procedure applies to all 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, sections 1 through 3, 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 walk-outs, 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.

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.

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.

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 collocating 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)

**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, SDSD, 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.

**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 2020, 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 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 Police 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 command all those assembled at (give specific location) to immediately disperse. You may move to (give a suitable location for crowd destination). If you do not do so, you will be arrested. If you refuse to move, chemical agents and other weapons will be used. (Provide the chemical agent/projectile warning only if their use is anticipated.)**

**Yo soy (name and rank) un oficial del departamento de policia de San Diego. Por Medio de 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). Sino hacen eso, ustedes seran arrestados. Si usted rehusa moverse se usara gas lacrimojeno y otras armas. (Provide the chemical agent/projectile warning only if their use is anticipated.)**

8. Emergency Medical Services personnel should be staged before the use of crowd dispersal techniques defined below unless exigent circumstances exist.
9. 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.

10. 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.
11. 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.
12. 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.
13. 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.
14. 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.
15. 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.
16. 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.
17. 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.
18. 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 P.C. 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.

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.
    - i. As described below, this technique shall not be used in response to non-violent civil disobedience.
    - ii. 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. 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.
  - b. 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.
  - c. 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.

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

## 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 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. 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

## **XI. 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.
- C. Police Department members shall accommodate the media, to the extent possible and reasonable, per Department Procedure 1.30.
- D. Members of the media may not interfere with arrests, assault officers, or commit acts that qualify as criminal violations under local, state, or federal law. Any criminal offenses by a media member shall be thoroughly documented, detailing specific facts, witnesses, and evidence.
- E. Even after a dispersal order has been given, clearly identified media shall be permitted to carry out their professional duties unless their presence would unduly interfere with the enforcement action.

**XII. MUTUAL AID REQUESTS**

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

**XIII. AFTER ACTION REPORTS**

- A. Refer to Department Procedure 8.11, Incident Report Procedures.