

Memorandum

TO: ALL DEPARTMENT PERSONNEL

FROM: Anthony Mata
Chief of Police

**SUBJECT: DUTY MANUAL REVISIONS:
FIRST AMENDMENT ACTIVITIES
AND CIVIL DISTURBANCES**

DATE: August 16, 2022

APPROVED

Memo #2022-041

BACKGROUND

On September 15, 2020, the Department presented a report to the City Council entitled [*Police Department Preliminary After Action Report for the Public Protests, Civil Unrest, and Law Enforcement Response from May 29 - June 7, 2020 \(link\)*](#). This report made numerous recommendations including the following:

Recommendation #1k reads: “Ensure formal debriefings are conducted after unusual or tactically complex events to enable rapid knowledge transfer.” (This recommendation is addressed in Duty Manual section L 2319 below.)

Recommendation #3c reads: “Revise the Department’s dispersal order script to include POST recommended language, including an explicit warning about force and gas.” (This recommendation is addressed in Duty Manual section L 2312 below.)

Recommendation #3d reads: “Pre-record dispersal orders in the three languages most likely to be encountered in San Jose: English, Spanish and Vietnamese.” (This recommendation is addressed in Duty Manual section L 2312 below.)

Recommendation #3e reads: “Incorporate into protocols a recommendation that unlawful assembly orders be repeated periodically once the Department is prepared to take enforcement action to avoid prolonged repeated announcements that may cause the crowd to become complacent.” (This recommendation is addressed in Duty Manual section L 2312 below.)

Recommendation #3f reads: “Unlawful assembly orders should be given repeatedly and then enforcement action taken soon thereafter so the crowd does not become emboldened or complacent.” (This recommendation is addressed in Duty Manual section L 2312 below.)

Recommendation #3g reads: “Requirement that briefings prior to deployment to large-scale events includes a review of rules of engagement, use of force and other relevant policies.” (This recommendation is addressed in Duty Manual section L 2300.7 below.)

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Recommendation #3h reads: “Establish a system to accurately record and document the deployment of less lethal weapons, to include the date, time, circumstances and number of munitions.” (This recommendation is addressed in Duty Manual section L 2317 below.)

Recommendation #3i reads: “Supervisors and commanders should ensure the accurate documentation of all events, facts and uses of force as soon as practicable after the event.” (This recommendation is addressed in Duty Manual sections L 2317 and L 2318 below.)

Recommendation #3k reads: “Develop written guidelines for prisoner processing during large-scale events that provide clear direction to arresting, transporting, and booking officers.” (This recommendation is addressed in Duty Manual section 2305.4 below.)

Recommendation #5c reads: “When dispersal orders are given, they should be published on various social media platforms and include instructions that the order applies to everyone present.” (This recommendation is addressed in Duty Manual section L 2312.5 below.)

Recommendation #5d reads: “Before deployment, commanders should remind personnel of policies and protocols for interaction with media, and operational plans should include such reminders.” (This recommendation is addressed in Duty Manual section L 2300.7 below.)

On March 1, 2022, the OIR Group presented a report to the City Council entitled [Independent After Action Regarding the Events of May 29 – June 7, 2020 \(link\)](#). This report made numerous recommendations including the following:

Recommendation #6 reads: “SJPD should revise the Department’s dispersal order script in the three predominant languages to include an explicit warning about arrest, force and gas should the order be defied, and clear instruction regarding the safe routes of departure.” (This recommendation is addressed in Duty Manual section L 2312 below.)

Recommendation #7 reads: “SJPD should revise the Department’s Demonstrations and Civil Disturbances policy to include an explicit warning about arrest and use of force (including chemical munitions) should the order be defied, and clear instruction regarding safe routes of departure.” (This recommendation is addressed in Duty Manual section L 2312 below.)

Recommendation #9 reads: “SJPD should revise the Department’s Demonstrations and Civil Disturbances policy to include an explicit warning about arrest and use of force (including chemical munitions) should the order be defied, and clear instruction regarding safe routes of departure.” (This recommendation is addressed in Duty Manual section L 2312 below.)

Recommendation #10 reads: “SJPD should revise the Department’s Demonstrations and Civil Disturbances policy to include that when dispersal orders are given, they should also be published on various social media platforms immediately.” (This recommendation is addressed in Duty Manual section L 2312.5 below.)

Recommendation #11 reads: “SJPd should ensure that briefings in advance of crowd control situations include reinforcement of the Department’s expectations regarding the reporting of uses of force.” (This recommendation is addressed in Duty Manual section 2300.7 below.)

Recommendation #12 reads: “SJPd should ensure that supervisors responsible for reviewing use of force reports ensure the reports are sufficiently detailed before approval.” (This recommendation is addressed in Duty Manual section L 2317 below.)

Recommendation #21 reads: “The Department should develop a policy on mass arrest and booking procedures that establishes a clearly articulated plan for handling the range of necessary tasks and includes detailed information about necessary forms, staffing assignments and division of responsibilities.” (This recommendation is addressed in Duty Manual section L 2305.4 below.)

Recommendation #25 reads: “SJPd and City leadership (specifically, the Deputy Managers assigned to manage the Emergency Operations Center) should continue to collaborate, especially around intelligence-sharing.” (This recommendation is addressed in Duty Manual section L 2316 below.)

In response to these recommendations, the Department is revising Duty Manual chapter L 2300 – FIRST AMENDMENT ACTIVITIES AND CIVIL DISTURBANCES.

ANALYSIS

The Duty Manual has been revised to reflect changes described below. Additions are shown in *italics and underlined*. Deletions are shown in ~~strike-through~~ form.

L 2300 FIRST AMENDMENT ACTIVITIES AND CIVIL DISTURBANCES:

No Change – Included for Continuity

It is neither the intention nor the desire of the Department to suppress or restrain lawful activity. The Department will expend whatever resources are necessary to protect the rights of any person or group to conduct a peaceful and lawful First Amendment activity at any legal location within the City. However, unlawful civil disturbances require prompt and effective action by the Department. The Department will take appropriate legal steps to discourage unlawful conduct whenever it occurs. First Amendment activity includes speech, assembly, and petition activity that is protected by the First Amendment of the United States Constitution and Article I of the California Constitution.

L 2300.5 FIRST AMENDMENT ACTIVITY (EXAMPLES OF):

No Change – Included for Continuity

The First Amendment of the U.S. Constitution protects freedom of religion, speech and the press and protects the rights of the people to peaceful assembly and to petition the government for redress of grievances. Article I of the California Constitution has similar protections. Activity protected by the U.S. and California Constitutions includes,

but is not limited to protests, demonstrations, rallies, assemblies, and marches on City streets, sidewalks, plazas, parks, and other similar areas open to the general public that are owned and/or controlled by the City.

L 2300.7 **BRIEFING PRIOR TO DEPLOYMENT AT A FIRST AMENDMENT ACTIVITY OR CIVIL DISTURBANCE:**

Added 08-16-22

If time and circumstances permit, all Department members or employees of another law enforcement agency providing mutual aid shall be briefed prior to deployment at a First Amendment activity or civil disturbance. In the event the activity or disturbance lasts more than one day, the briefings should be held, at minimum, each day. Elements of briefings should include but are not limited to the following:

- *Background*
- *Objectives*
- *Use of force procedures and documentation (L 2317)*
- *Arrest procedures and documentation (L 2305.4)*
- *Relevant policies and procedures*
- *Assignments*
- *Chain of command*
- *Safety plans*
- *Interactions with the media (L 2306 – L 2306.9)*
- *Expectations on participation (L 2302.1), demeanor (L 2302.2), and equality of treatment (L 2303)*

L 2301 **MINIMIZE THE POTENTIAL FOR VIOLENCE AT A FIRST AMENDMENT ACTIVITY OR CIVIL DISTURBANCE DEMONSTRATIONS/CIVIL DISTURBANCES:**

Revised 08-16-22

Tactics employed by dissidents engaged in disruptive activities frequently include efforts to draw the police and other public officials into responses likely to produce violence and injury to participants and thus garner support for their cause. It is therefore incumbent upon officers to resolve disruptive situations in a manner which will minimize the potential for violent confrontations by performing assigned tasks within the framework of the following principles.

L 2302 **DEPARTMENT RESPONSE TO DEMONSTRATIONS:**

Revised 08-16-22

Demonstrations are often highly emotional incidents. The demonstrators and others in the area are committed to their various causes and their rights, which may be in conflict. In such situations, officers will strive to remain objective in order to maintain effectiveness. Once an officer's objectivity is lost or even appears to be lost, the officer's mere presence at a demonstration may increase tensions and make the police task even more difficult. ~~Officers assigned to the scene of a demonstration will strive to maintain an outward appearance of calmness, whether the task involved is simply~~

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~~standing by protecting demonstrators from hostile onlookers or making necessary arrests of violent demonstrators.~~

L 2302.1 **PARTICIPATION IN A FIRST AMENDMENT ACTIVITY:**

Added 08-16-22

On duty Department members at a First Amendment activity including but not limited to protests, demonstrations, rallies, assemblies, or marches should not participate in the event in a manner that would advocate for or against the cause or reason for the event without prior approval from the Chief of Police or their designee.

L 2302.2 **DEMEANOR AT FIRST AMENDMENT ACTIVITIES:**

Added 08-16-22

On duty Department members at a First Amendment activity including but not limited to protests, demonstrations, rallies, assemblies, or marches should maintain a professional demeanor at all times. Refer to Duty Manual section C 1308 – COURTESY for further information.

L 2303 **EQUALITY OF TREATMENT:**

Revised 08-16-22

Officers will treat all persons at a First Amendment activity, including demonstrators, onlookers, or counter demonstrators, with equal treatment. Additionally, when enforcing the law at a First Amendment activity, equal service to all persons is essential. Refer to Duty Manual section C 1305 – EQUALITY OF ENFORCEMENT for further information.

L 2305.4 **ARRESTS AT A FIRST AMENDMENT ACTIVITY OR CIVIL DISTURBANCE:**

Added 08-16-22

When an arrest is made at a First Amendment activity, the following procedures shall be followed:

- A new event number will be created and cross-referenced to the event number for the First Amendment activity. The new event number should be titled according to the reason for the arrest (e.g., vandalism, battery, failure to disperse, etc.)
- The individual being booked will be booked under the new event number.

The Department recognizes the need to keep personnel in service and available during a civil disturbance. As a result, the Department may use processing procedures where arrestees are not arrested, processed, transported, or booked by the same person. When this happens, Department members will adhere to the following procedures:

- The arresting officer is responsible for providing to the processing, transporting, and/or booking officer(s) their name and badge number, the

arrestee's full name and date of birth, the location and time of the arrest, and the probable cause for the arrest.

- The arresting officer is responsible for notifying the processing, transporting, and/or booking officer(s) of any use of force that may have caused an injury or complaint of pain to the arrestee.
- The arresting officer is responsible for documenting the arrest on a General Offense report. To do so, the arresting officer must obtain the information necessary to complete the documentation. This includes the identity of the processing, transporting, and/or booking officer(s). A supplemental report may be completed by the processing, transporting, and/or booking officer(s) to assist in the documentation.

L 2308

ONLOOKERS AT A FIRST AMENDMENT ACTIVITY ~~THE SCENE OF A DEMONSTRATION, OR CIVIL DISTURBANCE OR OTHER INCIDENT:~~

Revised 08-16-22

Onlookers shall be permitted to observe and overhear conversations in detention or arrest situations in public areas when it is reasonable to do so. Onlookers may remain in the vicinity as long as the presence of the onlookers do not interfere with the officers' duties or create a safety concern for the officer, person detained or onlooker.

Onlookers have the right to record the incident, and the recording device (camera, video camera, tape recorder, and any film or tape from a recording device) cannot be seized by an officer at the scene except under the authority of a search warrant. If the immediate circumstances lead the officer to believe that the recording contains crucial evidence, the officer may ask the citizen to voluntarily surrender the recording material.

If the citizen refuses to give consent for the seizing of the recording material and there is a possibility of criminal prosecution or civil liability for the City or its employees arising out of the incident, the officer should ask for the name, address and telephone number of the onlooker who records the incident. If the onlooker refuses to provide identification, the officer should obtain any available information at the time that will allow investigators to identify the onlooker and obtain a search warrant for the recording materials.

Occasionally, onlookers may record incidents involving juveniles or victims of a sexual assault. In these circumstances, officers are not obligated to advise the onlookers of the rights of privacy of these victims. A juvenile or victim of a sexual assault may take legal action against an onlooker who publishes or distributes recorded material that would not have otherwise been released by an agency of the criminal justice system.

Onlookers must maintain a reasonable distance when monitoring police activities depending on the circumstances. Onlookers are allowed to approach within hearing distance provided that the control of the situation can be maintained by the officer. Onlookers who are clearly at a reasonable distance will not be subject to a "move-on" order or threatened with arrest.

The sensitive nature of these situations requires that officers make every attempt to diplomatically resolve conflicts involving onlookers. Depending on the stability of the situation, officers will advise onlookers of their legal rights and limitations under this order. If an onlooker continues to create a disturbance, a supervisor is called to resolve the conflict. All highly sensitive incidents are reported immediately to a supervisor and recorded on a Crime Report to ensure documentation.

Nothing in this section is meant to restrict an officer from arresting any person who willfully resists, delays, or obstructs any peace officer in discharging his or her duties according to the provisions of Penal Code Section 148. Nor does this section restrict an officer from arresting any person who willfully commits a trespass as defined in Penal Code Section 602.

L 2309 DEPARTMENT RESPONSE TO CIVIL DISTURBANCE DISORDERS:
Revised 08-16-22

Due to the variety of situations existing during a civil disturbance disorder, it is not possible to establish procedures which would cover all contingencies. Therefore, the Department has established the following procedures to assist members assigned to the scene of a civil disturbance.

L 2312 ORDER TO DISPERSAL ORDER:
Revised 08-16-22

A dispersal order must be given before a person can be guilty of remaining at a place of a riot, rout, or unlawful assembly. If the supervisor in charge at the disturbance scene decides to declare an unlawful assembly, ~~such supervisor shall make an audible statement.~~ there are two options for providing the dispersal order: via combination of audio recording and providing specific details or by reciting the entire dispersal order script. The audio recording will provide the dispersal order in English, Spanish, and Vietnamese. The preferred method of giving the dispersal order is via combination of audio recording and providing specific details. When the dispersal is given in this manner, the dispersal order will haveing the following form:

Recording:

"I am (rank and name), a peace officer for the San Jose Police Department. I hereby declare this to be an unlawful assembly and in the name of the People of the State of California, order all those assembled at this (specify 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 or subject to other police action including the use of an acoustic hailing device, projectile impact weapons, and chemical agents, which include foam baton rounds, beanbag rounds, tear gas, CN, CS, OC, or pepper spray. Use of these devices or oOther police action could include the use of force which could result in serious injury. Penal Code section 409 prohibits remaining present at an unlawful assembly, which means that you must leave the area I just described. If you remain in the area I just described, you will be in violation of Penal Code section 409. ~~The following routes of safe dispersal are available (specify routes). It is now (specify time) and you have (specify a sufficient amount of time) to disperse."~~

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Audible statement by personnel at the scene:

I am **(rank and name)**, a peace officer for the San Jose Police Department. I hereby declare this to be an unlawful assembly and in the name of the People of the State of California, order all those assembled at **(specify location)** to immediately disperse. The following routes of safe dispersal are available **(specify routes)**. It is now **(specify time)** and you have **(specify a sufficient amount of time)** to disperse.

When the dispersal order is given by reciting the entire dispersal order script, it will have the following form:

Audible statement by personnel at the scene:

"I am **(rank and name)**, a peace officer for the San Jose Police Department. I hereby declare this to be an unlawful assembly and in the name of the People of the State of California, order all those assembled at **(specify 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 an acoustic hailing device, projectile impact weapons, and chemical agents, which include foam baton rounds, beanbag rounds, tear gas, CN, CS, OC, or pepper spray. Use of these devices or other police action could result in serious injury. Penal Code section 409 prohibits remaining present at an unlawful assembly, which means that you must leave the area I just described. If you remain in the area I just described, you will be in violation of Penal Code section 409. The following routes of safe dispersal are available **(specify routes)**. It is now **(specify time)** and you have **(specify a sufficient amount of time)** to disperse."

The dispersal order statement may be made by loud speech, or amplified sound, ~~or pre-recorded message~~. The dispersal order must be given in a manner reasonably believed to be heard and understood by the intended audience. Signage may be used to assist in the dispersal order or to provide additional information. Consideration should be given to providing the dispersal order and audible statements in multiple languages and from multiple locations. The dispersal order should be repeated periodically—not continuously—once the Department is prepared to take enforcement action to avoid prolonged repeated announcements which may have an unintended escalation affect or cause the crowd to become complacent as appropriate to the intended audience.

Prior to orders for arrest, the highest ranking Department member on scene or their designee should, if time and circumstances permit, make a reasonable attempt to contact the event organizer to obtain voluntary compliance with dispersal orders.

If the crowd moves a significant distance from the area specified in the dispersal order, and it remains an unlawful assembly at that location, the dispersal order must be given again. In this case, the new location, safe routes, time, and amount of time for compliance shall be provided to the crowd. For this purpose, a significant distance is

one that would cause a reasonable person to question whether the dispersal order still applies to the crowd.

Reasonable time must be given for compliance with the dispersal order. The announcements should continue during that time. Once a reasonable amount of time has elapsed, orders for arrest may be given.

L 2312.5 **PUBLICATION OF DISPERSAL ORDER:**

Added 08-16-22

When dispersal orders are given, the Media Relations Unit shall publish the dispersal order, including event-specific locations, egress routes, and sufficient time for compliance on the Department's social media platforms as soon as practicable.

L 2313 **SUPPLEMENTARY INFORMATION:**

Revised 08-16-22

Riot experience throughout the United States has shown ~~that~~ in many cases minor incidents involving the police were responsible for initiating the trouble. With this in mind, the following procedures are observed unless specific orders to the contrary are issued by competent authority.

- Arrests must be thoroughly justified and only necessary force must be used in making them.
- Incidents must be handled as quickly as possible without creating a disturbance or attracting other persons.
- Areas of an incident or small riot should be closed off and ingress not allowed. Persons wishing to leave should be allowed and encouraged to do so.
- The Deputy Chief of the Bureau of Field Operations or their ~~his~~ designated alternate is responsible for field operations involving civil disturbances. Reports from the field will go directly to the Deputy Chief or designee in overall command. The officer in overall command will have the responsibility for deciding whether or not to notify the Assistant Chief of Police.

L 2314 **REQUESTS FOR ASSISTANCE:**

Revised 08-16-22

While the control of riots is primarily the responsibility of the Police Department, officers can expect assistance from other agencies if the riot grows very large. In the event such assistance is necessary, the Chief of the Police or, if unavailable, one of their ~~his/her~~ immediate subordinates will notify the highest ranking officer available at the Santa Clara County Sheriff's Department who will in turn make appropriate requests. The Chief of Police or a designee is delegated the responsibility of notifying the City Manager that a request for assistance has been made.

L 2315

CONTACTING FIRST AMENDMENT ACTIVITY EVENT ORGANIZERS:

Added 08-16-22

When the Department becomes aware of a pending First Amendment activity, the Deputy Chief of the Bureau of Field Operations or their designee should make a reasonable attempt to contact the event organizer to establish a line of communication between the Department and the event. The information sought should include, but not be limited to, the following:

- A contact person on the day of the event and a phone number at which they may be reached
- Whether the event is permitted or not by the City (i.e., through the Office of Cultural Affairs)
- Number of participants who are expected to be present
- Location of the expected event and any movement they expect to undertake
- Security plans
- If they expect any unlawful activity or antagonistic groups attending the event

In addition, the Deputy Chief of the Bureau of Field Operations or their designee should provide information including, but not limited to, the following:

- An event liaison on the day of the event and a phone number at which they may be reached
- The parameters by which the event would shift to an unlawful assembly
- A brief overview of the procedures after an event is declared an unlawful assembly

L 2316

**COORDINATION WITH THE CITY EMERGENCY OPERATIONS:
CENTER:**

Added 08-16-22

In the event the City opens the Emergency Operations Center (EOC) in response to a First Amendment activity or civil disturbance, the on-duty Patrol Captain or their designee shall be identified as the Department liaison with the EOC. To supply and receive information, the on-duty Patrol Captain or their designee shall maintain contact with the EOC by either being on-site or through regular communication via phone or video conference.

L 2317

USE OF FORCE AT A CIVIL DISTURBANCE:

Added 08-16-22

In the event of a use of force at a civil disturbance, Department members shall, as time and circumstances permit, comport with the procedural requirements (i.e., providing first aid, notifications, investigation, documentation, and supervisor review) of Duty Manual chapter L 2600 - USE OF FORCE for all uses of force. If the procedural requirements of L 2600 are unable to be met contemporaneous with the use of force, they shall be completed as soon as practicable.

Note: This section does not change to the substantive rules in Duty Manual chapter L 2600 regulating all authorized uses of force.

L 2318 **POST EVENT DOCUMENTATION:**
Added 08-16-22

The Incident Commander of a First Amendment activity or civil disturbance shall designate a Department member to memorialize full documentation of the event. This report may be assigned to the beat officer where the incident originated or another officer of the Incident Commander's choosing. The report will include all relevant information including the following:

- Overview of the event
- The relevant event timeline
- All incident logs
- All assignment logs
- All arrest logs
- All reports of injury to Department members or members of any Department providing mutual aid
- All reports of injury to suspects and members of the public not documented in cross referenced reports
- All reports of damage to City property or property of any Department providing mutual aid

L 2319 **DEBRIEFINGS AFTER A FIRST AMENDMENT ACTIVITY OR CIVIL DISTURBANCE:**
Added 08-16-22

The Incident Commander or their designee should conduct formal debriefings at the conclusion of every First Amendment activity or civil disturbance to enable rapid knowledge transfer. All Department members associated to the First Amendment activity or civil disturbance incidents should attend the debriefing. The debriefing may occur in the field, at the command post, or at a time and location determined by the Incident Commander or their designee.

ORDER

Effective immediately, all Department personnel shall adhere to the above Duty Manual sections.


Anthony Mata
Chief of Police

AM:SD:DK