

First Amendment Activity and Crowd Management

Model Use of Force Policy

The Policy

1.1 – Key Concepts and Definitions

A. Key Concepts:

1. The Department's officers play an important role in safeguarding First Amendment rights and facilitating lawful assemblies, demonstrations, and protests while keeping the peace.
2. Officers must differentiate between lawful speech and assembly activity, on the one hand, and unlawful or violent acts of individuals or groups within a crowd.
3. If individuals or groups within a crowd engage in unlawful or violent acts requiring intervention, officers should respond in a manner that minimizes the use of force and has a minimal impact on any remaining, ongoing lawful activity.

B. Definitions:

1. **Demonstration:** An assembly of persons organized for the purpose of engaging in constitutionally protected speech. Demonstrations may include marches, protests, speeches, press conferences, and other assemblies. Demonstrations are not Civil Disturbances, but a subset of attendees at a Demonstration may cause a Civil Disturbance requiring enforcement action.
2. **Civil Disturbance:** An unlawful assembly that constitutes an immediate threat to public safety or public order in the form of imminent threats of widespread violence, destruction of property, or other unlawful acts.
3. **Crowd Management:** Techniques used to manage lawful assemblies before, during, and after the event for purposes of maintaining the event's lawful status and facilitating the exercise of constitutional rights. Crowd management techniques include, but are not limited to, pre-event contact with organizers of the event, information gathering, training, and communication throughout the event.
4. **Crowd Control:** Techniques used to address mass assemblages of people, Demonstrations, and Civil Disturbances, including shows of force, crowd containment, dispersal equipment and arrests, and preparations for mass arrests.
5. **Incident Commander:** The Department's designated supervisor with responsibility for the Department's response to a Demonstration.

6. **Necessary:** Force is necessary only if there are no other available non-force options or less-forceful options to achieve a lawful objective.

7. **Resistance:** Officers may face the following types of resistance to their lawful commands:

Passive Resistance: A person does not attack or attempt to attack the officer or another person, and does not attempt to flee, but fails to comply with the officer's commands. Examples include, but may not be limited to, going limp, standing stationary and not moving following a lawful command, and/or verbally signaling their intent to avoid or prevent being taken into custody.

Active Resistance: A person moves to avoid detention or arrest but does not attack or attempt to attack the officer or another person. Examples include, but may not be limited to, attempts to leave the scene, fleeing, hiding from detection, physical resistance to being handcuffed, or pulling away from the officer's grasp. Verbal statements, bracing, or tensing alone do not constitute Active Resistance. A person's reaction to pain caused by an officer or purely defensive reactions to force does not constitute Active Resistance.

1.2 – Preparation and Response Strategy

A. Communication, Outreach, and Information Gathering

1. *Outreach to Event Organizers.* The Department will sometimes, but not always, have notice and the opportunity to prepare and plan for a Demonstration. When the Department receives notice of a planned Demonstration, officers should engage in outreach to the event organizers and/or demonstrators, discuss the planned event, and gather information that will assist the Department in facilitating lawful First Amendment activity and maintaining or establishing the peace.
2. *Unplanned Demonstrations.* When the Department becomes aware of an unplanned or spontaneous Demonstration, or if it is otherwise not possible to identify or contact Demonstration leaders in advance of a Demonstration, officers should similarly endeavor to gather this information.
3. *Social Media Information.* Event organizers and demonstrators often use social media to plan and share information about a Demonstration. When officers use social media to learn more about a Demonstration, plan a response, and follow the Demonstration, they must comply with the U.S. Constitution, state constitution, and all relevant policies of the Department on the use of social media for information gathering. Officers must ensure that this use of social media does not infringe upon individuals' constitutional rights.
4. The types of information a Department should gather or learn more about a Demonstration include:

- What type of event is planned? How many participants are expected? When is it planned, and will the event coincide with other planned, large-scale events?
- What is the history of conduct at such events? Is opposition to the event expected? Who are the potential counter-protest groups? Is there a history of violence between the group demonstrating and potential counter-protest groups?
- What are the assembly areas and movement routes? What actions, activities, or tactics are anticipated? What critical infrastructure is in the proximity of the event?
- Have permits been sought and issued? Have other agencies, including the Fire Department or Emergency Medical Services (“EMS”), been notified?
- Has the appropriate level of personnel been allocated to ensure the safety of demonstrators, bystanders, and officers? Will off-duty personnel be required? Is there a need to request mutual aid?

B. Designating an Incident Commander

Upon learning of a Demonstration, whether planned or spontaneous, the Department must designate an Incident Commander with responsibility over the Department’s response to the Demonstration.

C. Planning

The Incident Commander has primary responsibility for developing and executing a written incident response plan.

1. *Response Plan.* The plan must consider the information gathered from community members and other sources and whether the Department expects the Demonstration to be non-violent.
2. *De-Escalation.* The Department’s planned response must be informed by the principles of de-escalation defined and discussed in the Department’s use of force policy. De-escalation principles suggest that the visible police presence should be limited, as practicable, to facilitate a Demonstration that the Department expects to be non-violent. These Demonstrations should generally require a lower level of resources from the Department.
3. *Non-violent Demonstrations.* Where the Department expects a Demonstration to be non-violent, the following general guidelines will apply:
 - The minimum possible number of officers should be sent to monitor the Demonstration.
 - Officers present at the demonstration should be in normal patrol uniforms with their badge numbers and identifying information visible.
 - Officers should observe from a distance close enough to see Demonstration activity, but should consider the potential effects of police presence on the Demonstration and maintain sufficient distance to avoid agitating participants.

D. Differentiation in Response Planning

The Department's planned response must at all levels be informed by the principles of differentiation.

1. Differentiation recognizes that crowds are comprised of individual actors and distinct groups who have different behaviors and motivations, which requires officers to respond accordingly.
2. Differentiation requires that the initial police response be tied to the minimum number of officers required to keep the peace, based on the Department's advance planning.
3. If the Department expects a Demonstration to be non-violent but has reason to believe that unlawful activity subsequently may arise during the Demonstration, differentiation requires a graded response: the police presence should be minimal, as long as the demonstration remains peaceful, but additional officers and resources should be available at a nearby staging area in the event more resources are required.
4. For officers observing a demonstration in progress, differentiation requires that officers should observe the dynamics of the crowd and understand that a variety of groups may be present, including legal observers, members of the press, bystanders, and various groups of Demonstration participants, including counter-protesters. Should unlawful or violent behavior occur, differentiation requires that officers' response should be targeted toward the individuals or groups acting unlawfully, rather than attributing disorderly behavior to the Demonstration as a whole.
5. Planning for Contingencies. The Department's written response plan must, to the greatest extent possible, anticipate various scenarios and devise a police response for these contingencies. If planned contingency responses require that armored vehicles, personal protective equipment, additional munitions, or additional officers be in the proximity of the Demonstration, the visibility of these officers or equipment must be minimized to the greatest extent possible.

1.3 – Crowd Control Tactics and Civil Disturbances

A. Responses to Unlawful or Violent Activity by Individuals or Groups

1. If an individual or small group within an otherwise lawful Demonstration is engaged in unlawful activity, officers must direct any enforcement at the individual or individuals involved in breaking the law and may not attribute the unlawful activity to the Demonstration as a whole. Minor violations of the law should not be used as a basis to disperse an entire assembly.
2. If a Demonstration or assembly becomes disruptive due to more widespread violent or unlawful behavior, supervisors must use their best efforts to develop and direct a gradual approach to restore order, consistent with the goal of preserving the health and safety of the participants and the public.

3. If the Incident Commander determines that the circumstances at a Demonstration or other crowd event meet the definition of a Civil Disturbance, the supervisor must consider whether the violent or unlawful activity may be effectively mitigated addressed without the further step of a declaration of a Civil Disturbance.

B. Evaluating and Declaring a Civil Disturbance

1. *Factors to Consider.* The Incident Commander will determine whether unlawful or violent acts at an assembly constitute a Civil Disturbance within the definition provided in this policy. If the circumstances meet the definition of a Civil Disturbance, the Incident Commander must consider whether the violent or unlawful activity may be effectively mitigated without the further step of a declaration of a Civil Disturbance. The Incident Commander must consider these factors:
 - The nature and scope of the unlawful or violent activity, including: the threat presented to people or property, the prevalence and nature of violent and unlawful acts within the crowd, and whether the violent or unlawful acts are concentrated within small groups or occurring throughout the assembled crowd;
 - The degree of internal conflict within the assembly (for instance, if previously separated groups have merged into one crowd);
 - The effectiveness, or expected effectiveness, of contacting event organizers to facilitate de-escalation; and
 - Whether the Department has sufficient police resources on-site to manage the incident effectively.
2. *Additional Factors.* The Incident Commander also may consider the following factors, but neither factor may be the sole basis for a decision to declare a Civil Disturbance:
 - The fact that the assembly organizers lack a permit, such as a park, parade, or sound permit; and
 - The fact that some Demonstration participants or involved groups have previously engaged in violent or unlawful acts.
3. *Documenting the Decision.* If the Incident Commander determines that circumstances warrant a declaration of a Civil Disturbance, the Incident Commander must document the violations of law and other factors that contributed to the decision to declare a civil disturbance.
4. *Ensuring Necessary Resources Available.* The Incident Commander must coordinate through designated communications channels to ensure the availability of sufficient officers and the required equipment to respond to the Civil Disturbance, as well as the required fire and EMS personnel and equipment.

5. *Communicating Civil Disturbance Declaration.* The Incident Commander must communicate the declaration of a Civil Disturbance to the assembly, in a manner that is audible and intelligible to all persons in the assembly. The announcement must state the date and time and explain the laws being broken or the reason that the assembly has been declared a Civil Disturbance. The announcement also must explain that if the identified violations are not corrected immediately, the assembled persons will be ordered to disperse.

C. Dispersal Orders

1. *Dispersal Order.* If the behavior that caused the Incident Commander to declare a Civil Disturbance does not cease after the announcement that a Civil Disturbance has been declared, the Incident Commander must issue a dispersal order. The dispersal order must include:
 - Date and time;
 - Number of times the dispersal order has been announced;
 - Name and rank of the issuing officer;
 - Statement that the officer is acting under authority of state law and that the assembly has been declared a Civil Disturbance;
 - Statement of the basis for the designation of Civil Disturbance (i.e., which law has been violated);
 - Clear order that all demonstrators present at the location shall disperse;
 - Permitted direction of egress; and
 - Statement that refusal to disperse may result in arrest.
2. *Activating Body-Worn Cameras.* Before the first announcement of the dispersal order to the assembly, officers must activate body-worn cameras, if not already activated.
3. *Announcing the Dispersal Order.* A dispersal order must be:
 - Announced in a manner that is audible and intelligible to all persons in the assembly;
 - Issued from multiple locations via an amplification system, where possible. Officers should be positioned at various points on the perimeter of the assembly, to ensure that the order can be heard clearly from locations within the assembly. If the Department does not have an amplification system available but the assembly is large enough that the order must be read from multiple locations to be heard by all persons in the assembly, multiple officers may read the dispersal order from different locations throughout the assembly;
 - Issued in English and in any additional languages that may be appropriate based on the audience and the Department's capabilities;

- Recorded by video or audio, with the time and the name(s) and locations(s) of the issuing officers(s) recorded in an event log; and
- Announced repeatedly, and at a minimum, at least twice, following the initial announcement, until the individuals in the assembly have dispersed, or until the Incident Commander determines that the individuals who remain do not intend to disperse and authorizes additional enforcement steps.

4. *Reasonable Opportunity to Disperse.* After the initial announcement of the dispersal order, officers must provide a reasonable opportunity for all individuals present to lawfully disperse, leaving the area by the designated egress route. Officers must continue to ensure that individuals leaving the assembly location have a clear route of egress to leave as directed while a dispersal order is in effect.
5. *Kettling Prohibited.* This policy prohibits the practice of police “kettling,” or surrounding a group to prevent them from leaving an area, except when the Incident Commander has authorized mass arrests as provided in this Policy, and probable cause exists to arrest each person in the encircled group based on officers’ observations of criminal activity.
6. *Addressing New Assemblies.* If individuals in an assembly disperse following a dispersal order and some or all of the participants re-convene at another site and engage in lawful, protected speech, the new assembly does not constitute a continuation of the Civil Disturbance. To treat the new assembly as a Civil Disturbance, the Incident Commander must make separate findings that the circumstances meet the definition of a Civil Disturbance and that a declaration of a Civil Disturbance as to the new assembly is justified.

D. Responses to a Civil Disturbance: Shows and Uses of Force

1. *Shows and Uses of Force.* After sufficient time has passed to allow compliance with repeated announcements of the dispersal order by all individuals who intend to comply, the Incident Commander may order additional shows or uses of force to obtain compliance from the individuals who remain at the site of a Civil Disturbance.
2. *Department's Force Policies Apply to Civil Disturbances.* The Department's general policies regarding the use of force apply to all Department responses to Civil Disturbances. Officers maintain the same authority when responding to Civil Disturbances as they have during day-to-day police operations. The principle of proportionality, as described in the Department's Policy on the authorization and standard for the use of force, applies in the setting of a Demonstration.
3. *Verbal Warning.* Unless exigent circumstances require immediate action, officers must issue a warning before any uses of force.

4. *Consider Impact of Use of Force.* In considering any use of force, an officer must consider the impact of the use of force on the dynamics of the assembled crowd, including the potential for further escalation in response.
5. *Force Options Requiring Incident Commanders Authorization.* Certain force options discussed in this Policy are permitted only with the authorization of the Incident Commander. For other force options, the use of force may be undertaken without the Incident Commander's express authorization, if justified by the circumstances, but must be immediately discontinued upon an order by the Incident Commander.
6. *Police Formations.* Officers may use a police line as a passive show of authority to establish a barrier or encourage compliance ("constructive force"). In a police line engaged for the purpose of constructive force, officers do not make physical contact with members of the public. The police line has the goal of causing the movement of individuals or a crowd. Police lines may comprise officers in standard patrol uniforms. The Incident Commander also may determine that circumstances require the presence of officers wearing personal protective equipment, in response to violent activity or reasonably anticipated violence. When using and forming police lines, the Incident Commander, other supervisors, and officers must:
 - Form police lines so as to leave an open path of egress from the Demonstration or assembly;
 - Wear the appropriate Department-issued identifying insignia, regardless of the uniform they wear. Officers must not hide, disguise, or intentionally block their identifying insignia from members of the public;
 - Behave neutrally and respectfully remains in effect in response to intentional provocation;
 - Be aware of the risk that officers in a police line may experience personal reactions to the behavior of the people present at the assembly, including to statements or actions intended to provoke reactions from officers;
 - Understand that officers in an organized formation do not have the same opportunity to remove themselves from the scene of a provocation, as do officers not engaged in a concerted show of force. Officers in a formation and their supervisors must be aware of any officers in the line who indicate an inability to maintain neutrality, and supervisors must coordinate a replacement for any such officer in the line;
 - Consider the presence of officers wearing personal protective equipment to be an escalated response and may be perceived as such by the persons in the assembly; and
 - Stage officers wearing protective equipment out of view until the Incident Commander determines that circumstances require their presence.

7. *Using a Police Line to Forcibly Move Crowd Members.* A police line also can be used to forcibly move members of a crowd in a predetermined direction.

- The use of physical force to move a crowd must be authorized by the Incident Commander, upon a determination that dispersing the crowd requires the use of this movement.
- The use of a police line to move a crowd will typically involve only bodily contact with the individuals being moved.
- If officers in a formation are directed to move the formation to shift a group in the assembly, and the officers are equipped with shields, batons, or bicycles, officers may be authorized by a supervisor to use this equipment to exert force on the crowd to be moved.
- If a supervisor authorizes the use of batons for this purpose, officers must hold the batons with a two-handed grip, in the port arms position.
- Any force exerted on individuals in the crowd must result from the movement of the police formation, rather than an officer's independent manipulation of a weapon to strike, jab, or shove at individuals.

8. *Batons.* Batons may be used in a Crowd Control setting as follows:

- Officers may be authorized to use a baton to forcibly move members of a crowd in a predetermined direction as set forth in this Policy.
- Other than the use described in this Policy, any officer's use of a baton must comply with the Department's separate policy on the use of batons.
- Officers may not remove batons from their baton holsters unless directed to do so by a supervisor.
- The Incident Commander, supervisors, and officers must consider that the display of batons may be viewed by persons in the assembly as aggressive or intimidating and, therefore, an escalated response.

9. *Canines.* The Department prohibits the use of canine units for the purpose of Crowd Control.

10. *Water Cannons.* The Department prohibits the use of water cannons for the purpose of Crowd Control.

11. *Kinetic Impact Projectiles (Rubber or Plastic Bullets) or Extended Range Impact Weapons (ERIWs).* The Department prohibits the use of kinetic impact projectiles or ERIWs, including foam baton rounds and beanbag rounds, for purposes of Crowd Control and dispersal, and prohibits these weapons from being fired into crowds. When used against individuals for defensive purposes:

- An officer who is trained within the last year in the use of an ERIW may fire an ERIW at a single person for defensive purposes only, when the officer reasonably perceives that the use of this weapon is necessary to prevent an imminent threat of serious bodily injury to an officer or another person and proportionate to the perceived threat.
- An ERIW may not be aimed at the head or neck of the person. The Department considers an ERIW deployment aimed at the head or neck of a person to be a use of deadly force.
- An ERIW may not be deployed from a distance of less than ten feet from the person.
- For the safety of all persons in the surrounding area, before deploying an ERIW round, an officer should clearly announce that they are firing an ERIW.
- Generally, an ERIW should be fired once to gain compliance. If an officer fires once and is unable to obtain compliance, and the officer reasonably determines that additional shots are necessary, proportionate to the perceived threat, and the ERIW can be safely deployed, additional shots must be directed at different areas of the person's body than the original shot, but not the head or the neck.
- An officer must ensure that a person struck by an ERIW projectile receives medical aid before being transported or released.

12. Long-Range Acoustic Device or Sound Cannon (LRAD). The Department prohibits the use of an LRAD's "deterrent" or "alert" tone for purposes of Crowd Control or dispersal. However, the Incident Commander or their designee may authorize the use of an LRAD's communication function for the sole purpose of communicating information to a large assembly, if the Incident Commander or their designee deems such use to be appropriate. Only officers trained in the operation of the LRAD may use an LRAD for this purpose.

13. Documenting Uses of Force. Officers must document and report all uses of force, regardless of type, outcome, and source of authorization, in accordance with the Department's policies regarding the use of force.

14. Duty to Provide Medical Aid. An officer's duty to provide appropriate medical aid applies in full force to the context of Crowd Control and crowd dispersal. In particular, officers must ensure that individuals who are impacted by the use of ERIWs, pepper spray or pepper balls, or chemical force (tear gas), receive appropriate medical attention.

15. Mass Arrests. The Incident Commander and officers should carefully consider the need for individual arrests during a demonstration. The Incident Commander should make officers aware that individuals who engage in unlawful activity during a demonstration may be identified and arrested at another time and place. Officers therefore may have discretion to delay or forgo arrests where there is no imminent public safety need to take the individual into custody and where an officer reasonably perceives that arresting an individual will have the effect of

escalating crowd tensions, such that the benefits of a legally justified arrest are outweighed by the likelihood that the arrest would escalate tensions.

16. Authorizing Mass Arrests. The Department limits mass arrests to when authorized by the Incident Commander or the Chief of Police. The Incident Commander or the Chief of Police may authorize mass arrests only of individuals engaged in criminal activity that arises out of the assembly. The decision to undertake mass arrests must be supported by probable cause that each individual to be arrested engaged in a criminal act justifying arrest. Further, mass arrests should be undertaken only as a last resort, when all other reasonable options have been exhausted.

Before an Incident Commander or the Chief of Police may deem mass arrests to be necessary, all reasonable efforts should be made to:

- Issue citations for nonviolent lawbreaking activity that does not, on its own, justify arrest;
- Engage in individual arrests for arrestable offenses, subject to the considerations set forth above; or
- If a dispersal order has been issued, obtain voluntary compliance with the dispersal order.

17. Planning for Mass Arrests. To effect mass arrests that respect the rights of the individuals, the Incident Commander must engage in critical pre-planning.

- Although mass arrests should be used as a response of last resort, the Incident Commander should include plans in the pre-event written plan for the possibility of mass arrests if the Incident Commander has reason to believe that mass arrests may be required.
- If the Incident Commander does not contemplate mass arrests in the pre-event written plan, but the Incident Commander later becomes aware that mass arrests may be required, the Incident Commander should devise and issue a formal plan for mass arrests as soon as possible.
- The plan for mass arrests must include the designation of one or more processing locations that are adequately staffed and equipped to process arrestees expeditiously and administer required medical care.
- The designation of processing centers and the Department's processing of arrestees must account for arrestees' access to adequate bathroom facilities, food, and water.
- The mass arrest plan and operation of processing sites must account for the need to safeguard the personal property of arrestees, which may include large items such as bicycles. Personal property must be safeguarded in accordance with Department

policies with the goal that all property shall be identifiable and returned to its owner upon release.

- If it is not feasible to establish adequate processing facilities near the Demonstration, the Incident Commander must ensure that adequate transportation is available to transport arrestees safely and without unreasonable delay to a processing center. If transportation is required, the transportation plan must account for arrestees' access to adequate bathroom facilities, food, and water.
- The Incident Commander must coordinate with court staff and prosecutors as needed, to facilitate the efficient conduct of initial appearances and other post-arrest processes.

18. Mass Arrest Protocol. If the Incident Commander or the Chief of Police authorizes mass arrests, these arrests must be carried out by arrest teams, designated by the Incident Commander or a designee or through the Department's normal procedures.

- Arrest teams must be informed of the basic offenses that form the basis for mass arrests.
- Each individual arrestee must be advised of the charge(s) and informed that they are under arrest.
- Each officer on an arrest team must be trained or informed in the safe and appropriate use of disposable (flex) handcuffs. If officers use flex handcuffs in a mass arrest, the flex handcuffs must be applied in accordance with the Department training. Flex handcuffs applied to an arrestee will be clearly marked with the badge number of the arresting officer, in permanent ink.
- Officers must follow a protocol, designated or approved by the Incident Commander, to identify each person arrested and record the following basic information about the arrest: date, time, location, and name and badge number of each arresting officer.
- Injured arrestees and arrestees who request medical attention must receive medical care without unreasonable delay and before any transportation.
- Before any transportation, each arrestee must be photographed, with additional photographs of any injuries. All property of the arrestee must also be photographed.
- The unit responsible for transporting arrestees must not transport an arrestee, whether for further processing or to a detention facility, without receiving (1) the photographs taken of the arrestee upon arrest; and (2) completed booking paperwork for the arrestee, or at a minimum, a record of the charges and the name and badge number of each arresting officer.
- Other than the procedures outlined in this policy, all arrests must be processed in compliance with the Department's arrest and processing procedures.

19. *Suspending Crowd Control Tactics Upon Voluntary Dispersal.* If the Incident Commander authorizes Crowd Control or dispersal tactics, but the remaining crowd appears to begin to voluntarily comply with the dispersal order, officers must suspend such tactics.

D. Force Prohibited Against Passive Resistance

1. *Force Prohibited Against Passive Resistance.* The Department prohibits the use of force against a person engaged in nonviolent, passive resistance, other than physically moving the person when it is necessary for that person's safety or public safety. The physical moving of a person engaged in passive resistance may be undertaken only when all available efforts to obtain voluntary compliance have been exhausted.
2. *Individuals Intending to Be Arrested.* Individuals engaged in passive resistance who make clear that their noncompliance with a dispersal order is undertaken with the intent to be arrested must be arrested, without first being subjected to additional uses of force or dispersal tactics.

E. Restriction on Use of Pepper Spray and Chemical Force

1. *Oleoresin Capsicum Pepper Spray (Pepper Spray).* The Department limits the use of pepper spray for crowd dispersal to when specifically authorized by the Incident Commander in response to a reasonably perceived need. The Incident Commander may authorize the use of pepper spray for crowd dispersal only when other means of obtaining compliance would be more intrusive or less effective. When the Incident Commander authorizes its use, any officer use of pepper spray must comply with the Department's separate policy on the use of pepper spray.
2. *Large-Volume OC Spray Canisters and OC Pepper Balls.* The Department limits the use of large-volume OC spray canisters and OC pepper balls for crowd dispersal to when specifically authorized by the Incident Commander in response to a reasonably perceived need. The Incident Commander may authorize the use of large-volume OC spray canisters and OC pepper balls for crowd dispersal only when:
 - Use is deemed reasonably necessary to prevent significant physical injury of police officers or members of the public, or to prevent significant property damage; and is
 - Proportionate to the perceived threat; and
 - Other means of Crowd Control must have been exhausted or the Incident Commander must reasonably believe that other means of Crowd Control would not be effective, before OC spray canisters or OC pepper balls are authorized; and
 - When the Incident Commander authorizes their use, OC pepper balls must be aimed at the ground near a crowd or above the crowd, and not at individuals' bodies.
3. *Use of Pepper Spray Against Individuals in Crowd.* An individual officer carrying a personal-sized pepper spray canister and trained in its use within the last year may use that spray to

subdue a single person, but only when that force is necessary to protect the officer, the individual, or another party from imminent physical harm, is proportionate to the perceived threat, and where lesser means would not be effective. Unless exigent circumstances require immediate deployment, an officer must seek and obtain a supervisor's approval before using pepper spray against an individual in a crowd setting. Any officer's use of personal-sized pepper spray must comply with the requirements of the Department's separate policy on the use of pepper spray.

4. *Chemical Force (Tear Gas).* The Department limits the use of chemical force (tear gas) to when authorized in writing by the police chief or a designee.

- The police chief or a designee may authorize the use of chemical force only as a defensive tactic. Its use may be authorized only to respond to violent activity and to prevent an assembled crowd from engaging in further violent activity that presents an imminent threat of serious bodily injury to officers or other persons. The use of chemical force must be proportionate to the perceived threat and it must reasonably be perceived that no efforts to segregate and subdue violent actors by any other means will be effective.
- The Incident Commander must issue a loud verbal warning before deploying chemical force. The verbal warning must be sufficiently loud so that it can be heard and understood by the entire assembled group. If the crowd is assembled in an area where non-participating members of the public are likely to be present, the Incident Commander should make efforts to issue warnings to the public that chemical force will be deployed in the area. The Department's official social media channels may be used for this purpose in addition to in-person contact with individuals in the area.
- Before deploying chemical force, the Incident Commander must ensure that routes of egress are available to the assembled crowd. The Incident Commander also must ensure that a sufficient number of officers and other emergency personnel, and sufficient supplies, are available to provide medical aid following the deployment of chemical force.

1.4 First Amendment Right to Record Police

A. First Amendment Right to Record

1. *Planning to Safeguard Exercise of First Amendment Rights.* The Department's response to Demonstrations must be planned and executed in a manner that facilitates the public's exercise of First Amendment rights of speech and assembly. That response must take into account the public's First Amendment right to record police.
2. *Right to Record Police Activity.* Members of the public, including but not limited to members of the press, have a First Amendment right to record police officers' activity in public places, so

long as the person making the recording does not interfere with the officers' official activity. A person who is lawfully in a public space or another location where they are legally permitted to be present has the right to record things in plain sight or hearing, which includes police activity that is observable from this lawful vantage point.

3. *Additional Officer Duties and Obligations.* Officers must be aware that the recording of people, places, buildings, structures, and events is a common and generally lawful activity. Officers may not regard the act of recording, alone, as suspicious activity, when persons recording are in a place where they are legally permitted to be present.
4. *Assume You May Be Recorded.* Officers should assume that they may be recorded at all times when they are on duty and in a public space. Officers may not threaten, intimidate, or otherwise discourage or interfere with the recording of police activity. Doing so may subject an officer to disciplinary, corrective, or legal action.

B. Limits on the Right to Record

1. *Limits on the Right to Record.* The right to record police activity is subject to the following limits:
 - A person recording public police activity must maintain a reasonable distance from the police activity.
 - A person may not obstruct police actions in the process of recording, physically or otherwise (for example, by interrupting the officer or shouting over the officer in a manner that precludes the officer from carrying out police duties). However, a person's activity that is merely critical of or annoying to the officer does not rise to the level of obstruction or interference.
 - A person's recording of police activity cannot unreasonably impede the movement of emergency equipment and personnel or the flow of ordinary traffic, and cannot jeopardize the safety of officers, witnesses, victims, or any other third parties.
2. *Verbal Warning.* If a person recording police activity violates any of these restrictions, officers must inform that person that they are engaged in prohibited activity and inform that person of available alternatives, before resorting to arrest.

C. Detention or Arrest of Person Recording

1. *Legal Basis for Detention or Arrest.* The act of recording police activity in a public place, alone, does not provide grounds for detention or arrest. Any arrest of a person who is recording police activity in public must be related to an objective, articulable violation of the law.
2. *Supervisory Approval.* An officer who has grounds to detain or arrest a person who has been engaged in recording public police activity must call a supervisor to the scene before taking any restrictive action, and a supervisor must approve any related arrest, except where exigent circumstances require that detention or arrest be undertaken without delay.

- If a person who has been recording police activity is arrested before a supervisor's arrival due to exigent circumstances, the person may not be moved to a holding or detention facility until a supervisor arrives and approves of the arrest.
- The arrest of a person recording police activity does not provide an exception to the warrant requirement that justifies a search of the person's recording equipment or media. Officers may secure the equipment incident to arrest but may not download, view, transfer, or otherwise access files or media without a search warrant. Files or media must not be altered or erased under any circumstances.

D. Seizure and Search of Recording Equipment

1. *Seizing Recording Equipment Prohibited.* Officers may not seize the recording equipment of a person making a recording or order the person to show the recording, absent arrest of that person. An officer may not take any action regarding a person's recording device without first notifying a supervisor, including making a request for voluntary consent to search or seize the device.
2. *Recording as Evidence of Crime.* If an officer has probable cause to believe that a person has recorded evidence of a serious crime, the officer must immediately request that a supervisor respond to the scene.
 - With the supervisor's approval, the officer may ask the person who possesses the recording to voluntarily allow the officer to take possession of the recording and process it as evidence. In making such a request, the officer may not implicitly or explicitly coerce the person's consent.
 - If the person refuses to voluntarily provide the recording or device and the officer reasonably believes that the recording will be destroyed, lost, tampered with or otherwise rendered useless as evidence before a warrant can be obtained, the officer must notify a supervisor of this fact. The supervisor must assess the situation and determine whether exigent circumstances exist to permit the warrantless seizure of the device.
3. *Obtaining Warrant.* Any seizure of a recording under this exception for exigent circumstances will be temporary and for the sole purpose of preserving the evidence while the officer, acting with diligence, obtains a warrant to seize the evidence.
 - The chain of custody for a device seized under this exception must be clearly documented.
 - A warrant must be obtained before the recording can be examined or copied.
 - In exigent circumstances when an officer reasonably believes that an immediate search of the recording is necessary to prevent death or injury, the officer must notify the

responding supervisor, who will assess the situation and determine whether exigent circumstances exist to permit the seizure and search of the device without a warrant. Officers and other employees may not view any photographs, videos, or recordings that are seized but are not directly related to the exigent circumstances until and unless a search warrant is obtained.

4. *Return of Recording Devices.* Any recording devices or media taken into custody must be returned as soon as practical.
5. *Limiting Access to Evidence.* Officers and other employees who view or listen to a recording or forensically examine a recording or device seized under this policy must take reasonable efforts to ensure that only materials that constitute potential evidence are accessed.