



THE CITY OF SAN DIEGO
MEMORANDUM

Date: March 30, 2021
To: David Nisleit, Chief, San Diego Police Department
From: Brandon Hilpert, Chair, Commission on Police Practices *RH*
via Sharmaine Moseley, Interim Executive Director *SM*
Subject: Recommendations to the San Diego Police Department

The Commission on Police Practices (“CPP” or “Commission”) appreciates that the San Diego Police Department (SDPD) accepted the former CRB’s recommendation to create a stand-alone policy which would provide a clear structure on how SDPD responds to First Amendment protected protest activities.

The Commission reviewed SDPD’s new procedure (4.17) and held public meetings to discuss its proposed clarifications and revisions. The Commission’s Policy Committee held a public meeting on February 25, 2021 as well as a community roundtable on March 18, 2021. At its Open Meeting on March 23, 2021, the Commission voted unanimously to make the following policy recommendations to the SDPD for its consideration:

1. Include in the policy, SDPD’s existing guidelines regarding pre-protest planning with event organizers. As it currently stands, the new policy reads more strictly as crowd control, rather than facilitation of First Amendment protected activities. We would also like to see a section that discusses protecting the safety of peaceful protesters.
2. Clearly restate that existing policies and procedures remain in full force and effect during protest activities. Specifically, body worn camera (1.49), de-escalation (1.55), duty to intervene (1.56), identification of officers (5.10 and 9.19).
3. Address how juveniles are treated during protest activities in line with existing procedures, for example, handcuffing or detention of minors.
4. The procedure references the verbiage of California Penal Code 407 in the definition of an unlawful assembly. However, we would like assurances that a protest will not be declared unlawful simply because it is

- “boisterous.” The policy should be clear that per case law, there must be a clear and present danger to persons or property before an unlawful assembly can be declared.
5. Include in the policy, a statement that preservation of life shall take precedence over protecting property.
 6. Specifically related to the issuance of dispersal orders once an unlawful assembly has been declared:
 - a. Require officers to have their body worn cameras activated in Event Mode to record the circumstances in which created an unlawful assembly order.
 - b. Require that the Officer making the dispersal order shall have their BWC activated to record the dispersal order as well as an Officer stationed behind the protest participants to ensure audible commands were able to be heard.
 - c. Section VII. C. 2. states “the officer is not required to use any particular words”, however, this conflicts with 7 which provides a detailed script to be used. We recommend the specific script be used.
 - d. State that the dispersal order must be given at least three times, with one minute between each order and the script must include a clear time requirement for participants to depart the scene (for example, participants have five minutes to depart, but not less than three minutes).
 - e. Clarify “amble means of egress”, factoring in considerations like participants which may have mobility issues.
 - f. For pre-planned protest activities, add communication options to include languages other than English and Spanish. For example, traffic signage to assist those that may be hearing impaired.
 7. When staging for EMS, require that EMS providers have proper materials on-hand for the situation. For example, ample water shall be available to decontaminate participants that have had OC utilized on them per existing policy 1.06.
 8. Define “a reasonable time.” The procedure needs to be clear as to what a reasonable time is for a crowd to disperse. We propose this time be not less than three minutes.
 9. Reiterate that use of OC spray is prohibited at this stage of resistance. We do not believe those individuals exhibiting “passive resistance” should be subject to the use of “impact weapons, impact weapon control holds, pain compliance or pressure points” which would technically be permitted under the existing Use of Force Matrix per 1.04.
 10. In the section regarding the use of specialty munitions, list options to be utilized in order of escalation by munition type as well as have clear and

- significant descriptions as to when and how they are utilized, handled and removed.
- a. 40 mm foam baton rounds should be utilized only as a last resort
 - b. CS gas grenades and rubber sting balls need to have clear and explicit references as to when use is permissible
11. In the utilization of flexcuffs procedure specify that Officers shall replace flexcuffs should they tighten by using the existing 6.01 procedures. Officers shall write their ID number on the flexcuffs of each individual they take into custody and officers shall mark the flexcuffs indicating initial placement to assist in visually observing if flexcuffs unexpectedly tighten.
 12. Body Worn Camera Usage
 - a. Add a new section for BWC retention periods for peaceful protest activities (no arrests, no complaints).
 - b. Add a clear statement that any BWC of protest activities shall or must not be used, stored, logged or cataloged to document or create a database of individuals participating in legal protest activities.
 13. Officers shall not request nor require media or other members of the public to stop, pause or discontinue audio or video recording.
 14. Add a new section that addresses the status and rights of legal observers and/or non-participants. Legal observers should be clearly identified and shall not be specifically targeted by officers.
 15. Require officers to provide the name and ID number of the commanding officer/incident commander at the scene.
 16. Include an unambiguous prohibition of officers obstructing their badge, name and/or ID numbers as well as a clear prohibition of providing false identification details
 17. Reconsider the policy of allowing only ID numbers to be given during protest activities.
 18. Consider addressing how officers deal with individuals participating in peaceful civil disobedience such as officers using bicycles as weapons or shields and using “follow cars” during protest activities.
 19. Require that if outside law enforcement agencies participate in City of San Diego protests under mutual aid agreements, such outside agencies should be subject to SDPD policies and procedures.

Additionally, the Commission recommends changes to the following procedures:

1. Body Worn Camera (1.49)- Remove the exclusion for mandated body worn camera recordings in secure facilities (Sally Port, detention rooms etc.). Although many secure areas have security footage, this footage does not contain audio and frequently is too far away to properly determine what may have occurred. Any interaction with a detainee should be recorded.

2. Chemical Agent Usage (1.06)- Require officers to provide a verbal warning prior to using chemical OC spray where possible. This would bring it in line with the Use of Force procedural (1.04) requirement for officers to provide a verbal warning prior to firing their firearm.
3. Maximum Restraint Time Limit (6.01)- Update this procedure to include a maximum time that an individual would be placed in the WRAP device to no more than 2 hours. (Currently there is no time limit stated.)
4. Utilization of Seatbelts on Prisoners (6.01)- Modify this policy to increase the requirements necessary prior to seatbelts not being utilized under the officer safety exemption. As this procedure stands today, we do not believe this procedure is enforceable.
5. Observation of Detainees in Sally Port- Require officers to check in on the status/welfare of detainees under their custody at least every 15 minutes.

Thank you for your consideration on the Commission's policy recommendations. If you have any questions, please do not hesitate to contact me at 619-548-8002.

Sincerely,



Brandon Hilpert, Chair
Commission on Police Practices

cc: Honorable Mayor Todd Gloria
Jay Goldstone, Chief Operating Officer
Paola Avila, Chief of Staff
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