

**POLICY ENFORCEMENT –
L 2300 DEMONSTRATIONS AND CIVIL
DISTURBANCES:**

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 demonstration at any location within the City. However, unlawful activity, whatever its guise, requires prompt and effective action by the Department. The Department will take appropriate legal steps to discourage unlawful conduct whenever it occurs.

**PROCEDURE
L 2301 DEMONSTRATIONS/CIVIL DISTURBANCES:**

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 Department members 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:

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, Department members 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. Department members assigned to the scene of a demonstration will strive to maintain an outward appearance of calmness, whether the task involved is simply standing by protecting demonstrators from hostile onlookers, or making necessary arrests of violent demonstrators.

L 2303 EQUALITY OF TREATMENT:

Department members will treat demonstrators, onlookers, or counter demonstrators with equal treatment.

L 2304 RESPONSE TO VIOLENT CONDUCT:

Where a demonstrator uses physical violence upon another person or property, Department members should promptly make an arrest unless the supervising officer at the scene concludes that making the arrest would divert limited manpower or be unnecessarily risky in reducing the ability of members to perform their duties most effectively.

L 2305 RESPONSE TO OTHER ILLEGAL CONDUCT:

Arrests will occasionally have to be made because of a demonstrator's nonviolent but nevertheless illegal conduct; for example, illegal obstruction of the streets or of a building entrance. In such situations the officer in command at the scene will decide if such arrests are to be made. Moreover, before any such arrest is made, demonstrators will be warned that they must move or risk arrest.

L 2306 TREATMENT OF NEWS MEDIA:

Department members assigned to the scene of a demonstration will cooperate with the media, whether writer, photographer, radio or television personnel. News media representatives have a constitutional right to cover demonstrations, though, as everyone else, they must not violate the law.

Those with a right to cover or photograph demonstrations are obviously not limited to representatives of the major newspapers, radio or television stations. Persons who represent some of this City's small newspapers or magazines, free lancers, and other citizens are also entitled to take notes or photographs. Although the press has no special right as a matter of law to be present if an unlawful assembly is declared, members will attempt to discriminate between non-obstructing members of the press and voluntary participants in the unlawful assembly.

Section 409.5 of the Penal Code authorizes officers to close disaster scenes such as earthquakes or fires to the public. Subsection (d), however, allows duly authorized representatives of any news service, newspaper, or radio or television station or network to enter closed areas. Areas determined to be part of a crime scene shall be closed to both the public as well as the press.

The Department issues media credentials as a convenient means for officers to identify members of the media and an easily recognized way for the media to identify themselves to officers at the scene of disasters or crime scenes. Media credentials issued by other police agencies or by the media representative's employer should be considered valid.

L 2307 COORDINATION OF DEPARTMENTAL ACTIONS:

Department members will strive to ensure that a disciplined and coordinated Department response is maintained at the scene of a demonstration. Department members will not act alone unless loss of life or great bodily harm could result from the conduct of demonstrators. When mere property damage is imminent, members will coordinate their response through assigned supervisors and perform tasks as directed. Supervisors will remain at the scene and continually seek information concerning location and number of demonstrators, emotional condition of the crowd, and resources available to effectively maintain order.

L 2308 ONLOOKERS AT THE SCENE OF A DEMONSTRATION, CIVIL DISTURBANCE OR OTHER INCIDENT:

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 these persons does 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, Department members 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 will be called to resolve the conflict. All highly sensitive incidents will be 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 DISORDERS:

Due to the variety of situations existing during a civil 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 2310 FIRST OFFICER AT SCENE:

The first officer at the scene of a disturbance should observe the situation from a distance and evaluate it before taking action. If the situation demands, such officer will notify the District Supervisor.

L 2311 COORDINATION OF EFFORT:

Actions by officers will be coordinated by a supervisor. Only requested units will respond to the scene. Officers will report to the supervisor after parking their vehicles in one group away from the crowd. One officer will be assigned to guard the vehicles against damage. Individual officers should avoid driving their cars into the center of the crowd and operating individually.

L 2312 ORDER TO DISPERSE:

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 should go as near to the crowd as is safe and make an audible statement having the following form:

- "This is (rank and name), a peace officer of the State of California and a police

officer of the City of San Jose. I do hereby declare this an unlawful assembly and in the name of the People of the State of California I command you to immediately disperse." A reasonable time must be allowed for compliance. Orders for arrest may then be given.

L 2313 SUPPLEMENTARY INFORMATION:

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 will be 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 to do so.**
- The Deputy Chief of the Bureau of Field Operations or his designated alternate will be responsible for field operations involving civil disturbances. Reports from the field will go directly to the Deputy Chief or designee in overall command. The Department member in overall command will have the responsibility for deciding whether or not to notify the Assistant Chief of Police.**

L 2314 REQUESTS FOR ASSISTANCE:

While the control of riots is primarily the responsibility of the Police Department, we 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 his immediate subordinates will notify the highest ranking officer available at the Sheriff's Department who will in turn make appropriate requests. The Chief of Police or a designee will be delegated the responsibility of notifying the City Manager that a request for assistance has been made.