



DEMONSTRATIONS AND CIVIL DISORDERS GENERAL ORDER #17.03

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POLICY

The Santa Clara County Sheriff's Office respects the rights of people to peaceably assemble. It is the policy of this office not to unreasonably interfere with, harass, intimidate, or discriminate against persons engaged in the lawful exercise of their rights, while also preserving the peace, protecting life, and preventing the destruction of property.

The Crowd Control Unit will be utilized when there exists a need for managing large crowds in preplanned or unplanned incidents.

Individuals or groups present on the public way, such as public facilities, streets or walkways, generally have the right to assemble, rally, demonstrate, protest or otherwise express their views and opinions through varying forms of communication, including the distribution of printed matter. These rights may be limited by laws or ordinances regulating such matters as the obstruction of individual or vehicle access or egress, trespass, noise, picketing, distribution of handbills and leafletting, and loitering. However, deputies shall not take action or fail to take action based on the opinions being expressed.

Participant behavior during a demonstration or other public assembly can vary. This may include, but is not limited to:

1. Lawful, constitutionally protected actions and speech.
2. Civil disobedience (typically involving minor criminal acts).
3. Rioting.

All of these behaviors may be present during the same event. Therefore, it is imperative that law enforcement actions are measured and appropriate for the behaviors deputies may encounter. This is particularly critical if force is being used. Adaptable strategies and tactics are essential. The purpose of a law enforcement presence at the scene of public assemblies and demonstrations should be to preserve the peace, to protect life, and to prevent the destruction of property.

Deputies shall not:

1. Engage in assembly or demonstration-related discussion with participants.
2. Harass, confront or intimidate participants.
3. Seize the cameras, cell phones or materials of participants or observers unless a deputy is placing a person under lawful arrest.

Supervisors should continually observe deputies under their commands to ensure that members' interaction with participants and their response to crowd dynamics is appropriate.

PROCEDURE

A. UNPLANNED EVENTS

When responding to an unplanned or spontaneous public gathering, the first responding deputy should conduct an assessment of conditions, including, but not limited to, the following:

1. Location
2. Number of participants
3. Apparent purpose of the event
4. Leadership (whether it is apparent and/or whether it is effective)
5. Any initial indicators of unlawful or disruptive activity
6. Indicators that lawful use of public facilities, streets or walkways will be impacted
7. Ability and/or need to continue monitoring the incident

Initial assessment information should be promptly communicated to County Communications, and the assignment of a supervisor should be requested. Additional resources should be requested as appropriate. The responding supervisor shall assume command of the incident until

command is expressly assumed by another, and the assumption of command is communicated to the involved members. A clearly defined command structure that is consistent with the Incident Command System (ICS) should be established as resources are deployed.

B. PLANNED EVENT PREPARATION

For planned events, comprehensive, incident-specific operational plans shall be developed. The Incident Command System (ICS) should be utilized for all planned events.

C. RECOGNITION OF POTENTIAL PROBLEMS

Recognition and adequate preparation require the effort of all personnel.

1. Primary gathering of information concerning possible demonstrations and/or disorders shall be reported by Sheriff's personnel to the Special Enforcement Division or the Watch Commander.
2. The Special Enforcement Division shall be responsible for initial evaluation of information and shall report all findings to the Sheriff, Undersheriff, responsible Division Captains, and the Crowd Control Unit Commander.
3. In cases of impending action, the Special Enforcement Division shall, on behalf of the Sheriff, arrange for a meeting between all concerned command staff and applicable outside agencies to properly evaluate and plan for a multi-agency response.
4. The following pertinent information may be needed for evaluation and should be made available to the agency(s) as soon as possible. It shall include but not necessarily be limited to:
 - a. Concerned jurisdiction or jurisdictions.
 - b. Date and time.
 - c. Schedule of events.
 - d. Exact location.
 - e. Estimate of weather conditions.
 - f. Stated purpose of demonstration.

remain with all “Mutual Aid” contingents.

5. All departmental equipment shall be made available to the Incident Commander and/or Crowd Control Unit Commander if necessary.
6. The Special Enforcement Division will be responsible for intelligence and shall distribute information to the Incident Commander or Planning Section Chief, once designated by the Incident Commander.
7. The Crowd Control Unit Commander shall be responsible for the Operations Section until an Operations Chief has been designated by the Incident Commander.
8. Logistical support, including supplies and personnel resources, shall be coordinated by the Incident Commander or Logistics Section Chief once designated. All departmental personnel shall be made available as needed to support ongoing operational periods.
9. Normal rules of wages, hours, and working conditions may be waived for the department and its personnel by the Sheriff during a crisis situation. Any disagreement on these items during a crisis situation will be postponed and considered when the crisis is over.

E. THE OPERATION

The control of the actual operation shall remain with the Sheriff through their appointed Incident Commander.

1. **Tactics:** The Crowd Control Unit Commander will have prepared the unit for all reasonable contingencies and will be responsible for any law enforcement or public safety actions carried out.
2. **Use of Force:** The use of force during a crowd control event is governed by current office policy and applicable law. When feasible, the Incident Commander shall evaluate the type of resistance and adopt a reasonable response to accomplish the law enforcement mission. Any use of force by a member of this office during a crowd control event shall be reported to the Incident Commander and documented promptly, completely, and accurately in an appropriate report.
3. **Coordination:** During all phases of the operation, it shall be the responsibility of the commander of the Intelligence Unit to remain in constant contact with both the Incident Commander and Crowd Control Unit Commander. They will advise both and be consulted on any actions taken. In a case of conflict, the final decision shall remain with

the Incident Commander.

4. Evidence: The Incident Commander shall ensure that supporting evidence is gathered as needed, i.e., photographs, films, recordings, and collection of evidence. Investigative Services Division personnel may be called upon for this support.
5. After Action: The Incident Commander will be responsible for ensuring that an after action report is filed on each event by all participating units.

F. USE OF KINETIC ENERGY PROJECTILES AND CHEMICAL AGENTS FOR CROWD CONTROL

Penal Code § 13652 mandates that Kinetic Energy Projectiles and Chemical Agents (defined below) shall only be deployed for crowd control purposes by deputies who have received POST training for crowd control. Moreover, the use of such devices must be objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including a deputy, or to bring an objectively dangerous and unlawful situation safely and effectively under control.

The use of Kinetic Energy Projectiles and Chemical Agents in a crowd control setting must also be in accordance with the following requirements:

1. De-escalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed.
2. Repeated, audible announcements are made announcing the intent to use kinetic energy projectiles and chemical agents and the type to be used, when objectively reasonable to do so. The announcements shall be made from various locations, if necessary, and delivered in multiple languages, if appropriate.
3. Persons are given an objectively reasonable opportunity to disperse and leave the scene.
4. An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and kinetic energy projectiles or chemical agents are targeted toward those individuals engaged in violent acts. Projectiles shall not be aimed indiscriminately into a crowd or group of persons.
5. Kinetic energy projectiles and chemical agents are used only with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable.
6. Deputies shall minimize the possible incidental impact of their use of kinetic energy projectiles and chemical agents on bystanders, medical personnel,

journalists, or other unintended targets.

7. An objectively reasonable effort has been made to extract individuals in distress.
8. Medical assistance is promptly provided, if properly trained personnel are present, or procured, for injured persons, when it is reasonable and safe to do so in accordance with General Order #12.00 (“Use of Force”).
9. Kinetic energy projectiles shall not be aimed at the head, neck, or any other vital organs.
10. Kinetic energy projectiles or chemical agents shall not be used by any law enforcement agency solely due to any of the following:
 - a. A violation of an imposed curfew.
 - b. A verbal threat.
 - c. Noncompliance with a law enforcement directive.
11. If the chemical agent to be deployed is tear gas, only a commanding officer at the scene of the assembly, protest, or demonstration may authorize the use of tear gas.

The following definitions will be used for purposes of understanding this section:

“Kinetic energy projectiles” means any type of device designed as less lethal, to be launched from any device as a projectile that may cause bodily injury through the transfer of kinetic energy and blunt force trauma. For purposes of this section, the term includes, but is not limited to, items commonly referred to as rubber bullets, plastic bullets, beanbag rounds, and foam tipped plastic rounds.

“Chemical agents” means any chemical that can rapidly produce sensory irritation or disabling physical effects in humans, which disappear within a short time following termination of exposure. For purposes of this section, the term includes, but is not limited to, chloroacetophenone tear gas, commonly known as CN tear gas; 2-chlorobenzalmalononitrile gas, commonly known as CS gas; and items commonly referred to as pepper balls, pepper spray, or oleoresin capsicum.

This section does not apply to the use of Kinetic Energy Projectiles or Chemical Agents within any county detention facility.

G. VACATING AN AREA

Penal Code § 726 provides, “Where any number of persons, whether armed or not, are unlawfully or riotously assembled, the sheriff of the county and his/her deputies, the officials governing the town or city, or any of them, must go among the persons assembled, or as near to them as possible, and command them, in the name of the people of the State, immediately to disperse.”

1. The decision to clear an area shall normally fall on the Incident Commander in liaison with a representative of the District Attorney's Office, who will be attached to the Sheriff's Office whenever possible during a major disturbance.
2. Consideration shall be made as to whether the area needed to be cleared of violators is public land or private property. If the area under the control of the violators is privately owned, then the owner or agent of the owner must first make an order to the crowd per Penal Code § 602(j). The following announcement should be made by the owner/agent:

“I am (full name and title) and I represent the owner or management of this property. You are not welcome here and are causing a disturbance. I request that you leave immediately and if you do not, I shall ask for your arrest.”

3. The following announcement shall be made by a Peace Officer upon a decision to clear an area.

“This is (rank and full name). I am a Deputy Sheriff of Santa Clara County. I hereby declare this to be an unlawful assembly and, in the name of the People of the State of California, command all those assembled (Name of location of unlawful assembly) to disperse. If you do not do so, you will be arrested. Penal Code Section 409 prohibits remaining present at an unlawful assembly.”

This announcement should be made up to two or three times and recorded if possible. The deputy should also give directions as to which way he/she expects persons to vacate the area and a definition of the boundaries of the order.

4. If necessary, any responsible deputy may make the decision to arrest persons for failure to disperse in violation of Penal Code § 409 after the above announcement has been made.

The above should also be made clear and recorded.

H. ARRESTS OF INDIVIDUALS OR GROUPS (MASS ARREST)

1. Arrest and booking procedure shall be organized and under the direction of the Incident Commander or the Crowd Control Unit Commander and coordinated through the Custody Bureau.
2. Once persons are booked in a custodial facility, whether permanent or temporary, they shall become the responsibility of the Custody Bureau and the Crowd Control Unit shall be relieved of responsibility.

I. CONTROL OF THE AREA

The Incident Commander shall confer with the Operations Section and the Planning Section and decide when the area of the disturbance may be returned to normal operations.

1. The Crowd Control Unit Commander shall release the personnel to their normal assignments after providing for necessary adjustments (i.e., rest, showers, clothing, food).

J. MEDIA RELATIONS

The Public Information Officer should use all available avenues of communication, including press releases, briefings, press conferences, and social media to maintain open channels of communication with media representatives and the public about the status and progress of the event, taking all opportunities to reassure the public about the professional management of the event.

K. MEDIA ACCESS

If deputies close the immediate area surrounding any emergency field command post or any other command post, or establish a police line, or rolling closure at a demonstration, march, protest, or rally where individuals are engaged in protected activity pursuant to the First Amendment, deputies shall comply with the following requirements with respect to authorized representatives of the media:

1. A duly authorized representative of any news service, online news service, newspaper, or radio or television station or network may enter the closed areas described in this section.
2. A deputy shall not intentionally assault, interfere with, or obstruct the duly authorized representative of any news service, online news service, newspaper, or radio or television station or network who is gathering, receiving, or processing information for communication to the public.

3. A duly authorized representative of any news service, online news service, newspaper, or radio or television station or network that is in a closed area described in this section shall not be cited for the failure to disperse, a violation of a curfew, or a violation of paragraph (1) of subdivision (a) of § 148, for gathering, receiving, or processing information. If the duly authorized representative is detained by a deputy, that representative shall be permitted to contact a supervisory officer immediately for the purpose of challenging the detention, unless circumstances make it impossible to do so.

Nothing in this section shall prevent a deputy from enforcing other applicable laws if the person is engaged in activity that is unlawful.

L. REPORTING

Penal Code § 13652.1 mandates that the Office shall ensure that a summary of each deployment of kinetic energy projectiles or chemical agents for crowd control purposes is prepared and published on the Office website. The commander of the division responding to the crowd control incident or their designee shall be responsible for preparing the summary (e.g., Patrol Division Commander if patrol division responds, Crowd Control Commander if crowd control unit responds). The summary shall be prepared and published within 60 days of the incident. The time frame may be extended for another 30 days where just cause is demonstrated, but no longer than 90 days from the time of the incident. The summary shall be limited to the information known to the Office at the time of the report and include the following required information:

1. A description of the assembly, protest, demonstration, or incident, including the approximate crowd size and the number of officers involved.
2. The type of kinetic energy projectile or chemical agent deployed.
3. The number of rounds or quantity of chemical agent dispersed, as applicable.
4. The number of documented injuries as a result of the kinetic energy projectile or chemical agent deployment.
5. The justification for using the kinetic energy projectile or chemical agent, including any de-escalation tactics or protocols and other measures that were taken at the time of the event to deescalate tensions and avoid the necessity of using the kinetic energy projectile or chemical agent.

The incident summary shall be routed to the PIO's for publishing on the department's website.

M. TRAINING

Deputies should receive periodic training regarding this policy, as well as the dynamics of crowd control and incident management (Penal Code § 13514.5). The Office should, when practicable, train with its external and mutual aid partners.

Deputies authorized to deploy kinetic energy projectiles and chemical agents should also receive periodic training on the standards for the use of kinetic energy projectiles and chemical agents for crowd control purposes as identified in Penal Code § 13652.



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