

SDPD Department Procedure 4.17 - FIRST AMENDMENT ACTIVITY FACILITATION AND MANAGEMENT follows POST Guidelines and meets or exceeds relevant state law.

Further, SDPD is obligated to respond to possible unlawful assembly or riot situations.

California Penal Code Section 410 states:

If a magistrate or officer, having notice of an unlawful or riotous assembly, mentioned in this Chapter, neglects to proceed to the place of assembly, or as near thereto as he can with safety, and to exercise the authority with which he is invested for suppressing the same and arresting the offenders, he is guilty of a misdemeanor.

California Penal Code Section 726 states:

Where any number of persons, whether armed or not, are unlawfully or riotously assembled, the sheriff of the county and his or 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. Question 1: How is the threat of using violence by protesters assessed?**

This is conduct-based and supported by specific articulable facts. Officers are trained to look at the totality of the circumstances. Factors include, but are not limited to, verbal threats to people or property; opposing parties engaged in threatening verbal or physical exchanges; criminal acts; fights; assaults; robberies; and the presence of traditional or improvised weapons (guns, knives, tasers, zip-ties, batons/sticks, rocks, chains, etc.).

**2. What is the minimum number of individuals that makes a riot according to SDPD Officers?**

Two. California Penal Code section 404(a) states:

A riot is any use of force or violence, disturbing the public peace, or any threat to use force or violence, if accompanied by immediate power of execution, **by two or more persons acting together**, and without authority of law.

**3. What metrics does SDPD use to define between a riot and an unlawful assembly?**

The California Penal Code defines both of these:

Penal Code section 404 defines a riot as:

Any use of force or violence, disturbing the public peace, or any threat to use force or violence, if accompanied by immediate power of execution, by two or more persons acting together, and without authority of law.

Penal Code section 407 defines an unlawful assembly as:

Whenever two or more persons assemble together to do an unlawful act or do a lawful act in a violent, boisterous or tumultuous manner, such assembly is an unlawful assembly.

The terms “boisterous” and “tumultuous” have been interpreted as conduct that poses a clear and present danger of imminent violence. *In re Brown* (1973) 9 Cal. 3d 612, 623.

#### **4. Related to protest activities, what does SDPD consider criminal conduct?**

Criminal conduct is an act that violates federal, state, or local law.

In regards to unlawful assembly, an “unlawful act” could be an intersection takeover. Obstructing traffic is an unlawful act, but SDPD rarely declares an unlawful assembly for obstructing traffic unless it is prolonged or accompanied by other factors, such as violence or vandalism.

Other examples of more serious criminal conduct could include vandalism, arson, assault, battery, theft, trespassing, and carrying or brandishing illegal weapons.

#### **5. Unlawful Assemblies, the procedure refers to the "number and nature." How does the department consider these out of the larger crowd?**

Section VII, B, 2 and 3 uses the term “number and nature.”

Immediately preceding is section VI C, which says:

During peaceful First Amendment Activity, officers may find the occasional individual who engages in criminal conduct that is not reflective of the larger group. In these cases, when feasible, officers should address the individual offender in compliance with other Department procedures while minimally disrupting the larger assembly.

Immediately following are sections VII, B, 4-7, which further state:

Whether the unlawful or violent acts result from one or two individuals or the larger crowd in general; whether separate crowds have merged and now the group has internal conflict between participants; whether contact with the police liaisons/event leaders to negotiate a resolution of the situation is appropriate and

effective; and evaluation of whether arresting individuals will be more appropriate than dispersing the entire crowd.

“Number and nature” is a way of articulating the facts that comprise the totality of the circumstances. It helps determine if a few individuals are exploiting a lawful assembly or if the assembly itself is the issue.

For instance, if officers are monitoring a protest and see that **one person** has vandalized a bus bench with a permanent marker, that would be a small number of vandalisms of a less severe nature (misdemeanor vandalism).

If **several people** were to use spray paint to vandalize a dozen storefront windows during the same event, that would be a larger number of acts and of a more severe nature (felony vandalism).

A further escalation would be if **several people** were to set fire to parked vehicles. That would be a larger number of acts of a much more severe nature (felony arson).

Each protest/demonstration must be evaluated independently. Officers may consider the “number and nature,” which means what type of criminal acts are occurring, whether criminal acts are widespread, whether there is a threat to safety or individuals being injured, whether there is a need to render aid to individuals in the crowd, and whether officers can safely arrest specific individuals in the crowd committing criminal acts, or if the larger crowd/event needs to be dispersed.

#### **6. What does the department mean by "sufficient police resources"?**

The goal of the SDPD is to provide public safety and protect the First Amendment rights of people engaged in expressive activity. Sufficiency will vary from incident to incident. Strategies, objectives, techniques and resources are articulated in section IX. CROWD DISPERSAL STRATEGIES, OBJECTIVES AND TECHNIQUES and XI. RESOURCES.

#### **7. Regarding dispersal orders, what does the department consider a "reasonable way"?**

Section VII, C provides detail about how a dispersal order is given.

Declaration of Unlawful Assembly

1. If the Incident Commander deems it is appropriate to declare an unlawful assembly, dispersal orders must be given.

2. For a dispersal order to be valid, a public officer must direct the persons assembled to immediately disperse in the name of the People of the State. Penal Code §726. The officer is not required to use any particular words. However, the

terms used must be sufficient to inform a reasonable person that the officer is acting in an official capacity and ordering people to leave the area. Additionally, the officer must communicate the order in a reasonable way that ensures that the order is heard. (Judicial Council of California Criminal Jury Instruction Number 2686).

3. Dispersal orders should not be given until officers are in a position to support/direct crowd movement. Members of the crowd should be given ample means of egress. The Incident Commander should consider persons with mobility issues when evaluating ample means of egress. The dispersal order shall be given at least three (3) times, and when safe, with audible confirmation from officers behind the crowd.

4. The dispersal order shall be given in English and Spanish.

5. The Incident Commander should ensure video recording occurs during unlawful assemblies, consistent with Department Procedures 1.49 and 3.26.

6. Officers shall activate their Body Worn Cameras before dispersal orders begin, consistent with Department Procedure 1.49.

7. Officers shall use the following dispersal order:

I am (your name and rank), a Police Officer of the City of San Diego. I hereby declare this to be an unlawful assembly, and in the name of the People of the State of California, I command all those assembled at (give specific location) to immediately disperse. You may move to (give a suitable location for crowd destination). If you do not do so, you will be arrested. If you refuse to move, (describe force, e.g. chemical agents and other weapons will be used. Provide the chemical agent/projectile warning only if their use is anticipated.)

Yo soy (name and rank) un oficial del departamento de policia de San Diego. Por Medio de la presente declaro que esta es una asamblea ilegal y en el nombre del gobierno del estado de California, les ordeno a todos aquellos reunidos (give specific location) que se retiren inmediatamente. Usted puede moverse (give specific locations and best route). Sino hacen eso, ustedes seran arrestados. Si usted rehusa moverse se usara gas lacrimojeno y otras armas. (Provide the chemical agent/projectile warning only if their use is anticipated.)

8. Incidents commanders shall consider the following methods that may be used to deliver and document dispersal orders (not in priority order):

a. Loud speech

b. Amplified sound

- c. Ensuring that the order is heard in remote areas
- d. Using unmanned aircraft equipped with amplified sound flown to inaccessible areas
- e. Pre-recorded unlawful assembly messages in multiple languages as appropriate
- f. Display of signage, including electronic signage and billboards, indicating unlawful assembly, dispersal and clearly identified routes of egress
- g. Gaining the attention of the crowd and documenting affirmative responses of crowd members prior to the declaration of unlawful assembly
- h. Positioning law enforcement personnel to the rear of a crowd to confirm and document hearing the transmission of the dispersal order
- i. Acquiring multiple-language capability
- j. Community alert system(s)
- k. Provide easy to understand directions that help the crowd disperse so that they clearly understand the desired response
- l. Using video/audio recording equipment for documentation of the dispersal order, the crowd response and their ability to hear
- m. Use of social media platforms to send out alerts to specific areas

**8. What does SDPD consider "violent criminal acts" or "acts of violence"?**

Violence is defined as “behavior involving physical force intended to hurt, damage, or kill someone or something.”

Violent criminal acts/acts of violence may include the following violations of the law: fighting in public, assault, battery, robbery, sexual assault, assault with a deadly weapon, brandishing a weapon, criminal threats, arson, and false imprisonment. Serious acts of property damage may also be considered violent acts. Generally, any act causing or likely to cause bodily or death, or acts resulting in damage to property.