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|  <p style="text-align: center;">ITHACA POLICE DEPARTMENT</p> <p style="text-align: center;">POLICY AND PROCEDURE GENERAL ORDER</p> | Distribution ALL PERSONNEL | General Order Number 7.04-A |
| | Original Issue Date 06/04/2021 | Reissue/Effective Date MM/DD/YY |
| Order Title: BEHAVIORAL THRESHOLDS FOR LAW ENFORCEMENT ACTION AT DEMONSTRATIONS | Accreditation Standard: NY: 2.7, 14.3, 20.1, 58.2(a), 58.2(k) | Section 7 |
| | Section Title SPECIAL OPERATIONS¹ | |
| Rescinds: |  John Joly, Acting Chief of Police | |

This General Order is for departmental use only and does not apply in any criminal or civil proceeding. This General Order should not be construed as creation of a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this General Order will only form the basis for departmental administrative sanctions. Violations of law will form the basis for civil and criminal sanctions in a recognized judicial setting.

I. PURPOSE

This General Order provides guidelines to Ithaca Police Department (“IPD” or “Department”) personnel and to the public on the public’s exercise of its rights of freedom of speech and assembly through protests and demonstrations. This General Order further describes the circumstances under which unlawful conduct at demonstrations may lead to arrest by law enforcement officers and prosecution by the Tompkins County District Attorney’s office or other prosecutorial offices with jurisdiction.

The guidelines contained in this General Order are not intended to discourage free speech or to favor any of the content communicated at demonstrations. The Department also does not intend for its policies or actions to excessively burden or punish non-violent civil disobedience. The Department intends to provide due warning that certain activities may be subject to involuntary dispersal of assembled individuals or arrest except in emergency circumstances.

II. POLICY

It is the policy of the Department to uphold the public’s constitutional right to engage in First Amendment Activities (defined below), while using the minimum physical force and authority required to address a crowd management or crowd control issue. The Department affirms and underscores that these guidelines are based on the essential role law enforcement officers play at demonstrations: protecting the constitutional rights of demonstrators, whatever their views may be, while preserving public safety, the safety of first responders and City personnel, and avoiding material damage to public and private property.

¹ The Special Operations section of IPD’s General Orders is designed to include General Orders applicable to non-routine circumstances outside of day-to-day law enforcement activities.

The City's embrace of First Amendment Activities does not extend to criminal activity. Crimes of violence, vandalism, harassment, or interference with services directed at members of the public, law enforcement officers and other first responders, elected officials, businesses, or property are not acceptable behaviors at demonstrations. Demonstrators and others who commit such acts, described in more detail below, will be subject to arrest upon probable cause and prosecuted.

The guidelines contained in this General Order are not intended to describe every possible circumstance that may arise at a demonstration. IPD leadership, incident commanders, and law enforcement officers must continuously adapt their approaches as an event, or set of events, develops. Factors that should guide law enforcement actions at demonstrations include the overall mood and conduct of the demonstrators; whether the demonstration has obvious leaders who are willing to communicate with law enforcement; whether the event is planned or spontaneous; the time of day and location; whether multiple groups are presenting opposing views in close proximity to one another; the availability of staffing and space for processing of persons arrested; and the availability of assistance from other law enforcement agencies.

III. DEFINITIONS

First Amendment Activities: First Amendment Activities include all forms of speech and expressive conduct used to convey ideas and/or information, express grievances, or otherwise communicate with others and include both verbal and non-verbal expression. Common First Amendment Activities include, but are not limited to, speeches, demonstrations, vigils, picketing, distribution of literature, displaying banners or signs, use of puppets to convey a message, street theater, and other artistic forms of expression. All these activities involve the freedom of speech, association, and assembly and the right to petition the government, as guaranteed by the United States Constitution and the Constitution and laws of the State of New York. The government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.

Demonstration: A public display of a group's or individual's feeling(s) toward a person(s), idea, cause, etc. and includes, but is not limited to, marches, protests, picketing, leafletting, student walkouts, assemblies, and sit-ins. Such events and activities usually attract a crowd of persons including participants, onlookers, observers, media, and other persons who may desire to observe, support, or disagree with the point of view of the activity.

IV. BEHAVIORAL THRESHOLDS FOR LAW ENFORCEMENT ACTION

A. Law Enforcement Presence Generally

The Department's policy seeks to keep the presence of law enforcement officers during First Amendment Activities to the minimum level necessary to protect public safety and health including that of demonstrators, onlookers, media, and first responders. Law enforcement officers will ordinarily be present in regular uniforms

or plain clothes and be available for the purpose of preventing disputes from breaking out and de-escalating any that do. The public should only expect law enforcement presence, use of protective gear, and use of crowd control efforts to occur in proportion to emerging criminal activity at demonstrations. Correspondingly, the public should expect law enforcement presence to decrease in proportion to de-escalation of any disputes or criminal activity that occur.

B. Criminal Activity – Category 1 (“Yellow”)

Category 1 criminal activity is denominated “Yellow” for caution that the conduct of some demonstrators has crossed the line between peaceful protest and criminal activity. Criminal Activity in Category 1 generally does not endanger public safety or health. Arrests for conduct coming within Category 1 will generally be made only after one or more warnings to the potential arrestee, and be approved by the Chief of Police, Deputy Chief, or Incident Commander (the highest level supervisor assigned to the event) after consultation, if practicable, with the Tompkins County District Attorney’s office. Arrests may also be made for conduct in Category 1 with the approval of the Chief or a Deputy Chief of Police based upon subsequent investigation (*e.g.* confirmation of an individual committing a criminal act based on an electronic recording having a sound evidentiary foundation).

Examples of conduct in Category 1 include crimes (generally at a misdemeanor or violation level) involving the following:

1. Congregating on, marching on, sitting in, occupying, blocking, or barricading public streets, driveways, sidewalks, parks, or walkways in a manner causing inconvenience but not a threat to public health or safety, and not restricting the movement of persons or vehicles desiring to leave the area;
2. Congregating in, sitting in, climbing on, or occupying public buildings, facilities, pavilions, or other structures in a manner causing inconvenience but not threat to public health or safety, and not causing material property damage;
3. Refusing to move from a public location upon the request or direction of a law enforcement officer. However, if the refusal interferes with movement of an emergency vehicle, an emergency operation, an arrest, or results in a direct threat to public health or safety or the health or safety of a law enforcement officer or other first responder, the conduct moves into Category 2 (“Red”), *see* Section “C” below, and will likely result in arrest;
4. Passively resisting an official order in a way that does not endanger the health or safety of a demonstrator, other member of the public, or law enforcement officer (*e.g.*, falling limp to the ground, lying on the street or sidewalk);

5. Using horns, megaphones, loudspeakers, sound trucks, sound cannons, or other amplification devices in violation of noise ordinances;
6. Painting unauthorized graffiti or murals on public property, street surfaces or sidewalk surfaces;
7. Moving or attempting to move barricades placed by law enforcement;
8. Demonstrating outside of zones established, defined, and clearly communicated by law enforcement or City administration prior to or during a demonstration;
9. Public intoxication and/or consuming alcohol from an open container, or openly consuming other illegal substances at a demonstration;
10. Opening fire hydrants or activating fire alarms;
11. Engaging in an unlawful assembly within the meaning of Section 240.10 of the Penal Law. Sections “D” and “E” below describe the procedures for announcing and actions that may be taken following announcement that a gathering is or has become an unlawful assembly.

C. Criminal Activity – Category 2 (“Red”)

Category 2 criminal activity is denominated “Red” to indicate that a demonstration involves prohibited conduct, generally violent, and there is an immediate danger to public safety and health. Arrests for conduct in Category 2 may be made immediately and without warning to the arrestee. Advance approval of the Chief of Police, a Deputy Chief or an incident commander for such arrests is desirable. However, the violence and emergency circumstances generally associated with the criminal activity in Category 2 can be expected to make obtaining approval impracticable in many cases. Arrests may also be made for conduct in this category with the approval of the Chief of Police or a Deputy Chief based upon subsequent investigation (*e.g.*, confirmation of an individual committing an offense based on an electronic recording having a sound evidentiary foundation).

Examples of conduct in Category 2 include crimes (which may be felonies, misdemeanors, or violations) involving the following:

C.1. Violence Against Persons

1. Discharge of a firearm;
2. Brandishing a firearm in a threatening manner;
3. Threatening to discharge a firearm;

4. Regardless of whether possession of the firearm would be permitted in other circumstances, possessing a firearm at a demonstration at which the City has announced, in advance thereof, a prohibition against the possession of firearms;
5. Possessing, setting off, brandishing, or threatening to set off an actual or false explosive device;
6. Engaging or threatening to engage in physical contact with deadly and non-deadly weapons other than firearms or brandishing such a weapon in a threatening manner;
7. Regardless of whether possession of a deadly or non-deadly weapon other than a firearm would be permitted in other circumstances, possessing a deadly or non-deadly weapon at a demonstration at which the City has announced, in advance thereof, a prohibition against the possession of weapons;
8. Engaging or threatening to engage in physical contact using poisonous or flammable substances or known irritants (*e.g.*, bear spray, pepper spray, mace, acid, other chemical agents, fuels, flares, fireworks), or throwing or launching such materials at law enforcement officers or other persons;
9. Throwing or mechanically launching projectiles (*e.g.*, rocks, bricks, sticks, poles, bottles) at other persons, or at occupied or unoccupied first responder or civilian motor vehicles, parked, stationary, or moving;
10. Using weapons, physical force, or threats of physical force, or physically blocking sidewalks, streets, or driveways for the purpose of preventing any individual from entering government facilities, including police stations, fire stations, courthouses, and other government offices; schools; religious institutions; hospitals or other medical care facilities; or from entering or leaving a place of business or residence; or from entering or leaving any other public place on foot, by public transit, bicycle, or motor vehicle;
11. Punching, kicking, choking, or physically restraining another individual, including a first responder (law enforcement officers, firefighters, EMTs, etc.), in a manner likely to result in physical injury;
12. Reaching for, grabbing at, or attempting to take away a first responder's gear (*e.g.* a law enforcement officer's firearm; a firefighter's fire extinguisher);
13. Directing light from a laser pointer or laser scope at another individual, including at a first responder (law enforcement officers, firefighters, EMTs, etc.), in a manner likely to cause temporary or permanent blindness or other physical injury, or likely to cause the other individual apprehension or fear of temporary or permanent blindness or other physical injury; or

14. Otherwise engaging in incitement to riot or riot in the second or first degree as defined in Penal Law Sections 240.05 and/or 240.06(a).²

C.2. Violence Against Property

1. Causing material damage to public or private buildings, residences, vehicles, or other facilities by breaking windows, breaking locks, forcing open doors, setting fires or other vandalism likely to destroy or make the property unusable;
2. Unauthorized entry into and/or theft from retail establishments, warehouses, storage facilities; public buildings, vehicles or facilities; schools; religious institutions; or hospitals or medical facilities of any kind.

D. When an Unlawful Assembly May Be Declared

1. The definition of an unlawful assembly is set forth in New York State Penal Law §240.10.³ Law enforcement may not disperse a demonstration or crowd event before demonstrators have acted illegally or before the demonstrators pose a clear and present danger of imminent violence.
2. The mere failure to obtain a permit, such as a parade permit or sound permit, is not a sufficient basis to declare an unlawful assembly. There must be criminal activity or a clear and present danger of imminent violence.
3. The fact that some of the demonstrators or organizing groups have engaged in violent or unlawful acts on prior occasions or demonstrations is not grounds for declaring an assembly unlawful.
4. Unless emergency or dangerous circumstances prevent negotiation, crowd dispersal techniques shall not be initiated until after attempts have been made through contacts with the law enforcement liaisons and demonstration or crowd

² “A person is guilty of inciting to riot when he urges ten or more persons to engage in tumultuous and violent conduct of a kind likely to create public alarm.” Penal Law §240.08.

“A person is guilty of riot in the second degree when, simultaneously with four or more other persons, he engages in tumultuous and violent conduct and thereby intentionally or recklessly causes or creates a grave risk of causing public alarm.” Penal Law §240.05.

A person is guilty of riot in the first degree when “[s]imultaneously with ten or more other persons, engages in tumultuous and violent conduct and thereby intentionally or recklessly causes or creates a grave risk of causing public alarm, and in the course of and as a result of such conduct, a person other than one of the participants suffers physical injury or substantial property damage occurs.” *Id.* §240.06(a).

³ An unlawful assembly under New York State law occurs when: (1) four or more persons assemble; (2) for the purpose of engaging or preparing to engage; (3) in tumultuous or violent conduct; (4) likely to cause public alarm; or (5) when, being present at an assembly which either has or develops such purpose, he remains there with intent to advance that purpose. Penal Law §240.10.

event leaders to negotiate a resolution of the situation so that the unlawful activity will cease and the First Amendment activity can continue.

5. If after a crowd disperses pursuant to a declaration of unlawful assembly and subsequently participants assemble at a different geographic location where the participants are engaged in non-violent and lawful First Amendment activity, such an assembly cannot be dispersed unless it has been determined that it is an unlawful assembly and the required official declaration has been adequately given.

E. Process for Declaring Unlawful Assembly and Actions Thereafter

1. Ending a protest by a dispersal order is IPD's last resort. If the the Department determines the circumstances of a demonstration to have become unsafe (such as due to criminal activity, particularly in the Red Zone, or extensive criminal activity in the Yellow Zone), demonstrators may be dispersed, and arrests are possible if orders are not complied with. Multiple announcements of unlawful assembly and directions to disperse will be given, consequences stated, and a path of exit provided.
2. Use of a dispersal order shall be made only with approval of the Chief of Police or a Deputy Chief of Police except to the extent exigent circumstances require proceeding without approval by the Chief or a Deputy Chief, in which case the approval of the highest ranking Incident Commander present must be obtained.
3. Actions to disperse a crowd shall not be initiated until Department officers have made repeated announcements to the crowd, asking members of the crowd to voluntarily disperse and informing them that, if they do not disperse, they will be subject to arrest.
4. Dispersal announcements must be made using adequate sound amplification equipment in a manner that will ensure that they are audible over a sufficient area. The dispersal orders should be repeated after commencement of the dispersal operation so that persons not present at the original broadcast will understand that they must leave the area. The announcements shall also specify adequate egress or escape routes. Whenever possible, two escape/egress routes shall be identified and announced.
5. In some instances, the Department may find it necessary to use a chemical agent to disperse a crowd. The dispersal announcement will inform the crowd when use of a chemical agent is contemplated. If the initial dispersal announcement did not inform the crowd of the contemplated use of a chemical agent, an additional announcement to this effect shall be made and an opportunity for the crowd to comply provided.

6. Unless an immediate risk to public safety exists or significant property damage is occurring, sufficient time will be allowed for a crowd to comply with law enforcement commands before action is taken.
7. It is the responsibility of the on-scene Chief, Deputy Chief or highest ranking Incident Commander to ensure that all such announcements are made in such a way that they are clearly audible to the crowd.
8. In the event the Department knows or has reason to believe a demonstration includes a significant number of persons who are deaf or hard of hearing, or have other disabilities that would interfere with their receipt or understanding of a dispersal announcement, reasonable steps will be taken to provide the announcement on multiple occasions in a manner that increases the likelihood that the announcement will be understood by as many participants in the demonstration as practicable.
9. The Incident Commander should ensure that the name of the individual making the dispersal order and the date/time each order was given is recorded.
10. Dispersal orders should not be given until officers are in position to support and/or direct crowd movement.
11. Personnel shall use the following Departmental dispersal order:

*I am a police officer [or other rank] with the City of Ithaca. I hereby declare this to be an unlawful assembly and command all those assembled at (location) to immediately leave. If you do not do so, you may be arrested or subject to other police action, including the use of force which may result in injury. The following routes of dispersal are available (routes). You have ____ minutes to leave. If you refuse to move, you will be arrested.**

**State other consequences if applicable (such as use of a chemical agent).*

12. It is the policy of the Department that any form of force used to disperse a demonstration shall be the minimum necessary to accomplish such objective. All General Orders concerning the use of force, including, without limitation, G.O. 3.01 (Use of Force) and G.O. 3.03 (Use of Oleorisin Capsicum (Pepper Spray)) apply in their entirety in the event force must be used to secure dispersal of a crowd. Body worn cameras shall be worn and activated by officers present at demonstrations in accordance with General Order 595.