

Chapter 4 - Patrol Operations

Patrol Function

400.1 PURPOSE AND SCOPE

The purpose of this policy is to define the patrol function and address intraorganizational cooperation and information sharing.

400.2 POLICY

The Milpitas Police Department provides patrol services 24 hours a day, seven days a week and will prioritize responses to requests for emergency services using available resources to enhance the safety of the public and department members.

400.3 FUNCTION

Officers will generally patrol in clearly marked vehicles, patrol assigned jurisdictional areas of Milpitas, respond to calls for assistance, act as a deterrent to crime, enforce state and local laws and respond to emergencies.

Patrol will generally provide the following services within the limits of available resources:

- (a) Patrol that is directed at the prevention of criminal acts, traffic violations and collisions, the maintenance of public order, and the discovery of hazardous situations or conditions
- (b) Crime prevention activities such as residential inspections, business inspections, community presentations, etc.
- (c) Calls for service, both routine and emergency in nature
- (d) Investigation of both criminal and non-criminal acts
- (e) The apprehension of criminal offenders
- (f) Community Oriented Policing and Problem Solving activities such as citizen assists and individual citizen contacts of a positive nature
- (g) The sharing of information between the Patrol and other division within the Department, as well as other outside governmental agencies
- (h) The application of resources to specific problems or situations within the community, which may be improved or resolved by Community Oriented Policing and problem solving strategies
- (i) Traffic direction and control

400.4 TERRORISM

It is the goal of the Milpitas Police Department to make every reasonable effort to accurately and appropriately gather and report any information that may relate to either foreign or domestic terrorism. Officers should advise a supervisor as soon as practicable of any activity believed to be terrorism related and should document such incidents with a written report. The supervisor should

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ensure that all terrorism related reports and FIs are forwarded to the Investigation Unit Supervisor in a timely fashion.

400.5 INFORMATION SHARING

To the extent feasible, all information relevant to the mission of the Department should be shared among all divisions and specialized units on a timely basis. Members should be provided with opportunities on a regular basis to share information during the daily briefings and to attend briefings of other divisions or specialized units.

Additionally, information should be shared with outside agencies and the public in conformance with department policies and applicable laws. Members are encouraged to share information with other units and divisions.

400.5.1 CRIME REPORTS

A crime report may be completed by any patrol officer who receives criminal information. The report will be processed and forwarded to the appropriate bureau for retention or follow-up investigation.

400.5.2 PATROL BRIEFINGS

Patrol supervisors, detective sergeants, and special unit sergeants are encouraged to share information as much as possible. All supervisors and/or officers will be provided an opportunity to share information at the daily patrol Briefings as time permits.

400.5.3 INFORMATION CLIPBOARDS

Several information clipboards will be maintained in the briefing room and will be available for review by officers from all bureaus within the Department. These will include, but not be limited to, the daily log clipboard and the teletype / patrol check clipboard.

400.5.4 BULLETIN BOARDS

A bulletin board will be kept in the hallway near the briefing room for display of new Departmental Directives. A copy of the Departmental Directive will be placed in the briefing basket.

400.6 CROWDS, EVENTS AND GATHERINGS

Officers may encounter gatherings of people, including but not limited to, civil demonstrations, civic, social and business events, public displays, parades and sporting events. Officers should monitor such events as time permits in an effort to keep the peace and protect the safety and rights of those present. A patrol supervisor should be notified when it becomes reasonably foreseeable that such an event may require increased monitoring, contact or intervention.

Officers responding to an event or gathering that warrants law enforcement involvement should carefully balance the speech and association rights of those present with applicable public safety concerns before taking enforcement action.

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Generally, officers should consider seeking compliance through advisements and warnings for minor violations and should reserve greater enforcement options for more serious violations or when voluntary compliance with the law is not achieved.

Officers are encouraged to contact organizers or responsible persons to seek voluntary compliance that may address relevant public safety/order concerns.

Officers should consider enforcement of applicable state and local laws, such as Penal Code 602.1 (obstructing or intimidating business operators), when the activity blocks the entrance or egress of a facility or location and when voluntary compliance with the law is not achieved.

Racial- or Bias-Based Profiling

402.1 PURPOSE AND SCOPE

This policy provides guidance to department members that affirms the Milpitas Police Department's commitment to policing that is fair and objective.

Nothing in this policy prohibits the use of specified characteristics in law enforcement activities designed to strengthen the department's relationship with its diverse communities (e.g., cultural and ethnicity awareness training, youth programs, community group outreach, partnerships).

402.1.1 DEFINITIONS

Definitions related to this policy include:

Bias-based policing - An inappropriate reliance on actual or perceived characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, disability, or affiliation with any non-criminal group (protected characteristics) as the basis for providing differing law enforcement service or enforcement (Penal Code § 13519.4).

402.2 POLICY

The Milpitas Police Department is committed to providing law enforcement services to the community with due regard for the racial, cultural or other differences of those served. It is the policy of this department to provide law enforcement services and to enforce the law equally, fairly, objectively and without discrimination toward any individual or group.

402.3 BIAS-BASED POLICING PROHIBITED

Bias-based policing is strictly prohibited.

However, nothing in this policy is intended to prohibit an officer from considering protected characteristics in combination with credible, timely and distinct information connecting a person or people of a specific characteristic to a specific unlawful incident, or to specific unlawful incidents, specific criminal patterns or specific schemes.

402.3.1 CALIFORNIA RELIGIOUS FREEDOM ACT

Members shall not collect information from a person based on religious belief, practice, affiliation, national origin or ethnicity unless permitted under state or federal law (Government Code § 8310.3).

Members shall not assist federal government authorities (Government Code § 8310.3):

- (a) In compiling personal information about a person's religious belief, practice, affiliation, national origin or ethnicity.
- (b) By investigating, enforcing or assisting with the investigation or enforcement of any requirement that a person register with the federal government based on religious belief, practice, or affiliation, or national origin or ethnicity.

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402.4 MEMBER RESPONSIBILITIES

Every member of this department shall perform his/her duties in a fair and objective manner and is responsible for promptly reporting any suspected or known instances of bias-based policing to a supervisor. Members should, when reasonable to do so, intervene to prevent any biased-based actions by another member.

402.4.1 REASON FOR CONTACT

Officers contacting a person shall be prepared to articulate sufficient reason for the contact, independent of the protected characteristics of the individual.

To the extent that written documentation would otherwise be completed (e.g., arrest report, field interview (FI) card), the involved officer should include those facts giving rise to the contact, as applicable.

Except for required data-collection forms or methods, nothing in this policy shall require any officer to document a contact that would not otherwise require reporting.

402.4.2 REPORTING OF STOPS

Effective January 1, 2022, an officer conducting a stop of a person shall collect the data elements required by 11 CCR 999.226 for every person stopped and prepare a stop data report. When multiple officers conduct a stop, the officer with the highest level of engagement with the person shall collect the data elements and prepare the report (11 CCR 999.227).

If multiple agencies are involved in a stop and the Milpitas Police Department is the primary agency, the Milpitas Police Department officer shall collect the data elements and prepare the stop data report (11 CCR 999.227).

The stop data report should be completed by the end of the officer's shift or as soon as practicable (11 CCR 999.227).

The data shall be reported to the California Department of Justice on or before April 1, 2023.

402.5 SUPERVISOR RESPONSIBILITIES

Supervisors should monitor those individuals under their command for compliance with this policy and shall handle any alleged or observed violations in accordance with the Personnel Complaints Policy.

- (a) Supervisors should discuss any issues with the involved officer and his/her supervisor in a timely manner.
 - 1. Supervisors should document these discussions, in the prescribed manner.
- (b) Supervisors should periodically review MAV recordings, portable audio/video recordings, Mobile Computer Terminal (Other:) data and any other available resource used to document contact between officers and the public to ensure compliance with the policy.
 - 1. Supervisors should document these periodic reviews.

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2. Recordings or data that capture a potential instance of bias-based policing should be appropriately retained for administrative investigation purposes.
- (c) Supervisors shall initiate investigations of any actual or alleged violations of this policy.
- (d) Supervisors should take prompt and reasonable steps to address any retaliatory action taken against any member of this department who discloses information concerning bias-based policing.

402.6 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

The Sergeant Manager shall ensure that all data required by the California Department of Justice (DOJ) regarding complaints of racial bias against officers is collected and provided to the Records Supervisor for required reporting to the DOJ (Penal Code § 13012; Penal Code § 13020). See the Records Bureau Policy.

Supervisors should ensure that data stop reports are provided to the Records Supervisor for required annual reporting to the DOJ (Government Code § 12525.5) (See Records Bureau Policy).

Briefing Training

404.1 PURPOSE AND SCOPE

Briefing training is generally conducted at the beginning of the officer's assigned shift. Briefing provides an opportunity for important exchange between employees and supervisors. A supervisor generally will conduct Briefing; however officers may conduct Briefing for training purposes with supervisor approval.

Briefing should accomplish, at a minimum, the following basic tasks:

- (a) Briefing officers with information regarding daily patrol activity, with particular attention given to unusual situations and changes in the status of wanted persons, stolen vehicles, and major investigations
- (b) Notifying officers of changes in schedules and assignments
- (c) Notifying officers of new Departmental Directives or changes in Departmental Directives
- (d) Reviewing recent incidents for training purposes
- (e) Providing training on a variety of subjects

404.2 PREPARATION OF MATERIALS

The supervisor conducting Briefing is responsible for preparation of the materials necessary for a constructive briefing. Supervisors may delegate this responsibility to a subordinate officer in his or her absence or for training purposes.

404.3 RETENTION OF BRIEFING TRAINING RECORDS

If appropriate, some briefing training materials and / or curriculum may be forwarded to the Training Sergeant for inclusion in training records.

Crime and Disaster Scene Integrity

406.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance in handling a major crime or disaster.

406.2 POLICY

It is the policy of the Milpitas Police Department to secure crime or disaster scenes so that evidence is preserved, and to identify and mitigate the dangers associated with a major crime or disaster scene for the safety of the community and those required to enter or work near the scene.

406.3 SCENE RESPONSIBILITY

The first officer at the scene of a crime or major incident is generally responsible for the immediate safety of the public and preservation of the scene. Officers shall also consider officer safety and the safety of those persons entering or exiting the area, including those rendering medical aid to any injured parties. Once an officer has assumed or been assigned to maintain the integrity and security of the crime or disaster scene, the officer shall maintain the crime or disaster scene until he/she is properly relieved by a supervisor or other designated person.

406.4 FIRST RESPONDER CONSIDERATIONS

The following list generally describes the first responder's function at a crime or disaster scene. This list is not intended to be all-inclusive, is not necessarily in order and may be altered according to the demands of each situation:

- (a) Broadcast emergency information, including requests for additional assistance and resources.
- (b) Provide for the general safety of those within the immediate area by mitigating, reducing or eliminating threats or dangers.
- (c) Locate or identify suspects and determine whether dangerous suspects are still within the area.
- (d) Provide first aid to injured parties if it can be done safely.
- (e) Evacuate the location safely as required or appropriate.
- (f) Secure the inner perimeter.
- (g) Protect items of apparent evidentiary value.
- (h) Secure an outer perimeter.
- (i) Identify potential witnesses.
- (j) Start a chronological log noting critical times and personnel allowed access.

Crime and Disaster Scene Integrity

406.5 SEARCHES

Officers arriving at crime or disaster scenes are often faced with the immediate need to search for and render aid to victims, and to determine if suspects are present and continue to pose a threat. Once officers are satisfied that no additional suspects are present and/or there are no injured persons to be treated, those exigent circumstances will likely no longer exist. Officers should thereafter secure the scene and conduct no further search until additional or alternate authority for the search is obtained, such as consent or a search warrant.

406.5.1 CONSENT

When possible, officers should seek written consent to search from authorized individuals. However, in the case of serious crimes or major investigations, it may be prudent to also obtain a search warrant. Consent as an additional authorization may be sought, even in cases where a search warrant has been granted.

406.6 EXECUTION OF HEALTH ORDERS

Any sworn member of this department is authorized to enforce all orders of the local health officer that have been issued for the purpose of preventing the spread of any contagious, infectious or communicable disease (Health and Safety Code § 120155).

Ride-Along Policy

410.1 PURPOSE AND SCOPE

The Ride-Along Program provides an opportunity for citizens to experience the law enforcement function first hand. This policy provides the requirements, approval process, and hours of operation for the Ride-Along Program.

410.1.1 ELIGIBILITY

The Milpitas Police Department Ride-Along Program is offered to residents, students and those employed within the City. Every attempt will be made to accommodate interested persons however any applicant may be disqualified without cause.

The following factors may be considered in disqualifying an applicant and are not limited to:

- Being under 16 years of age
- Prior criminal history
- Pending criminal action
- Pending lawsuit against the Department
- Denial by any supervisor

410.1.2 AVAILABILITY

The Ride-Along Program is available on most days of the week, with certain exceptions. The ride-along times are from 9:00 a.m. to 11:00 p.m. Exceptions to this schedule may be made as approved by the Chief of Police, Division Captain, or Watch Commander.

410.2 PROCEDURE TO REQUEST A RIDE-ALONG

Generally, ride-along requests will be scheduled by the Police-Community Relations Sergeant or his / her designee. The participant will complete a "Ride Along Request / Rules and Regulation Form and Release of Liability" form. Information requested will include a valid ID or California driver's license, address, and telephone number. If the participant is under 18 years of age, a parent/guardian must be present to complete the Ride-Along Form.

The Police-Community Relations Sergeant or his / her designee will schedule a date, based on availability, at least one week after the date of application. If approved, a copy will be forwarded to the respective Watch Commander as soon as possible for his/her scheduling considerations.

If the ride-along is denied after the request has been made, the Police Community Relations Sergeant or designee will contact the applicant and advise him/her of the denial.

410.2.1 PROGRAM REQUIREMENTS

Once approved, civilian ride-alongs will be allowed to ride no more than once every six months. An exception would apply to the following: Explorers, Citizen Volunteers, Reserves, Chaplains, police applicants, and all others with approval of the Police Community Relations Sergeant. .

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An effort will be made to ensure that no more than one citizen will participate in a ride-along during any given time period. Normally, no more than one ride-along will be allowed in the officer's vehicle at a given time.

410.2.2 SUITABLE ATTIRE

Any person approved to ride along is required to be suitably dressed in collared shirt, blouse or jacket, slacks or jeans and shoes. Sandals, T-shirts, tank tops, shorts and ripped or torn blue jeans are not permitted. Hats and ball caps should not be worn in the police vehicle. The Watch Commander or field supervisor may refuse a ride along to anyone not properly dressed.

410.2.3 PEACE OFFICER RIDE-ALONGS

Off-duty members of this department or any other law enforcement agency will not be permitted to ride-along with on-duty officers without the expressed consent of the Watch Commander. In the event that such a ride-along is permitted, the off-duty employee shall not be considered on-duty and shall not represent themselves as a peace officer or participate in any law enforcement activity except as emergency circumstances may require.

410.2.4 RIDE-ALONG CRIMINAL HISTORY CHECK

All Ride-along applicants are subject to a criminal history check. The criminal history check may include a local records check and a Department of Justice Automated Criminal History System check through CLETS prior to their approval as a ride-along with a law enforcement officer (provided that the ride-along is not an employee of the Milpitas Police Department) (CLETS Policies, Practices and Procedures Manual § 1.6.1.F.2.).

410.3 OFFICER'S RESPONSIBILITY

The officer shall advise the dispatcher that a ride-along is present in the vehicle before going into service. Officers shall consider the safety of the ride-along at all times. Officers should use sound discretion when encountering a potentially dangerous situation, and if feasible, let the participant out of the vehicle in a well-lighted place of safety. The dispatcher will be advised of the situation and as soon as practical have another police unit respond to pick up the participant at that location. The ride-along may be continued or terminated at this time.

The Police-Community Relations Sergeant or his / her designee is responsible for maintaining and scheduling ride-alongs. Upon completion of the ride-along, the ride-along form shall be returned to the Police-Community Relations Sergeant with any comments which may be offered by the officer.

410.4 CONTROL OF RIDE-ALONG

The assigned employee shall maintain control over the ride-along at all times and instruct him/her in the conditions that necessarily limit their participation. These instructions should include:

- (a) The ride-along will follow the directions of the officer
- (b) The ride-along will not become involved in any investigation, handling of evidence, discussions with victims or suspects, or handling any police equipment

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- (c) The ride-along may terminate the ride at any time and the officer may return the observer to their home or to the station if the ride-along interferes with the performance of the officer's duties
- (d) Ride-alongs may be allowed to continue riding during the transportation and booking process provided this does not jeopardize their safety
- (e) Officers will not allow any ride-alongs to be present in any residences or situations that would jeopardize their safety or cause undue stress or embarrassment to a victim or any other citizen
- (f) Under no circumstance shall a civilian ride along be permitted to enter a private residence with an officer without the expressed consent of the resident or other authorized person

Hazardous Material Response

412.1 PURPOSE AND SCOPE

Hazardous materials present a potential harm to employees resulting from their exposure. To comply with Title 8, California Code of Regulations, § 5194, the following is to be the policy of this department.

412.1.1 HAZARDOUS MATERIAL DEFINED

A hazardous material is a substance which by its nature, containment and reactivity, has the capability of inflicting harm during exposure; characterized as being toxic, corrosive, flammable, reactive, an irritant or strong sensitizer and thereby posing a threat to health when improperly managed.

412.2 HAZARDOUS MATERIAL RESPONSE

Employees may encounter situations involving suspected hazardous materials, such as at the scene of a traffic accident, chemical spill or fire. When employees come into contact with a suspected hazardous material, certain steps should be taken to protect themselves and citizens.

The following steps should be considered at any scene involving suspected hazardous materials:

- (a) Attempt to identify the type of hazardous substance. (Identification can be determined by placard, driver's manifest or statements from the person transporting).
- (b) Notify the Fire Department.
- (c) Provide first-aid for injured parties if it can be done safely and without contamination.
- (d) Begin evacuation of the immediate area and surrounding areas, dependent on substance. Voluntary evacuation should be considered; however, depending on the substance, mandatory evacuation may be necessary.

412.3 REPORTING EXPOSURE(S)

Department personnel who believe that they have been exposed to a hazardous material shall immediately report the exposure to a supervisor. Each exposure shall be documented by the employee in an employee memorandum that shall be forwarded via chain of command to the Commanding Officer. Should the affected employee be unable to document the exposure for any reason, it shall be the responsibility of the notified supervisor to complete the memorandum.

Injury or illness caused or believed to be caused from exposure to hazardous materials shall be reported the same as any other on-duty injury or illness in addition to a crime report or incident report.

412.3.1 SUPERVISOR RESPONSIBILITY

When a supervisor has been informed that an employee has been exposed to a hazardous material, he/she shall ensure that immediate medical treatment is obtained and appropriate action is taken to lessen the exposure.

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To ensure the safety of employees, safety equipment is available through supervisory personnel. Safety items not maintained by the Department will be obtained through the Fire Department.

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Crisis Intervention Incidents

417.1 PURPOSE AND SCOPE

This policy provides guidelines for interacting with those who may be experiencing a mental health or emotional crisis. Interaction with such individuals has the potential for miscommunication and violence. It often requires an officer to make difficult judgments about a person's mental state and intent in order to effectively and legally interact with the individual.

417.1.1 DEFINITIONS

Definitions related to this policy include:

Person in crisis - A person whose level of distress or mental health symptoms have exceeded the person's internal ability to manage his/her behavior or emotions. A crisis can be precipitated by any number of things, including an increase in the symptoms of mental illness despite treatment compliance; non-compliance with treatment, including a failure to take prescribed medications appropriately; or any other circumstance or event that causes the person to engage in erratic, disruptive or dangerous behavior that may be accompanied by impaired judgment.

417.2 POLICY

The Milpitas Police Department is committed to providing a consistently high level of service to all members of the community and recognizes that persons in crisis may benefit from intervention. The Department will collaborate, where feasible, with mental health professionals to develop an overall intervention strategy to guide its members' interactions with those experiencing a mental health crisis. This is to ensure equitable and safe treatment of all involved.

417.3 SIGNS

Members should be alert to any of the following possible signs of mental health issues or crises:

- (a) A known history of mental illness
- (b) Threats of or attempted suicide
- (c) Loss of memory
- (d) Incoherence, disorientation or slow response
- (e) Delusions, hallucinations, perceptions unrelated to reality or grandiose ideas
- (f) Depression, pronounced feelings of hopelessness or uselessness, extreme sadness or guilt
- (g) Social withdrawal
- (h) Manic or impulsive behavior, extreme agitation, lack of control
- (i) Lack of fear
- (j) Anxiety, aggression, rigidity, inflexibility or paranoia

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Members should be aware that this list is not exhaustive. The presence or absence of any of these should not be treated as proof of the presence or absence of a mental health issue or crisis.

417.4 COORDINATION WITH MENTAL HEALTH PROFESSIONALS

When feasible, officers should consider collaborating with county mental health professionals, or other community resources when interacting with those who may be suffering from mental illness or who appear to be in a mental health crisis. Resources may include but are not limited to the Law Enforcement Liaison from the Santa Clara County Department of Behavioral Health Services, and Uplift Family Services.

417.5 FIRST RESPONDERS

Safety is a priority for first responders. It is important to recognize that individuals under the influence of alcohol, drugs or both may exhibit symptoms that are similar to those of a person in a mental health crisis. These individuals may still present a serious threat to officers; such a threat should be addressed with reasonable tactics. Nothing in this policy shall be construed to limit an officer's authority to use reasonable force when interacting with a person in crisis.

Officers are reminded that mental health issues, mental health crises and unusual behavior alone are not criminal offenses. Individuals may benefit from treatment as opposed to incarceration.

An officer responding to a call involving a person in crisis should:

- (a) Promptly assess the situation independent of reported information and make a preliminary determination regarding whether a mental health crisis may be a factor.
- (b) Request available backup officers and specialized resources as deemed necessary and, if it is reasonably believed that the person is in a crisis situation, use conflict resolution and de-escalation techniques to stabilize the incident as appropriate.
- (c) If feasible, and without compromising safety, turn off flashing lights, bright lights or sirens.
- (d) Attempt to determine if weapons are present or available.
 1. Prior to making contact, and whenever possible and reasonable, conduct a search of the Department of Justice Automated Firearms System via the California Law Enforcement Telecommunications System (CLETS) to determine whether the person is the registered owner of a firearm (Penal Code § 11106.4).
- (e) Take into account the person's mental and emotional state and potential inability to understand commands or to appreciate the consequences of his/her action or inaction, as perceived by the officer.
- (f) Secure the scene and clear the immediate area as necessary.
- (g) Employ tactics to preserve the safety of all participants.
- (h) Determine the nature of any crime.
- (i) Request a supervisor, as warranted.

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- (j) Evaluate any available information that might assist in determining cause or motivation for the person's actions or stated intentions.
- (k) If circumstances reasonably permit, consider and employ alternatives to force.

417.6 DE-ESCALATION

Officers should consider that taking no action or passively monitoring the situation may be the most reasonable response to a mental health crisis.

Once it is determined that a situation is a mental health crisis and immediate safety concerns have been addressed, responding members should be aware of the following considerations and should generally:

- Evaluate safety conditions.
- Introduce themselves and attempt to obtain the person's name.
- Be patient, polite, calm, courteous and avoid overreacting.
- Speak and move slowly and in a non-threatening manner.
- Moderate the level of direct eye contact.
- Remove distractions or disruptive people from the area.
- Demonstrate active listening skills (e.g., summarize the person's verbal communication).
- Provide for sufficient avenues of retreat or escape should the situation become volatile.

Responding officers generally should not:

- Use stances or tactics that can be interpreted as aggressive.
- Allow others to interrupt or engage the person.
- Corner a person who is not believed to be armed, violent or suicidal.
- Argue, speak with a raised voice or use threats to obtain compliance.

417.7 INCIDENT ORIENTATION

When responding to an incident that may involve mental illness or a mental health crisis, the officer should request that the dispatcher provide critical information as it becomes available. This includes:

- (a) Whether the person relies on drugs or medication, or may have failed to take his/her medication.
- (b) Whether there have been prior incidents, suicide threats/attempts, and whether there has been previous police response.
- (c) Contact information for a treating physician or mental health professional.

Additional resources and a supervisor should be requested as warranted.

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417.8 SUPERVISOR RESPONSIBILITIES

A supervisor should respond to the scene of any interaction with a person in crisis. Responding supervisors should:

- (a) Attempt to secure appropriate and sufficient resources.
- (b) Closely monitor any use of force, including the use of restraints, and ensure that those subjected to the use of force are provided with timely access to medical care (see the Handcuffing and Restraints Policy).
- (c) Consider strategic disengagement. Absent an imminent threat to the public and, as circumstances dictate, this may include removing or reducing law enforcement resources or engaging in passive monitoring.
- (d) Ensure that all reports are completed and that incident documentation uses appropriate terminology and language.
- (e) Conduct an after-action tactical and operational debriefing, and prepare an after-action evaluation of the incident to be forwarded to the Division Captain.

Evaluate whether a critical incident stress management debriefing for involved members is warranted.

417.9 INCIDENT REPORTING

Members engaging in any oral or written communication associated with a mental health crisis should be mindful of the sensitive nature of such communications and should exercise appropriate discretion when referring to or describing persons and circumstances.

Members having contact with a person in crisis should keep related information confidential, except to the extent that revealing information is necessary to conform to department reporting procedures or other official mental health or medical proceedings.

417.9.1 DIVERSION

Individuals who are not being arrested should be processed in accordance with the Mental Illness Commitments Policy.

417.10 NON-SWORN INTERACTION WITH PEOPLE IN CRISIS

Non-sworn members may be required to interact with persons in crisis in an administrative capacity, such as dispatching, records request, and animal control issues.

- (a) Members should treat all individuals equally and with dignity and respect.
- (b) If a member believes that he/she is interacting with a person in crisis, he/she should proceed patiently and in a calm manner.
- (c) Members should be aware and understand that the person may make unusual or bizarre claims or requests.

If a person's behavior makes the member feel unsafe, if the person is or becomes disruptive or violent, or if the person acts in such a manner as to cause the member to believe that the person

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may be harmful to him/herself or others, an officer should be promptly summoned to provide assistance.

417.11 TRAINING

In coordination with the mental health community and appropriate stakeholders, the Department will develop and provide comprehensive education and training to all department members to enable them to effectively interact with persons in crisis.

This department will endeavor to provide Peace Officer Standards and Training (POST)-approved advanced officer training on interaction with persons with mental disabilities, welfare checks and crisis intervention (Penal Code § 11106.4; Penal Code § 13515.25; Penal Code § 13515.27; Penal Code § 13515.30).

Mental Illness Commitments

418.1 PURPOSE AND SCOPE

This policy provides guidelines for when officers may take a person into custody for psychiatric evaluation and treatment (5150 commitment) (Welfare and Institutions Code § 5150).

418.2 POLICY

It is the policy of the Milpitas Police Department to protect the public and individuals through legal and appropriate use of the 72-hour treatment and evaluation commitment (5150 commitment) process.

418.3 AUTHORITY

An officer having probable cause may take a person into custody and place the person in an approved mental health facility for 72-hour treatment and evaluation when the officer believes that, as a result of a mental disorder, the person is a danger to him/herself or others or the person is gravely disabled (Welfare and Institutions Code § 5150; Welfare and Institutions Code § 5585.50).

When determining whether to take a person into custody, officers are not limited to determining the person is an imminent danger and shall consider reasonably available information about the historical course of the person's mental disorder, which may include evidence presented from any of the following (Welfare and Institutions Code § 5150; Welfare and Institutions Code § 5150.05):

- (a) An individual who is providing or has provided mental health treatment or related support services to the person
- (b) A family member
- (c) The person subject to the determination or anyone designated by the person

418.3.1 VOLUNTARY EVALUATION

If an officer encounters an individual who may qualify for a 5150 commitment, he/she may inquire as to whether the person desires to voluntarily be evaluated at an appropriate facility. If the person so desires, the officers should:

- (a) Transport the person to an appropriate facility that is able to conduct the evaluation and admit the person pursuant to a 5150 commitment.
- (b) If at any point the person changes his/her mind regarding voluntary evaluation, officers should proceed with the 5150 commitment, if appropriate.
- (c) Document the circumstances surrounding the individual's desire to pursue voluntary evaluation and/or admission.

418.3.2 RESTRAINTS

If the patient is violent or potentially violent, the officers should notify the staff of this concern. The staff member in charge will have discretion as to whether soft-restraints will be used. If these

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restraints are desired, the officers should wait while they are being applied to help provide physical control of the patient, if needed.

418.3.3 MENTAL HEALTH DOCUMENTATION

The officer will complete an Application For 72-Hour Detention for Evaluation and Treatment form (MH-302) and provide it to the staff member assigned to that patient. The officer will retain a copy of the 72-hour evaluation for inclusion in the case report. The officer shall also provide a verbal summary to an emergency department staff member regarding the circumstances leading to the involuntary detention.

418.3.4 SECURING OF WEAPONS

The firearm shall be secured in the appropriate gun locker at the facility or in the police unit.

418.4 CONSIDERATIONS AND RESPONSIBILITIES

Any officer handling a call involving an individual who may qualify for a 5150 commitment should consider, as time and circumstances reasonably permit:

- (a) Available information that might assist in determining the cause and nature of the person's action or stated intentions.
- (b) Community or neighborhood mediation services.
- (c) Conflict resolution and de-escalation techniques.
- (d) Community or other resources available to assist in dealing with mental health issues.

While these steps are encouraged, nothing in this section is intended to dissuade officers from taking reasonable action to ensure the safety of the officers and others.

Officers should consider a 5150 commitment over arrest when mental health issues appear to be a mitigating factor for people who are suspected of committing minor crimes or creating other public safety issues.

418.4.1 SECURING OF PROPERTY

When a person is taken into custody for evaluation, or within a reasonable time thereafter, and unless a responsible relative, guardian or conservator is in possession of the person's personal property, the officer shall take reasonable precautions to safeguard the individual's personal property in his/her possession or on the premises occupied by the person (Welfare and Institutions Code § 5150).

The officer taking the person into custody should provide a report to the court that describes the person's property and its disposition in the format provided in Welfare and Institutions Code § 5211, unless a responsible person took possession of the property, in which case the officer should only include the name of the responsible person and the location of the property (Welfare and Institutions Code § 5150).

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The officer shall also issue a Field Property Receipt to the subject in which the property was taken from pursuant to Penal Code 1412 then book the property into the MPD evidence room as either safekeeping or evidence.

418.5 TRANSPORTATION

When transporting any individual for a 5150 commitment, the transporting officer should have the Communications Center notify the receiving facility of the estimated time of arrival, the level of cooperation of the individual and whether any special medical care is needed.

Officers may transport individuals in a patrol unit and shall secure them in accordance with the Handcuffing and Restraints Policy. Should the detainee require transport in a medical transport vehicle and the safety of any person, including the detainee, requires the presence of an officer during the transport, Watch Commander approval is required before transport commences.

418.5.1 RETURN OF CONFISCATED FIREARMS AND WEAPONS

- (a) Whenever the handling officer has cause to believe that the future return of any confiscated weapon(s) might endanger the person or others, the officer shall detail those facts and circumstances in a report. The report shall be forwarded to the City Attorney which shall be responsible for initiating a petition to the superior court for a hearing in accordance with Welfare and Institutions Code § 8102(b), to determine whether or not the weapon(s) will be returned.
- (b) The petition to the Superior Court shall be initiated within 30 days of the release of the individual from whom such weapon(s) have been confiscated unless the Department makes an ex parte application to the court to extend the time to file such a petition, up to a maximum of 60 days. At the time any such petition is initiated, the City Attorney shall send written notice to the individual informing him or her of the right to a hearing on the issue and that he or she has 30 days to confirm with the court clerk any desire for a hearing and that the failure to do so will result in the forfeiture of any confiscated weapon(s).
- (c) If no petition is initiated within the above period, the Department shall make the weapon(s) available for return in accordance with subsection (d) below. If the person does not confirm a desire for a hearing within the prescribed 30 days, the City Attorney may file a petition for an order of default.
- (d) Under no circumstances shall any firearm be returned to any individual unless and until such person presents valid identification and written notification from the California Department of Justice which conforms to the provisions of Penal Code § 33850.
- (e) In no case in which a firearm or other deadly weapon is not retained as evidence shall the Department be required to retain such firearms or other deadly weapon longer than 180 days after notice has been provided to the owner that such firearm or other deadly weapon is available for return. At the expiration of such period, the firearm or

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other deadly weapon may be processed for disposal in accordance with applicable law (Penal Code § 33875).

418.6 TRANSFER TO APPROPRIATE FACILITY

Upon arrival at the facility, the officer will escort the individual into a treatment area designated by a facility staff member. If the individual is not seeking treatment voluntarily, the officer should provide the staff member with the written application for a 5150 commitment and remain present to provide clarification of the grounds for detention, upon request.

Absent exigent circumstances, the transporting officer should not assist facility staff with the admission process, including restraint of the individual. However, if the individual is transported and delivered while restrained, the officer may assist with transferring the individual to facility restraints and will be available to assist during the admission process, if requested. Under normal circumstances, officers will not apply facility-ordered restraints.

418.7 DOCUMENTATION

The officer shall complete an application for a 72-Hour detention for evaluation and treatment, provide it to the facility staff member assigned to that patient and retain a copy of the application for inclusion in the case report.

The application shall include the circumstances for officer involvement; the probable cause to believe the person is, as a result of a mental health disorder, a danger to others or him/herself or gravely disabled; and all information used for the determination of probable cause (Welfare and Institutions Code § 5150; Welfare and Institutions Code § 5150.05).

The officer should also provide a verbal summary to any evaluating staff member regarding the circumstances leading to the involuntary detention.

418.7.1 ADVISEMENT

The officer taking a person into custody for evaluation shall advise the person of:

- (a) The officer's name and agency.
- (b) The fact that the person is not under criminal arrest but is being taken for examination by mental health professionals and the mental health staff will advise him/her of their rights.
- (c) The name of the facility to which the person is being taken.
- (d) If the person is being taken into custody at his/her residence, he/she should also be advised that he/she may take a few personal items, which the officer must approve, and may make a telephone call or leave a note indicating where he/she is being taken. The officer should also ask if the person needs assistance turning off any appliance or water.

The advisement shall be given in a language the person understands. If the person cannot understand an oral advisement, the information shall be provided in writing (Welfare and Institutions Code § 5150).

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418.8 CRIMINAL OFFENSES

Officers investigating an individual who is suspected of committing a minor criminal offense and who is being taken on a 5150 commitment should resolve the criminal matter by issuing a warning or a Notice to Appear as appropriate.

When an individual who may qualify for a 5150 commitment has committed a serious criminal offense that would normally result in an arrest and transfer to a jail facility, the officer should:

- (a) Arrest the individual when there is probable cause to do so.
- (b) Notify the appropriate supervisor of the facts supporting the arrest and the facts that would support the 5150 commitment.
- (c) Facilitate the individual's transfer to jail.
- (d) Thoroughly document in the related reports the circumstances that indicate the individual may qualify for a 5150 commitment.

In the supervisor's judgment, the individual may instead be arrested or booked and transported to the appropriate mental health facility. The supervisor should consider the seriousness of the offense, the treatment options available, the ability of this department to regain custody of the individual, department resources (e.g., posting a guard) and other relevant factors in making this decision.

418.9 FIREARMS AND OTHER WEAPONS

Whenever a person is taken into custody for a 5150 commitment, the handling officers should seek to determine if the person owns or has access to any firearm or other deadly weapon defined in Welfare and Institutions Code § 8100. Officers should consider whether it is appropriate and consistent with current search and seizure law under the circumstances to seize any such firearms or other dangerous weapons (e.g., safekeeping, evidence, consent).

Officers are cautioned that a search warrant may be needed before entering a residence or other place to search, unless lawful, warrantless entry has already been made (e.g., exigent circumstances, consent). A search warrant may also be needed before searching for or seizing weapons

The handling officers shall issue a receipt describing the deadly weapon or any firearm seized, and list any serial number or other identification that is on the firearm. Officers shall advise the person of the procedure for the return of any firearm or other weapon that has been taken into custody (Welfare and Institutions Code § 8102 (b)) (see Property and Evidence Policy).

418.9.1 PETITION FOR RETURN OF FIREARMS AND OTHER WEAPONS

Whenever the handling officer has cause to believe that the future return of any confiscated weapon might endanger the person or others, the officer shall detail those facts and circumstances in a report. The report, Field Property Receipt and RECEIPT AND NOTICE OF RIGHTS FOR CONFISCATED FIREARMS/OTHER DEADLY WEAPONS shall be forwarded to the Records Unit. The Records Unit or Property Unit or designee shall be responsible for sending the requested

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information to the City Attorney's Office for review. The City Attorney is responsible for initiating a petition to the Superior Court for a hearing in accordance with Welfare and Institutions Code § 8102(c), to determine whether the weapon will be returned.

The petition to the Superior Court shall be initiated within 30 days of the release of the individual from whom such weapon has been confiscated, unless the Department makes an ex parte application to the court to extend the time to file such a petition, up to a maximum of 60 days. At the time any such petition is initiated, the City Attorney shall send written notice to the individual informing him/her of the right to a hearing on the issue, that he/she has 30 days to confirm with the court clerk any desire for a hearing and that the failure to do so will result in the forfeiture of any confiscated weapon.

418.10 TRAINING

This department will endeavor to provide Peace Officer Standards and Training (POST)-approved advanced officer training on interaction with persons with mental disabilities, 5150 commitments and crisis intervention.

MENTAL HEALTH URGENT CARE

419.1 PURPOSE AND SCOPE

This procedure describes an officer's duties when contacting a citizen that desires mental health assistance but does not fit the criteria for Welfare and Institutions Code 5150.

419.2 OFFICER CONSIDERATIONS AND RESPONSIBILITIES

An officer handling a call involving a citizen who is at least 18 years old and requiring mental health assistance but does not fit the criteria for Welfare and Institutions Code 5150 shall:

- (a) Ask the citizen if he / she desires to speak with a mental health professional.
- (b) If assistance is requested, the officer shall contact the Mental Health Urgent Care (MHUC) at (408) 885-7855, which is located at 2221 Enborg Lane, in San Jose, to ensure the citizen is eligible for treatment
- (c) IF MHUC is willing to accept the citizen for treatment, Officers shall transport the citizen to the facility and escort the citizen to the reception desk. The MHUC receptionist will require a case number and a brief verbal description of why the citizen was brought to the facility.
- (d) Officers shall complete a report describing the contact.

Citizens **voluntarily** requesting mental health assistance are not in custody and cannot be forced to be treated at the facility.

This service shall not be used for citizens meeting the criteria for Welfare and Institutions Code 5150.

419.3 EXCEPTIONS TO VOLUNTARY MENTAL HEALTH SERVICES

The MHUC does not service the following cases:

- Citizens under the influence of drugs
- Citizens who receive service from other providers, unless the provider is unavailable
- Parolees

If there is uncertainty about eligibility officers should contact the MHUC for clarification.

Cite and Release Policy

420.1 PURPOSE AND SCOPE

This policy provides guidance on when to release adults who are arrested for a criminal misdemeanor offense on a written notice to appear (citation) and when to hold for court or bail.

420.2 POLICY

It is the policy of the Milpitas Police Department to release all persons arrested on misdemeanor or other qualifying charges on a citation with certain exceptions (Penal Code § 853.6).

If there is a reason for non-release, the Department's mission to protect the community will be the primary consideration when determining whether to release any individual in lieu of holding for court or bail.

420.3 RELEASE BY CITATION

Except in cases where a reason for non-release as described below exists, adults arrested for a misdemeanor offense, including a private persons arrest, shall be released from custody on a citation (Penal Code § 853.6).

The citing officer shall, at the time the defendant signs the notice to appear, call attention to the time and place for appearance and take any other steps he/she deems necessary to ensure that the defendant understands his/her written promise to appear.

420.3.1 FIELD CITATIONS

In most cases an adult arrested for a misdemeanor offense may be released in the field on a citation in lieu of physical arrest when booking and fingerprinting is not practicable or immediately required provided the individual can be satisfactorily identified, there is no outstanding arrest warrant for the individual and none of the below described disqualifying circumstances are present (Penal Code § 853.6; Penal Code § 1270.1). In such cases the arresting officer should check the booking required box on the citation form to indicate that the person will be photographed and fingerprinted at a later time when ordered by the court.

When a booking photo or fingerprints are needed for the furtherance of any investigation, the person should be released on citation after booking instead of on a field citation.

420.3.2 RELEASE AFTER PROCESSING

In certain cases, it may not be feasible or desirable to release a person arrested for misdemeanor offenses in the field. The person arrested may instead be released from the preprocessing area.

Any person arrested for a misdemeanor offense shall be released on his/her written promise to appear after the processing is completed, unless disqualified for reasons listed in Policy Manual § 420.4.2.

420.4 NON-RELEASE

Cite and Release Policy

420.4.1 REASONS FOR NON-RELEASE

A person arrested for a misdemeanor shall be released on a citation unless there is a reason for non-release. The Watch Commander may authorize a release on citation regardless of whether a reason for non-release exists when it is determined to be in the best interest of the Department and does not present an unreasonable risk to the community (e.g., release of an intoxicated or ill person to a responsible adult).

Reasons for non-release include (Penal Code § 853.6(i)):

- (a) The person arrested is so intoxicated that he/she could be a danger to him/herself or to others. Release may occur as soon as this condition no longer exists.
- (b) The person arrested requires medical examination or medical care or is otherwise unable to care for his/her own safety
 - 1. The Milpitas Police Department shall not release an arrestee from custody for the purpose of allowing that person to seek medical care at a hospital, and then immediately re-arrest the same individual upon discharge from the hospital, unless the hospital determines this action will enable it to bill and collect from a third-party payment source (Penal Code § 4011.10).
- (c) The person is arrested for one or more of the offenses listed in Vehicle Code § 40302, Vehicle Code § 40303, and Vehicle Code § 40305.
- (d) The person has been cited, arrested, or convicted for theft from a store or vehicle in the previous six months, or there is probable cause to believe the person is guilty of committing organized retail theft, as defined in Penal Code § 490.4(a).
- (e) There are one or more outstanding arrest warrants for the person or failures to appear in court on previous misdemeanor citations that have not been resolved (see Misdemeanor Warrants elsewhere in this policy).
- (f) The person could not provide satisfactory evidence of personal identification.
 - 1. If a person released on citation does not have satisfactory identification in his/her possession, a right thumbprint or fingerprint should be obtained on the citation form.
- (g) The prosecution of the offense or offenses for which the person was arrested or the prosecution of any other offense or offenses would be jeopardized by the immediate release of the person arrested.
- (h) There is a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by the release of the person arrested.
- (i) The person arrested demands to be taken before a magistrate or has refused to sign the notice to appear.
- (j) There is reason to believe that the person would not appear at the time and place specified in the notice to appear. The basis for this determination shall be specifically documented. An arrest warrant or failure to appear that is currently pending shall constitute reason to believe that the person will not appear. Other reasons may include:

Cite and Release Policy

- (a) Previous failure to appear is on record
- (b) The person lacks ties to the area, such as a residence, job, or family
- (c) Unusual circumstances lead the officer responsible for the release of prisoners to conclude that the suspect should be held for further investigation

When a person is arrested on a misdemeanor offense and is not released by criminal citation, the reason for non-release shall be noted on the booking form. This form shall be submitted to the Watch Commander for approval and included with the case file in the Records Bureau.

420.4.2 DISQUALIFYING OFFENSES

An adult arrested on any of the following disqualifying charges shall not be released on citation and shall be transported to the appropriate detention facility or held for court or bail after booking (Penal Code § 1270.1):

- (a) Misdemeanor domestic battery (Penal Code § 243(e)(1))
- (b) Felony domestic battery (Penal Code § 273.5)
- (c) Serious or violent felonies (Penal Code § 1270.1(a)(1))
- (d) Felony intimidation of witnesses and victims (Penal Code § 136.1)
- (e) Rape of a spouse (Penal Code § 262)
- (f) Violation of a protective order and the arrested person has made threats, used violence, or has gone to the protected person's workplace or residence (Penal Code § 273.6)
- (g) Stalking (Penal Code § 646.9)
- (h) Misdemeanor violations of a protective order relating to domestic violence if there is a reasonable likelihood the offense will continue or the safety of the individuals or property would be endangered (Penal Code § 853.6)

420.5 REQUESTING CASE NUMBERS

Many cases involving a criminal citation release can be handled without requesting a case number. Traffic situations and local code violations can be documented on the reverse side of the records copy of the citation. Most Penal Code sections will require a case number to document the incident properly in a report. This section does not preclude an officer from requesting a case number if he/she feels the situation should be documented more thoroughly in a case report.

Foreign Diplomatic and Consular Representatives

422.1 PURPOSE AND SCOPE

Article 36 of the Vienna Convention on Consular Relations, sets forth certain rights of foreign nationals from member countries when arrested, detained or imprisoned by law enforcement officials in this country. This section provides direction to officers when considering a physical arrest or detention of a foreign national. All foreign service personnel shall be treated with respect and courtesy, regardless of the level of established immunity. As noted herein, the United States is a party to several bilateral agreements that obligate authorities to notify the consulate upon the person's detention, regardless of whether the detained person requests that his/her consulate be notified. The list of specific countries that the United States is obligated to notify is listed on the following table:

See attachment: [Countries and Jurisdictions with Mandatory Notifications.pdf](#)

Contact information for Foreign Embassies and Consulates, as well as additional information on Consular Notification can be found on the following U.S. Department of State [website](#)

422.1.1 DEFINITIONS

Foreign National - Anyone who is not a citizen of the United States (U.S.). A person with dual-citizenship, U.S. and foreign, is not a foreign national.

Immunity - Refers to various protections and privileges extended to the employees of foreign governments who are present in the U.S. as official representatives of their home governments. These privileges are embodied in international law and are intended to ensure the efficient and effective performance of their official "missions" (i.e., embassies, consulates, etc.) in foreign countries. Proper respect for the immunity to which an individual is entitled is necessary to ensure that U.S. diplomatic relations are not jeopardized and to maintain reciprocal treatment of U.S. personnel abroad. Although immunity may preclude U.S. courts from exercising jurisdiction, it is not intended to excuse unlawful activity. It is the policy of the U.S. Department of State's Office of Foreign Missions (OFM) that illegal acts by Foreign Service personnel should always be pursued through proper channels. Additionally, the host country's right to protect its citizens supersedes immunity privileges. Peace officers may intervene to the extent necessary to prevent the endangerment of public safety or the commission of a serious crime, regardless of immunity claims.

422.2 ARREST OR DETENTION OF FOREIGN NATIONALS

Officers should take appropriate enforcement action for all violations observed, regardless of claims of diplomatic or consular immunity received from violators. A person shall not, however, be subjected to in-custody arrest when diplomatic or consular immunity is claimed by the individual or suspected by the officer, and the officer has verified or reasonably suspects that the claim of immunity is valid.

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422.3 LEVELS OF IMMUNITY

The specific degree of immunity afforded to foreign service personnel within the U.S. is directly related to their function and position in this country.

422.3.1 DIPLOMATIC AGENTS

Diplomatic agents (e.g., ambassadors and United Nations representatives) are afforded the highest levels of immunity. They are exempt from arrest or detention and are immune from all criminal (and most civil) prosecution by the host state. The family members of diplomatic agents enjoy these same immunities. Currently there are no diplomatic agents permanently assigned to California; but they do occasionally visit the state.

422.3.2 CONSULAR OFFICERS

Consular officers are the ranking members of consular posts who perform various formal functions on behalf of their own governments. Typical titles include consul general, consul, and vice consul. These officials are immune from arrest or detention, except pursuant to a felony warrant. They are only immune from criminal and civil prosecution arising from official acts. Official acts immunity must be raised as an affirmative defense in the court jurisdiction, and its validity is determined by the court. Under this defense, the prohibited act itself must have been performed as an official function. It is not sufficient that the consular agent was on-duty or in an official capacity at the time of the violation. The family members of consular officers generally enjoy no immunity, however, any family member who enjoys a higher level of immunity is issued an identification card by Department of State (DOS) enumerating any privileges or immunities on the back of the card. Examples are consular officers and family members from Russia or China.

There are approximately 600 consular officers in California, with most located in Los Angeles, San Francisco and San Diego.

422.3.3 HONORARY CONSULS

Honorary consuls are part-time employees of the country they represent and are either permanent residents of the U.S. or U.S. nationals (unlike career consular officers, who are foreign nationals on temporary assignment to the U.S.). Honorary consuls may be arrested and detained; limited immunity for official acts may be available as a subsequent defense. Family members have no immunity. There are less than 100 honorary consuls in California.

422.4 IDENTIFICATION

All diplomatic and consular personnel who are entitled to immunity are registered with the Department of State and are issued distinctive identification cards by the Department of State Protocol Office. These cards are the best means of identifying Foreign Service personnel. They include a photograph, identifying information, and, on the reverse side, a brief description of the bearer's immunity status. Unfortunately, these identification cards are not always promptly issued by the Department of State. In addition to the Department of State identification card, Foreign Service personnel should also have a driver license issued by the Department of State Diplomatic Motor Vehicle Office (DMVO), which in most circumstances replaces the operator's license issued

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by the state. Additionally they may have California credentials issued by the California Governor's Office of Emergency Services (Cal OES).

422.4.1 VEHICLE REGISTRATION

Vehicles that are owned by foreign missions or Foreign Service personnel and their dependents are registered with the Department of State OFM and display distinctive red, white, and blue license plates. Vehicles assigned to diplomatic or consular officers will generally have license plates labels with the words "diplomat" or "consul". Vehicles owned by honorary consuls are not issued OFM license plates; but may have California license plates with an "honorary consul" label. Driver's identity or immunity status should not be presumed from the type of license plates displayed on the vehicle. The status of an OFM license plate should be run via the National Law Enforcement Telecommunications System (NLETS), designating "US" as the state, if the officer has reason to question the legitimate possession of the license plate.

422.5 ENFORCEMENT PROCEDURES

The following procedures provide a guideline for handling enforcement of foreign nationals:

422.5.1 CITABLE OFFENSES

An enforcement document shall be issued at the scene for all violations warranting such action, regardless of the violator's immunity status. The issuance of a citation is not considered an arrest or detention under current Department of State guidelines. Whenever the equivalent of a notice to appear is issued to an immunity claimant, the following additional procedures shall be followed by the arresting officer:

- (a) Identification documents are to be requested of the claimant
- (b) The title and country represented by the claimant are to be recorded on the back of the officer's copy of the Notice to Appear for later reference. Do not include on the face of the notice to appear
- (c) The claimant shall be requested to sign the notice to appear. If the claimant refuses, the identity and immunity status of the individual shall be conclusively established
- (d) Verified diplomatic agents and consular officers, including staff and family members from countries with which the U.S. has special agreements, are not required to sign the Notice to Appear. The word "Refused#?" shall be entered in the signature box, and the violator shall be released
- (e) Verified consular staff members, excluding those from countries with which the U.S. has special agreements, are generally obligated to sign the Notice to Appear, but a signature shall not be required if their immunity status is uncertain
- (f) All other claimants are subject to the provisions of Vehicle Code § 40302(b) and policy and procedures outlined in this chapter
- (g) The violator shall be provided with the appropriate copy of the notice to appear

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422.5.2 IN-CUSTODY ARRESTS

Diplomatic agents and consular officers are immune from arrest or detention (unless they have no identification and the detention is to verify their diplomatic status). Proper identification of immunity claimants is imperative in potential in-custody situations. Claimants who are not entitled to immunity shall be placed in custody in accordance with the provisions outlined in Policy Manual § 422.6 of this policy.

A subject who is placed under arrest and claims diplomatic or consular immunity shall not be physically restrained before verification of the claim (unless restraint is necessary for the protection of the officer or others.)

A supervisor shall be promptly notified and should respond to the scene when possible.

Field verification of the claimant's identity is to be attempted as follows:

- (a) Identification cards issued by the Department of State, Protocol Office, are the only valid evidence of diplomatic or consular immunity. The following types of identification cards are issued: Diplomatic (blue bordered), Consular (red bordered), and Official (green bordered). The Department of State identification cards are 3-3/4 inch by 1-1/2 inch and contain a photograph of the bearer.
- (b) Initiate telephone verification with the Department of State. Newly arrived members of diplomatic or consular missions may not yet have official Department of State identity documents. Verify immunity by telephone with the Department of State any time an individual claims immunity and cannot present satisfactory identification, the officer has reason to doubt the claim of immunity, or there is a possibility of physical arrest. Law enforcement personnel should use the following numbers in order of preference:

Office of Foreign Missions
San Francisco, CA
(415) 744-2910, Ext. 22 or 23
(415) 744-2913 FAX
(0800-1700 PST)

Office of the Foreign Missions
Los Angeles, CA
(310) 235-6292, Ext. 121 or 122
(310) 235-6297 FAX
(0800-1700 PST)

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Office of Foreign Missions	Department of State
Diplomatic Motor Vehicle Office	Diplomatic Security Service
Washington D.C.	Command Center
(202) 895-3521 (Driver License Verification) or	Washington D.C.
(202) 895-3532 (Registration Verification)	(202) 647-7277
(202) 895-3533 FAX	(202) 647-1512
(0815-1700 EST)	(Available 24 hours)
	(202) 647-0122 FAX

Members of diplomatic or consular missions also may have other forms of identification. These include identification cards issued by Cal OES, local law enforcement agencies, the foreign embassy, or consulate; driver licenses issued by Department of State; and, Department of State license indicia on the vehicle. All these items are only an indication that the bearer may have some form of immunity.

Subjects verified through the above procedures as being officials entitled to immunity (diplomatic agent, consular officers and consular staff and family members from countries with which the U.S. has special agreements) may not be arrested. The procedures below shall be followed. These procedures should also be used in the event immunity cannot be verified, but another form of identification indicates that immunity is probable.

If the release of the violator will not create an additional hazard, adequate information to properly identify the violator shall be obtained then the official shall be released. A supervisor's approval for the release shall be obtained whenever possible. The necessary release documents and/or a Certificate of Release form should only be issued under the proper conditions.

If the violator appears to have been driving while under the influence, field sobriety tests, including Preliminary Alcohol Screening (PAS) device tests and chemical tests should be offered and obtained whenever possible, however, these tests cannot be compelled. The subject shall not be permitted to drive. A supervisor's approval for release shall be obtained whenever possible and alternative transportation should be arranged.

All facts of the incident shall be documented in accordance with this policy in a Driving Under the Influence (DUI) Arrest-Investigation Report, Arrest-Investigation Report and/or any other relevant Report form. Notwithstanding the field release of the subject, prosecution is still appropriate and should be pursued by the command concerned. The Department of State will take appropriate sanctions against errant foreign service personnel, even where prosecution is not undertaken by the agency.

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422.6 TRAFFIC COLLISIONS

Persons involved in traffic collisions who possess a Department of State OFM Diplomatic Driver License, issued by the DMVO, shall have "D" coded in the license "class" box of the Traffic Collision Report. The actual driver license class (e.g., 1, 2, 3, or A, B, C, M) shall be entered in the miscellaneous box on page two of the traffic report. If subsequent prosecution of the claimant is anticipated, the claimant's title, country, and type of identification presented should be recorded for future reference. Issuance of a citation to, or arrest of, an immunity claimant at the accident scene should be handled in accordance with the procedures specified in Policy Manual § 422.5 of this chapter.

422.6.1 VEHICLES

Vehicles, which are owned by subjects with full immunity, may not be searched, stored, or impounded without the owner's permission. (Such permission may be assumed if the vehicle has been stolen.) These vehicles may, however, be towed the necessary distance to remove them from obstructing traffic or creating any other hazard.

422.6.2 REPORTS

A photocopy of each traffic collision report involving an identified diplomat and/or immunity claimant shall be forwarded to the office of the Chief of Police within 48 hours whether or not the claim is verified. The words "Immunity Claim" shall be marked on the photocopy, together with a notation of the claimant's title, country, and type of identification presented (if applicable). In addition to the report, a follow-up cover memorandum should be submitted if the violation was flagrant, if the claimant was uncooperative, or if there were any other unusual aspects of the enforcement contact that should be reported to the Department of State for further action. The Watch Commander/Supervisor apprised of the incident/accident shall also send a copy of all documents and reports submitted by the investigating officer along with any supervisor's notes, materials and/or logs to the Chief of Police's office within 48 hours of the incident. The Chief of Police's office will check to ensure that notification of Department of State and all necessary follow-up occur.

422.7 DIPLOMATIC IMMUNITY TABLE

Reference table on diplomatic immunity:

Category	Arrested or Detained	Enter Residence Subject to Ordinary Procedures	Issued Traffic Citation	Subpoenaed as Witness	Prosecuted	Recognized Family Members
Diplomatic Agent	No (note (b))	No	Yes	No	No	Same as sponsor (full immunity & inviolability)

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Member of Admin and Tech Staff	No (note (b))	No	Yes	No	No	Same as sponsor (full immunity & inviolability)
Service Staff	Yes (note (a))	Yes	Yes	Yes	No for official acts. Yes otherwise (note (a))	No immunity or inviolability (note (a))
Career Consul Officer	Yes if for a felony and pursuant to a warrant (note (a))	Yes (note (d))	Yes	No for official acts Testimony may not be compelled in any case	No for official acts. Yes otherwise (note (a))	No immunity or inviolability
Honorable Consul Officer	Yes	Yes	Yes	No for official acts Yes otherwise.	No for official acts Yes otherwise	No immunity or inviolability
Consulate Employees	Yes (note (a))	Yes	Yes	No for official acts Yes otherwise.	No for official acts. Yes otherwise (note (a))	No immunity or inviolability (note (a))
Int'l Org Staff (note (b))	Yes (note (c))	Yes (note (c))	Yes	Yes (note (c))	No for official acts. Yes otherwise (note (c))	No immunity or inviolability
Diplomatic-Level Staff of Missions to Int'l Org	No (note (b))	No	Yes	No	No	Same as sponsor (full immunity & inviolability)
Support Staff of Missions to Int'l Orgs	Yes	Yes	Yes	Yes	No for official acts Yes otherwise	No immunity or inviolability

Notes for diplomatic immunity table:

- (a) This table presents general rules. The employees of certain foreign countries may enjoy higher levels of privileges and immunities on the basis of special bilateral agreements.
- (b) Reasonable constraints, however, may be applied in emergency circumstances involving self-defense, public safety, or in the prevention of serious criminal acts.

Foreign Diplomatic and Consular Representatives

- (c) A small number of senior officers are entitled to be treated identically to diplomatic agents.
- (d) Note that consul residences are sometimes located within the official consular premises. In such cases, only the official office space is protected from police entry.

422.8 FOREIGN NATIONALS WHO DO NOT CLAIM IMMUNITY

These policies and procedures apply to foreign nationals who do not claim diplomatic or consular immunity.

Officers shall arrest foreign nationals only under the following circumstances:

- (a) There is a valid warrant issued for the person's arrest
- (b) There is probable cause to believe that the foreign national has violated a federal criminal law, a state law, or a local ordinance

Officers shall not arrest foreign nationals for undocumented presence. Federal courts have consistently held that undocumented presence is not a crime but a federal civil violation only enforceable by federal officers.

- Officers shall not stop or detain persons solely for determining immigration status.
- International treaty obligations provide for notification of foreign governments when foreign nationals are arrested or otherwise detained in the U.S.
- Whenever an officer arrests and incarcerates a foreign national or detains a foreign national for investigation for over two hours, the officer shall promptly advise the individual that he/she is entitled to have his/her government notified of the arrest or detention. (Penal Code § 834c). If the individual wants his/her government notified, the officer shall begin the notification process.

422.8.1 ARREST PROCEDURE

Whenever an officer physically arrests or detains an individual for criminal investigation and the officer reasonably believes the person to be a foreign national, the officer shall inquire to determine the person's citizenship.

This procedure applies to detentions of more than two hours. An inquiry is not required if the individual is detained less than two hours for criminal investigation.

If the individual indicates that he/she is other than a U.S. citizen, the officer shall advise the individual that he/she has a right to have the nearest appropriate embassy or consulate notified of the arrest/detention.

If the individual requests such notification, the officer shall notify the appropriate embassy / consulate. Officers shall provide the following information concerning the individual:

- Country of citizenship

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- Full name of individual, including paternal and maternal surname if used;
- Date of birth or age
- Current residence
- Time, date, place, location of incarceration/detention, and the 24-hour telephone number of the place of detention if different from the Department itself

If the foreign national claims citizenship of one of the countries listed in the attached table, officers shall contact the appropriate embassy/consulate as soon as practical, whether or not the individual desires the embassy/consulate to be notified. This procedure is critical because of treaty obligations with the particular countries. The list of specific countries that the United States is obligated to notify can be found below:

[See attachment: Countries and Jurisdictions with Mandatory Notifications.pdf](#)

Contact information for Foreign Embassies and Consulates, as well as additional information on Consular Notification can be found on the following U.S. Department of State [website](#)

Officers should attempt to provide the Communications Center with request for embassy/consulate notification at the same time they provide incarceration information in order to expedite these notifications.

422.8.2 DOCUMENTATION

Officers shall document on the face page and in the narrative of the appropriate Arrest-Investigation Report the date and time the Communications Center was notified of the foreign national's arrest/detention and his/her claimed nationality.

ACTIVE SHOOTER / CRIMINAL MASS CASUALTY RESPONSE

424.1 PURPOSE AND SCOPE

Violence that is committed in schools, workplaces and other locations by individuals or a group of individuals who are determined to target and kill persons and to create mass casualties presents a difficult situation for law enforcement. The purpose of this policy is to identify guidelines and factors that will assist responding officers in situations that call for rapid response and deployment.

424.2 POLICY

The Active Shooter / Criminal Mass Casualty Response Protocol for Law Enforcement is a document updated and published annually by the Police Chief's Association of Santa Clara County. It shall be the policy of the Milpitas Police Department to adhere to the procedures outlined in this document and maintain strict compliance with the protocol. The updated protocol will be inserted into the Protocol Manual annually and shall serve as our policy and procedure on the response to Active Shooter / Criminal Mass Casualty incidents.

Civil Disputes

426.1 PURPOSE AND SCOPE

This policy provides members of the Milpitas Police Department with guidance for addressing conflicts between persons when no criminal investigation or enforcement action is warranted (e.g., civil matters), with the goal of minimizing any potential for violence or criminal acts.

The Domestic Violence Policy will address specific legal mandates related to domestic violence court orders. References in this policy to “court orders” apply to any order of a court that does not require arrest or enforcement by the terms of the order or by California law.

426.2 POLICY

The Milpitas Police Department recognizes that a law enforcement presence at a civil dispute can play an important role in the peace and safety of the community. Subject to available resources, members of this department will assist at the scene of civil disputes with the primary goal of safeguarding persons and property, preventing criminal activity and maintaining the peace. When handling civil disputes, members will remain impartial, maintain a calm presence, give consideration to all sides and refrain from giving legal or inappropriate advice.

426.3 GENERAL CONSIDERATIONS

When appropriate, members handling a civil dispute should encourage the involved parties to seek the assistance of resolution services or take the matter to the civil courts. Members must not become personally involved in disputes and shall at all times remain impartial.

While not intended to be an exhaustive list, members should give considerations to the following when handling civil disputes:

- (a) Civil disputes tend to be confrontational and members should be alert that they can escalate to violence very quickly. De-escalation techniques should be used when appropriate.
- (b) Members should not dismiss alleged or observed criminal violations as a civil matter and should initiate the appropriate investigation and report when criminal activity is apparent.
- (c) Members shall not provide legal advice, however, when appropriate, members should inform the parties when they are at risk of violating criminal laws.
- (d) Members are reminded that they shall not enter a residence or other non-public location without legal authority including valid consent.
- (e) Members should not take an unreasonable amount of time assisting in these matters and generally should contact a supervisor if it appears that peacekeeping efforts longer than 30 minutes are warranted.

Civil Disputes

426.4 COURT ORDERS

Disputes involving court orders can be complex. Where no mandate exists for an officer to make an arrest for a violation of a court order, the matter should be addressed by documenting any apparent court order violation in a report. If there appears to be a more immediate need for enforcement action, the investigating officer should consult a supervisor prior to making any arrest.

If a person appears to be violating the terms of a court order but is disputing the validity of the order or its applicability, the investigating officer should document the following:

- (a) The person's knowledge of the court order or whether proof of service exists.
- (b) Any specific reason or rationale the involved person offers for not complying with the terms of the order.

A copy of the court order should be attached to the report when available. The report should be forwarded to the District Attorney's Office. The report should also be forwarded to the court issuing the order with a notice that the report was also forwarded to the District Attorney's Office for review.

426.4.1 STANDBY REQUESTS

Officer responding to a call for standby assistance to retrieve property should meet the person requesting assistance at a neutral location to discuss the process. The person should be advised that items that are disputed will not be allowed to be removed. The member may advise the person to seek private legal advice as to the distribution of disputed property.

Members should accompany the person to the location of the property. Members should ask if the other party will allow removal of the property or whether the other party would remove the property.

If the other party is uncooperative, the person requesting standby assistance should be instructed to seek private legal advice and obtain a court order to obtain the items. Officers should not order the other party to allow entry or the removal of any items. If there is a restraining or similar order against the person requesting standby assistance, that person should be asked to leave the scene or they may be subject to arrest for violation of the order.

If the other party is not present at the location, the member will not allow entry into the location or the removal of property from the location.

426.5 VEHICLES AND PERSONAL PROPERTY

Officers may be faced with disputes regarding possession or ownership of vehicles or other personal property. Officers may review documents provided by parties or available databases (e.g., vehicle registration), but should be aware that legal possession of vehicles or personal property can be complex. Generally, officers should not take any enforcement action unless a crime is apparent. The people and the vehicle or personal property involved should be identified and the incident documented.

426.6 REAL PROPERTY

Disputes over possession or occupancy of real property (e.g., land, homes, apartments) should generally be handled through a person seeking a court order.

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Civil Disputes

Immigration Violations

429.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to members of the Milpitas Police Department relating to immigration and interacting with federal immigration officials.

429.1.1 DEFINITIONS

The following definitions apply to this policy (Government Code § 7284.4):

Criminal immigration violation - Any federal criminal immigration violation that penalizes a person's presence in, entry, or reentry to, or employment in, the United States. This does not include any offense where a judicial warrant already has been issued.

Immigration enforcement - Any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal civil immigration law, including any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal criminal immigration law that penalizes a person's presence in, entry or reentry to, or employment in the United States.

Judicial warrant - An arrest warrant for a violation of federal criminal immigration law and issued by a federal judge or a federal magistrate judge.

429.2 POLICY

It is the policy of the Milpitas Police Department that all members make personal and professional commitments to equal enforcement of the law and equal service to the public. Confidence in this commitment will increase the effectiveness of this department in protecting and serving the entire community and recognizing the dignity of all persons, regardless of their national origin or immigration status.

429.3 VICTIMS AND WITNESSES

To encourage crime reporting and cooperation in the investigation of criminal activity, all individuals, regardless of their immigration status, must feel secure that contacting or being addressed by members of law enforcement will not automatically lead to immigration inquiry and/or deportation. While it may be necessary to determine the identity of a victim or witness, members shall treat all individuals equally and not in any way that would violate the United States or California constitutions.

429.4 IMMIGRATION INQUIRIES PROHIBITED

Officers shall not inquire into an individual's immigration status for immigration enforcement purposes (Government Code § 7284.6).

429.4.1 CALIFORNIA LAW ENFORCEMENT TELECOMMUNICATIONS SYSTEM (CLETS)

Members shall not use information transmitted through CLETS for immigration enforcement purposes except for criminal history information and only when consistent with the California Values Act (Government Code § 15160).

Immigration Violations

Members shall not use the system to investigate immigration violations of 8 USC § 1325 (improper entry) if that violation is the only criminal history in an individual's record (Government Code § 15160).

429.5 DETENTIONS AND ARRESTS

An officer shall not detain any individual, for any length of time, for a civil violation of federal immigration laws or a related civil warrant (Government Code § 7284.6).

An officer who has a reasonable suspicion that an individual already lawfully contacted or detained has committed a criminal violation of 8 USC § 1326(a) (unlawful reentry) that may be subject to an enhancement due to a previous conviction of an aggravated felony under 8 USC § 1326(b) (2), may detain the person for a reasonable period of time to contact federal immigration officials to verify whether the United States Attorney General has granted the individual permission for reentry and whether the violation is subject to enhancement (Government Code § 7284.6). No individual who is otherwise ready to be released should continue to be detained only because questions about the individual's status are unresolved.

If the officer has facts that establish probable cause to believe that a person already lawfully detained has violated 8 USC § 1326(a) and the penalty may be subject to enhancement due to prior conviction for specified aggravated felonies, he/she may arrest the individual for that offense (Government Code § 7284.6).

An officer shall not detain any individual, for any length of time, for any other criminal immigration violation of federal immigration laws (Government Code § 7284.6).

An officer should notify a supervisor as soon as practicable whenever an individual is arrested for violation of 8 USC § 1326(a).

429.6 FEDERAL REQUESTS FOR ASSISTANCE

Absent an urgent issue of officer safety or other emergency circumstances, requests by federal immigration officials for assistance from this department should be directed to a supervisor. The supervisor is responsible for determining whether the requested assistance would be permitted under the California Values Act (Government Code § 7284.2 et seq.).

429.7 INFORMATION SHARING

No member of this department will prohibit, or in any way restrict, any other member from doing any of the following regarding the citizenship or immigration status, lawful or unlawful, of any individual (8 USC § 1373; Government Code § 7284.6):

- (a) Sending information to, or requesting or receiving such information from federal immigration officials
- (b) Maintaining such information in department records
- (c) Exchanging such information with any other federal, state, or local government entity

Immigration Violations

Nothing in this policy restricts sharing information that is permissible under the California Values Act.

429.7.1 IMMIGRATION DETAINERS

No individual should be held based solely on a federal immigration detainer under 8 CFR 287.7 (Government Code § 7284.6).

Notification to a federal authority may be made prior to release of an individual who is the subject of a notification request only if the individual meets one of the following conditions (Government Code § 7282.5; Government Code § 7284.6):

- (a) The individual has been arrested and had a judicial probable cause determination for a serious or violent felony identified in Penal Code § 667.5(c) or Penal Code § 1192.7(c).
- (b) The individual has been arrested and had a judicial probable cause determination for a felony punishable by time in a state prison.
- (c) The individual has been convicted of an offense as identified in Government Code § 7282.5(a).
- (d) The individual is a current registrant on the California Sex and Arson Registry.
- (e) The individual is identified by the U.S. Department of Homeland Security's Immigration and Customs Enforcement as the subject of an outstanding federal felony arrest warrant.

429.7.2 NOTICE TO INDIVIDUALS

Individuals in custody shall be given a copy of documentation received from U.S. Immigration and Customs Enforcement (ICE) regarding a hold, notification or transfer request along with information as to whether the Milpitas Police Department intends to comply with the request (Government Code § 7283.1).

If the Milpitas Police Department provides ICE with notification that an individual is being, or will be, released on a certain date, the same notification shall be provided in writing to the individual and to his/her attorney or to one additional person who the individual may designate (Government Code § 7283.1).

[See attachment: Truth Act Consent Form 1.pdf](#)

[See attachment: Truth Act Notification Form 2.pdf](#)

[See attachment: Truth Act Notification to Attorney Form 3.pdf](#)

[See attachment: Truth Act Consent Form 1_Korean](#)

[See attachment: Truth Act Notification Form 2_Korean](#)

[See attachment: Truth Act Notification to Attorney Form 3_Korean](#)

[See attachment: Truth Act Consent Form 1_Simplified Chinese](#)

[See attachment: Truth Act Notification Form 2_Simplified Chinese](#)

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See attachment: Truth Act Notification to Attorney Form 3_Simplified Chinese

See attachment: Truth Act Consent Form 1_Tagalog

See attachment: Truth Act Notification Form 2_Tagalog

See attachment: Truth Act Notification to Attorney Form 3_Tagalog

See attachment: Truth Act Consent Form 1_Vietnamese

See attachment: Truth Act Notification Form 2_Vietnamese

See attachment: Truth Act Notification to Attorney Form 3_Vietnamese

See attachment: Truth Act Consent Form 1_Spanish

See attachment: Truth Act Notification Form 2_Spanish

See attachment: Truth Act Notification to Attorney Form 3_Spanish

429.7.3 ICE INTERVIEWS

Before any interview regarding civil immigration violations takes place between ICE personnel and an individual in custody, the Milpitas Police Department shall provide the individual with a written consent form that explains the purpose of the interview, that the interview is voluntary, and that he/she may decline to be interviewed or may choose to be interviewed only with his/her attorney present. The consent form must be available in the languages specified in Government Code § 7283.1.

429.7.4 TRANSFERS TO IMMIGRATION AUTHORITIES

Members shall not transfer an individual to immigration authorities unless one of the following circumstances exist (Government Code § 7282.5; Government Code § 7284.6):

- (a) Transfer is authorized by a judicial warrant or judicial probable cause determination.
- (b) The individual has been convicted of an offense as identified in Government Code § 7282.5(a).
- (c) The individual is a current registrant on the California Sex and Arson Registry.
- (d) The individual is identified by the U.S. Department of Homeland Security's Immigration and Customs Enforcement as the subject of an outstanding federal felony arrest warrant.

429.7.5 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

The Administration Sergeant shall ensure that data regarding the number of transfers of an individual to immigration authorities, as permitted by Government Code § 7284.6(a)(4), and the offense that allowed for the transfer is collected and provided to the Records Supervisor for required reporting to the DOJ (Government Code § 7284.6(c)(2)(see the Records Bureau Policy).

Immigration Violations

429.8 U VISA AND T VISA NONIMMIGRANT STATUS

Under certain circumstances, federal law allows temporary immigration benefits, known as a U visa, to victims and witnesses of certain qualifying crimes (8 USC § 1101(a)(15)(U)).

Similar immigration protection, known as a T visa, is available for certain qualifying victims of human trafficking (8 USC § 1101(a)(15)(T)).

Any request for assistance in applying for U visa or T visa status should be forwarded in a timely manner to the Detective Bureau Lieutenant, or his/her designee assigned to oversee the handling of any related case. The Detective Bureau Lieutenant or his/her designee should:

- (a) Consult with the assigned investigator to determine the current status of any related case and whether further documentation is warranted.
- (b) Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the certification or declaration has not already been completed and whether a certification or declaration is warranted.
- (c) Address the request and complete the certification or declaration, if appropriate, in a timely manner.
 - 1. The instructions for completing certification and declaration forms can be found on the U.S. Department of Homeland Security (DHS) website.
 - 2. Form I-918 Supplement B certification shall be completed if the victim qualifies under Penal Code § 679.10 (multiple serious offenses). Form I-914 Supplement B certification shall be completed if the victim qualifies under Penal Code § 236.5 or Penal Code § 679.11 (human trafficking).
- (d) Ensure that any decision to complete, or not complete, a certification or declaration form is documented in the case file and forwarded to the appropriate prosecutor. Include a copy of any completed form in the case file.
- (e) Inform the victim liaison of any requests and their status.

429.8.1 TIME FRAMES FOR COMPLETION

Officers and their supervisors who are assigned to investigate a case of human trafficking as defined by Penal Code § 236.1 shall complete the above process and the documents needed for indicating the individual is a victim for the T visa application within 15 business days of the first encounter with the victim, regardless of whether it is requested by the victim (Penal Code § 236.5).

Officers and their supervisors shall complete the above process and the documents needed certifying victim cooperation for a U visa or T visa application pursuant to Penal Code § 679.10 and Penal Code § 679.11 within 30 days of a request from the victim, victim's family, or authorized representative (as defined in Penal Code § 679.10 and Penal Code § 679.11) related to one of their assigned cases. If the victim is in removal proceedings, the certification shall be processed within seven days of the first business day following the day the request was received.

Immigration Violations

429.8.2 REPORTING TO LEGISLATURE

The Detective Bureau Lieutenant or his/her authorized designee should ensure that certification requests are reported to the Legislature in January of each year and include the number of certifications signed and the number denied. The report shall comply with Government Code § 9795 (Penal Code § 679.10; Penal Code § 679.11).

429.8.3 POLICE REPORTS

Upon request, an officer or supervisor should provide a victim or authorized representative with a copy of the report filed by the victim within seven days of the request (Penal Code § 679.10).

429.9 COMMUNITY INFORMATION

The Milpitas Police Department Investigations Unit Supervisor will be responsible for maintaining proper records of ICE notifications and/or anyone who ICE has had access to within the Milpitas Police Department. These records will be subject to the State of California Public Records Act.

The Milpitas Police Department will be responsible for conducting an annual community forum if the department allowed ICE access to any individuals held at the Milpitas Police Department.

429.10 TRAINING

The Training Sergeant should ensure that all appropriate members receive training on immigration issues.

Training should include:

- (a) Identifying civil versus criminal immigration violations.
- (b) Factors that may be considered in determining whether a criminal immigration violation has been committed.
- (c) Prohibitions contained in the California Values Act (Government Code § 7284 et seq.).

Emergency Utility Service

431.1 PURPOSE AND SCOPE

The City Public Works Department has personnel available to handle emergency calls 24 hours per day. Calls for service during non-business hours are frequently directed to the Police Department. Requests for such service received by this department should be handled in the following manner.

431.1.1 BROKEN WATER LINES

The City's responsibility ends at the water meter; any break or malfunction in the water system from the water meter to the citizen's residence or business is the customer's responsibility. Public Works can only turn off the valve at the meter. The citizen can normally accomplish this. Milpitas Fire Department will respond to assist citizen's with turning off the water as needed in emergency situations.

If a break occurs on the City side of the meter, emergency personnel should be called as soon as practical by the Communications Center.

431.1.2 ELECTRICAL LINES

City Public Works does not maintain electrical lines to street light poles. When a power line poses a hazard, an officer should be dispatched to protect against personal injury or property damage that might be caused by power lines. The Fire Department should be dispatched to assess scene safety and fire risk. The Electric Company or Public Works should be promptly notified, as appropriate.

431.1.3 RESERVOIRS, PUMPS, WELLS, ETC.

Public Works maintains the reservoirs and public water equipment, as well as several underpass and other street drainage pumps. In the event of flooding or equipment malfunctions, emergency personnel should be contacted as soon as possible.

431.1.4 EMERGENCY NUMBERS

A current list of emergency personnel who are to be called for municipal utility emergencies is maintained by the Communications Center.

431.2 TRAFFIC SIGNAL MAINTENANCE

The Public Works Department provides maintenance for most traffic signals within the City, other than those maintained by the State of California and County of Santa Clara.

431.2.1 OFFICER'S RESPONSIBILITY

Upon observing a damaged or malfunctioning signal, the officer will advise the the Communications Center of the location and problem with the signal. The dispatcher will contact the Public Works Department to repair the signal light.

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SIMULATION TRAINING

434.1 PURPOSE AND SCOPE

Simulation training is any training that includes the use of simulated firearms or weapons. This type of training is to provide a more realistic environment in dealing with armed or combative suspects.

434.2 GUIDELINES FOR SIMULATION TRAINING

Simulation training includes range scenario training, use of force exercises, and ACT training where officers and/or role players use a simulated firearm or weapon. Simulation training does not include any training that requires a loaded firearm or "live fire."

The following guidelines must be followed during simulation training:

- (a) The simulation training area must be clearly defined for all participants before the start of any training.
- (b) The simulation training area must have only one point of entry and exit.
- (c) Genuine or real firearms or weapons are prohibited in the simulation training area. This includes unloaded firearms and disabled firearms. Hazardous items are also prohibited in the simulation training area.
- (d) All instructors shall visually and physically inspect each other for any hazardous items, including genuine or real firearms or weapons, immediately prior to entering the simulation training area.
- (e) All instructors shall physically search the simulation training area for any safety concerns and hazardous items, including genuine or real firearms or weapons, and remedy any concerns before the start of any training.
- (f) At least one pre-designated instructor shall visually and physically inspect each person preparing to enter the simulation training area for any hazardous items, including genuine or real firearms or weapons, immediately before the person enters the simulation training area. If a person exits the simulation training area, the person shall be visually and physically inspected again immediately before reentry.
- (g) All instructors shall ensure anyone entering the simulation training area is properly wearing any safety equipment required by the training circumstances.
- (h) Only Department approved training tools may be used in the simulation training area. Such tools include Simunition weapons, replica firearms, replica weapons, and items designed solely for training purposes.
- (i) Genuine or real firearm(s), even if unloaded or disabled, shall not be used in any simulation training.
- (j) Any unique simulation training circumstance that may require any deviation from this policy must be approved in advance by the respective Division Commander.

SIMULATION TRAINING

Field Training Officer Program

437.1 PURPOSE AND SCOPE

The Field Training Officer Program is intended to provide a standardized program to facilitate the officer's transition from the academic setting to the actual performance of general law enforcement duties of the Milpitas Police Department.

It is the policy of this department to assign all new police officers to a structured Field Training Officer Program that is designed to prepare the new officer to perform in a patrol assignment, and possessing all skills needed to operate in a safe, productive and professional manner.

437.2 FIELD TRAINING OFFICER - SELECTION AND TRAINING

The Field Training Officer (FTO) is an experienced officer trained in the art of supervising, training and evaluating entry level and lateral police officers in the application of their previously acquired knowledge and skills.

437.2.1 SELECTION PROCESS

FTO's will be selected based on the following desired qualifications:

- (a) Desire to be an FTO
- (b) Minimum of three years of patrol experience and possess a Basic POST Certificate
- (c) Physically able to perform the duties, and maintain a professional appearance
- (d) Possess a work history demonstrating motivation, reliability, and initiative
- (e) No "sustained" internal affairs complaints within the past twenty-four months, which could directly relate to the candidates suitability for this assignment
- (f) Minimal use of sick leave
- (g) Competent ratings in all categories on the past two Performance Appraisal Reviews

437.2.2 TRAINING

An officer selected as a Field Training Officer shall successfully complete a POST certified (40-hour) Field Training Officer's Course prior to being assigned as an FTO.

All FTOs must complete a 24-hour Field Training Officer update course every three years while assigned to the position of FTO.

437.3 FIELD TRAINING OFFICER PROGRAM SUPERVISOR

The Field Training Officer Program supervisor will be selected from the rank of sergeant or above by the Police Operations Division Commander or his/her designee and shall possess a POST Supervisory Certificate.

The responsibilities of the FTO Program Supervisor include the following:

- (a) Assignment of trainees to FTOs.

Field Training Officer Program

- (b) Conduct FTO meetings.
- (c) Maintain and ensure FTO/Trainee performance evaluations are completed.
- (d) Maintain, update and issue the Field Training Manual to each trainee.
- (e) Monitor individual FTO performance.
- (f) Monitor overall FTO Program.
- (g) Develop ongoing training for FTOs.

The FTO Program supervisor will be required to successfully complete a POST approved Field Training Administrator's Course within one year of appointment to this position.

437.4 TRAINEE DEFINED

Any entry level or lateral police officer newly appointed to the Milpitas Police Department who has successfully completed a POST approved Basic Academy.

437.5 REQUIRED TRAINING

Entry level officers shall be required to successfully complete the Field Training Program, consisting of a minimum of 12 weeks.

The training period for a lateral officer may be modified depending on the trainee's demonstrated performance and level of experience, but shall consist of a minimum of eight weeks.

To the extent practicable, entry level and lateral officers should be assigned to a variety of Field Training Officers, shifts and geographical areas during their Field Training Program.

437.5.1 FIELD TRAINING MANUAL

Each new officer will be issued a Field Training Manual at the beginning of his/her Primary Training Phase. This manual is an outline of the subject matter and/or skills necessary to properly function as an officer with the Milpitas Police Department. The officer shall become knowledgeable of the subject matter as outlined. He/she shall also become proficient with those skills as set forth in the manual.

The Field Training Manual will specifically cover those policies, procedures, rules and regulations adopted by the Milpitas Police Department.

437.6 EVALUATIONS

Evaluations are an important component of the training process and shall be completed as outlined below.

437.6.1 FIELD TRAINING OFFICER

The FTO will be responsible for the following:

- (a) Complete and submit a written evaluation on the performance of his/her assigned trainee to the FTO Coordinator on a daily basis.

Field Training Officer Program

- (b) Review the Daily Trainee Performance Evaluations with the trainee each day.
- (c) Complete a detailed end-of-phase performance evaluation on his/her assigned trainee at the end of each phase of training.
- (d) Sign off all completed topics contained in the Field Training Manual, noting the method(s) of learning and evaluating the performance of his/her assigned trainee.

437.6.2 IMMEDIATE SUPERVISOR

The immediate supervisor shall review the Daily Observation Reports and complete a weekly evaluation of the trainee.

437.6.3 FIELD TRAINING ADMINISTRATOR

The Field Training Administrator will review the Daily Observation Reports.

437.6.4 TRAINEE

At the completion of the Field Training Program, the trainee shall submit a confidential performance evaluation on each of their FTOs and on the Field Training Program.

437.7 DOCUMENTATION

All documentation of the Field Training Program will be retained in the officer's training files and will consist of the following:

- (a) Daily Observation Reports
- (b) End of phase evaluations
- (c) A Certificate of Completion certifying that the trainee has successfully completed the required number of hours of field training

Contacts and Temporary Detentions

441.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for temporarily detaining but not arresting persons in the field, conducting field interviews (FI) and pat-down searches, and the taking and disposition of photographs.

441.1.1 DEFINITIONS

Definitions related to this policy include:

Consensual encounter - When an officer contacts an individual but does not create a detention through words, actions, or other means. In other words, a reasonable individual would believe that his/her contact with the officer is voluntary.

Field interview - The brief detainment of an individual, whether on foot or in a vehicle, based on reasonable suspicion for the purpose of determining the individual's identity and resolving the officer's suspicions.

Field photographs - Posed photographs taken of a person during a contact, temporary detention, or arrest in the field. Undercover surveillance photographs of an individual and recordings captured by the normal operation of a Mobile Audio Video (MAV) system, body-worn camera, or public safety camera when persons are not posed for the purpose of photographing are not considered field photographs.

Pat-down search - A type of search used by officers in the field to check an individual for dangerous weapons. It involves a thorough patting-down of clothing to locate any weapons or dangerous items that could pose a danger to the officer, the detainee, or others.

Reasonable suspicion - When, under the totality of the circumstances, an officer has articulable facts that criminal activity may be afoot and a particular person is connected with that possible criminal activity.

Temporary detention - When an officer intentionally, through words, actions, or physical force, causes an individual to reasonably believe he/she is required to restrict his/her movement without an actual arrest. Temporary detentions also occur when an officer actually restrains a person's freedom of movement.

441.2 POLICY

The Milpitas Police Department respects the right of the public to be free from unreasonable searches or seizures. Due to an unlimited variety of situations confronting the officer, the decision to temporarily detain a person and complete a field interview (FI), pat-down search, or field photograph shall be left to the officer based on the totality of the circumstances, officer safety considerations, and constitutional safeguards.

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441.3 FIELD INTERVIEWS

Based on observance of suspicious circumstances or upon information from an investigation, an officer may initiate the stop of a person, and conduct an FI, when there is articulable, reasonable suspicion to do so. A person, however, shall not be detained longer than is reasonably necessary to resolve the officer's suspicion.

Nothing in this policy is intended to discourage consensual contacts. Frequent casual contact with consenting individuals is encouraged by the Milpitas Police Department to strengthen community involvement, community awareness, and problem identification.

441.3.1 INITIATING A FIELD INTERVIEW

When initiating the stop, the officer should be able to point to specific facts which, when considered with the totality of the circumstances, reasonably warrant the stop. Such facts include but are not limited to an individual's:

- (a) Appearance or demeanor suggesting that he/she is part of a criminal enterprise or is engaged in a criminal act
- (b) Actions suggesting that he/she is engaged in a criminal activity
- (c) Presence in an area at an inappropriate hour of the day or night
- (d) Presence in a particular area is suspicious
- (e) Carrying of suspicious objects or items
- (f) Excessive clothes for the climate or clothes bulging in a manner that suggest he/she is carrying a dangerous weapon
- (g) Location in proximate time and place to an alleged crime
- (h) Physical description or clothing worn that matches a suspect in a recent crime
- (i) Prior criminal record or involvement in criminal activity as known by the officer

441.4 PAT-DOWN SEARCHES

Once a valid stop has been made, and consistent with the officer's training and experience, an officer may pat a suspect's outer clothing for weapons if the officer has a reasonable, articulable suspicion the suspect may pose a safety risk. The purpose of this limited search is not to discover evidence of a crime, but to allow the officer to pursue the investigation without fear of violence. Circumstances that may establish justification for performing a pat-down search include but are not limited to:

- (a) The type of crime suspected, particularly in crimes of violence where the use or threat of deadly weapons is involved.
- (b) Where more than one suspect must be handled by a single officer.
- (c) The hour of the day and the location or neighborhood where the stop takes place.
- (d) Prior knowledge of the suspect's use of force and/or propensity to carry weapons.
- (e) The actions and demeanor of the suspect.

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- (f) Visual indications which suggest that the suspect is carrying a firearm or other weapon.

Whenever practicable, a pat-down search should not be conducted by a lone officer. A cover officer should be positioned to ensure safety and should not be involved in the search.

441.5 FIELD PHOTOGRAPHS

All available databases should be searched before photographing any field detainee. If a photograph is not located, or if an existing photograph no longer resembles the detainee, the officer shall carefully consider, among other things, the factors listed below.

441.5.1 FIELD PHOTOGRAPHS TAKEN WITH CONSENT

Field photographs may be taken when the subject of the photograph knowingly and voluntarily gives consent. When taking a consensual photograph, the officer should document on any related report or Field Interview card that the photograph was taken under consent.

441.5.2 FIELD PHOTOGRAPHS TAKEN WITHOUT CONSENT

Field photographs may be taken without consent only if they are taken during a detention that is based upon reasonable suspicion of criminal activity, and the photograph serves a legitimate law enforcement purpose related to the detention. The officer must be able to articulate facts that reasonably indicate that the subject was involved in or was about to become involved in criminal conduct. The subject should not be ordered to remove or lift any clothing for the purpose of taking a photograph.

If, prior to taking a photograph, the officer's reasonable suspicion of criminal activity has been dispelled, the detention must cease and the photograph should not be taken.

All field photographs and related reports shall be submitted to a supervisor and retained in compliance with this policy.

441.5.3 SUPERVISOR RESPONSIBILITIES

While it is recognized that field photographs often become valuable investigative tools, supervisors should monitor such practices in view of the above listed considerations. This is not to imply that supervisor approval is required before each photograph is taken.

Access to, and use of, field photographs shall be strictly limited to law enforcement purposes.

441.6 WITNESS IDENTIFICATION AND INTERVIEWS

Because potential witnesses to an incident may become unavailable or the integrity of their statements compromised with the passage of time, officers should, when warranted by the seriousness of the case, take reasonable steps to promptly coordinate with an on-scene supervisor and/or criminal investigator to utilize available members for the following:

- (a) Identifying all persons present at the scene and in the immediate area.
 - 1. When feasible, a recorded statement should be obtained from those who claim not to have witnessed the incident but who were present at the time it occurred.

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2. Any potential witness who is unwilling or unable to remain available for a formal interview should not be detained absent reasonable suspicion to detain or probable cause to arrest. Without detaining the individual for the sole purpose of identification, officers should attempt to identify the witness prior to his/her departure.
- (b) Witnesses who are willing to provide a formal interview should be asked to meet at a suitable location where criminal investigators may obtain a recorded statement. Such witnesses, if willing, may be transported by Milpitas Police Department members.
 1. A written, verbal, or recorded statement of consent should be obtained prior to transporting a witness. When the witness is a minor, consent should be obtained from the parent or guardian, if available, prior to transport.

441.7 DISPOSITION OF PHOTOGRAPHS

All detainee photographs must be adequately labeled and submitted with either an associated FI card or incident number. If an individual is photographed as a suspect in a particular crime, the photograph should be submitted as an evidence item in the related case, following standard evidence procedures.

If a photograph is not associated with an investigation where a case number has been issued, the officer will forward the photograph to one of the following locations:

- (a) If the photo and associated FI is relevant to criminal street gang enforcement, the officer will forward the photo and documents to the SIU Supervisor. The SIU Supervisor will ensure the photograph and supporting documents are retained as prescribed by the Criminal Organizations Policy.

441.7.1 PURGING THE FIELD PHOTO FILE

The Police Evidence Technician(s) will be responsible for ensuring that photographs maintained in the VeriPic server that are more than one year old and no longer serve a law enforcement purpose are periodically purged and destroyed. Photographs that continue to serve a legitimate law enforcement purpose may be retained longer than one year provided that a notation of that fact is added to the file for each additional year that they are retained. Photographs associated with a criminal case will be purged following standard evidence procedures. The VeriPic server shall be strictly limited to law enforcement purposes.

A photograph need not be purged but may be retained as an updated photograph in a prior booking file if the person depicted in the photograph has been booked at the Milpitas Police Department and the booking file remains in the Records Bureau.

441.8 PHOTO REVIEW POLICY

Any person who has been the subject of a field photograph or an FI by this agency during any contact other than an arrest may file a written request within 30 days of the contact requesting a review of the status of the photograph/FI. The request shall be directed to the office of the Chief

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of Police who will ensure that the status of the photograph or FI is properly reviewed according to this policy as described below. Upon a verbal request, the Department will send a request form to the requesting party along with a copy of this policy.

441.8.1 REVIEW PROCESS

Upon receipt of such a written request, the Chief of Police or his or her designee will permit the individual to appear in person (any minor must be accompanied by their parent or legal guardian) for a review of the status of the photograph/FI.

Such a meeting will generally be scheduled during regular business hours within 30 days of the receipt of the written request. An extension of the 30-day limit may be made either upon the mutual convenience of the parties or if, at the discretion of the Chief of Police, there appears to be an ongoing legitimate law enforcement interest which warrants a delay. If the delay could jeopardize an ongoing investigation, nothing in this policy shall require the Chief of Police to disclose the reason(s) for the delay.

A meeting for the review of the status of any non-arrest photograph/FI is not intended to be a formal hearing, but simply an informal opportunity for the individual to meet with the Chief of Police or his/her designee to discuss the matter.

After carefully considering the information available, the Chief of Police or designee will determine, generally within 30 days of the original meeting, whether the photograph/FI was obtained in accordance with existing law and Milpitas Police Department policy and, even if properly obtained, then whether there is any ongoing legitimate law enforcement interest in retaining the photograph/FI.

If the Chief of Police or his/her designee determines that the photograph/FI was obtained in accordance with existing law and department policy and that there is an ongoing legitimate law enforcement interest in retaining the non-arrest photograph, the photograph/FI shall be retained according to this policy and applicable law.

If the Chief of Police or his/her designee determines that the original legitimate law enforcement interest in retaining a non-arrest photograph no longer exists or that it was obtained in violation of existing law or Milpitas Police Department policy, the original photograph will be destroyed or returned to the person photographed, if requested. All other associated reports or documents, however, will be retained according to department policy and applicable law.

If the Chief of Police or his/her designee determines that the original legitimate law enforcement interest in retaining a non-arrest FI no longer exists or that the original FI was not obtained in accordance with established law or Milpitas Police Department policy, the original FI may only be destroyed upon the execution of a full and complete waiver of liability by the individual (and guardian if a minor) arising out of that field contact.

If the Chief of Police or his/her designee determines that any involved Milpitas Police Department personnel violated existing law or department policy, the Chief of Police or designee shall

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initiate a separate internal investigation which may result in additional training, discipline or other appropriate action for the involved employees.

The person photographed/FI'd will be informed in writing within 30 days of the Chief of Police's determination whether or not the photograph/FI will be retained. This does not entitle any person to any discovery or access to any law enforcement records not otherwise authorized by law.

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Watch Commanders

445.1 PURPOSE AND SCOPE

Each patrol shift must be directed by supervisors who are capable of making decisions and communicating in a manner consistent with departmental policies, procedures, practices, functions and objectives. To accomplish this goal, a Lieutenant heads each watch.

445.2 DESIGNATION AS ACTING WATCH COMMANDER

When a Lieutenant is unavailable for duty as Watch Commander, in most instances the senior qualified sergeant shall be designated as acting Watch Commander. This policy does not preclude designating a less senior sergeant as an acting Watch Commander when operational needs require or training permits.

Use of Audio/Video Recorders

449.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable audio/video recording devices by members of this department while in the performance of their duties.

This policy does not apply to surreptitious interception of electronic communications for lawful authorized investigative purposes or to mobile audio video recordings (see the Mobile Audio Video Policy).

449.2 POLICY

The Milpitas Police Department may provide members with access to portable recorders, either audio or video or both, for use during the performance of their duties. The use of recorders is intended to enhance the mission of the Department by accurately capturing contacts between members of the Department and the public.

449.3 PRIVACY

All recordings made by personnel acting in their official capacity as members of this department shall remain the property of the Department and should not be considered private, regardless of whether those recordings were made with department-issued or personally owned recorders.

449.4 MEMBER RESPONSIBILITIES

Prior to going into service, each uniformed member will be responsible for making sure that he/she is equipped with a portable recorder, issued by the Department, and that the recorder is in good working order. Uniformed members should wear the recorder in a conspicuous manner.

Any member assigned to a non-uniformed position may carry an approved portable recorder at any time the member believes that such a device may be useful.

When using a recorder, the assigned member shall record his/her name, employee number and the current date and time at the beginning and the end of the shift or other period of use, regardless of whether any activity was recorded. This procedure is not required when the recording device and related software captures the user's unique identification and the date and time of each recording.

449.5 ACTIVATION OF THE AUDIO RECORDER

Members should activate the recorder during all enforcement stops and field interrogation situations and any other time the member reasonably believes that a recording of an on-duty contact may be useful. Once started, recordings should continue without interruption until the contact ends, if feasible.

At no time is a member expected to jeopardize his/her safety in order to activate a recorder or change the recording media. However, the recorder should be activated in required situations as soon as practicable.

Use of Audio/Video Recorders

449.6 PROHIBITED USE OF PORTABLE RECORDERS

Members are prohibited from using department-issued portable recorders and recording media for personal use and are prohibited from making personal copies of recordings created while on-duty or while acting in their official capacity.

Members are also prohibited from retaining recordings of activities or information obtained while on-duty, whether the recording was created with department-issued or personally owned recorders. Members shall not duplicate or distribute such recordings, except for authorized legitimate department business purposes. All such recordings shall be retained at the Department.

Members are prohibited from using personally owned recording devices while on-duty without the express consent of the Watch Commander. Any member who uses a personally owned recorder for department-related activities shall comply with the provisions of this policy, including retention and release requirements.

Recordings shall not be used by any member for the purpose of embarrassment or ridicule.

Any member who may have questions regarding the application of this policy is encouraged to seek clarification from supervisory personnel.

449.7 RETENTION OF RECORDINGS

Any time a member records any portion of a contact that the member reasonably believes constitutes evidence in a criminal case, the member shall record the related case number and download the file in accordance with the Computers and Digital Evidence Policy and document the existence of the recording in the related case report.

Any time a member reasonably believes a recorded contact may be beneficial in a non-criminal matter (e.g., a hostile contact), the member should promptly notify a supervisor of the existence of the recording.

Members should upload the file, in accordance with current procedure for storing digital files, at the end of their shift and any time the storage capacity is nearing its limit.

449.7.1 RETENTION REQUIREMENTS

All recordings shall be retained for a period consistent with the requirements of the organization's records retention schedule but in no event for a period less than 180 days.

Use of Audio/Video Recorders

449.8 RELEASE OF RECORDINGS

Recordings made using portable recording devices pursuant to this policy are department records and may only be released as provided in the Release of Records and Information Policy or for other authorized legitimate department business purposes.

449.9 REVIEW OF RECORDED MEDIA FILES

When preparing written reports, members should review their recordings as a resource. However, members should not use the fact that a recording was made as a reason to write a less detailed report.

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct, reports of meritorious conduct or whenever such recordings would be beneficial in reviewing the member's performance.

Recorded files may also be reviewed:

- (a) Upon approval by a supervisor, by any member of the Department who is participating in an official investigation, such as a personnel complaint, administrative investigation or criminal investigation.
- (b) Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.
- (c) By media personnel with permission of the Chief of Police or the authorized designee.
- (d) In compliance with a public records request, if permitted, and in accordance with the Release of Records and Information Policy.

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BODY WORN CAMERA

451.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for the use and deployment of the body-worn camera.

451.2 POLICY

It shall be the policy of the Milpitas Police Department to utilize a body-worn camera in a manner that will assist in criminal prosecution or civil litigation by providing a recording of the incident that may supplement a member's report and help document professional police conduct. The use of body-worn cameras is intended to enhance the mission of the Milpitas Police Department by accurately capturing contacts between members of the department and the public.

451.3 BODY-WORN CAMERAS (BWC)

A Body-Worn Camera (BWC) is a camera worn on an individual officer's person that records and stores audio and video. Body-worn cameras are an effective law enforcement tool that can reduce violent confrontations and complaints against officers. Body-worn cameras provide additional documentation of police-public encounters and may be an important tool for collecting evidence and maintaining public trust.

Only Department issued body-worn cameras are authorized for members to use.

451.3.1 BODY- WORN CAMERA USAGE

1. Body-worn camera video provides additional information regarding an investigative or enforcement contact with a member of the public. As body-worn camera recordings only provide a limited perspective of the encounter all other available evidence, such as witness statements, officer interviews, forensic analysis and documentary evidence should be considered before conclusions are reached
2. Body-worn cameras should assist in the following:
 - Collecting evidence for use in criminal investigations and prosecutions;
 - Assisting officers with completing reports and providing testimony in court;
 - Deterring criminal activity and uncooperative behavior during police-public interactions;
 - Promoting accountability; and
 - Training, performance, and professionalism of Milpitas police officers.
3. Body-worn camera video is not meant to replace or relieve the employee from submitting any documentation as required by policy.
4. All audio, video images, and recordings associated with body-worn cameras are property of the Milpitas Police Department and will not be released or disseminated without the express written consent of the Chief of Police or designee or otherwise expressly required by federal or state law.

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5. All body-worn camera recordings made by members on any department-issued device at any time, and any recording made while acting in an official capacity for this department, regardless of ownership of the device it was made on, shall remain the property of the Milpitas Police Department. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

451.4 COORDINATOR

The Chief of Police, or the authorized designee, shall appoint a member of the Milpitas Police Department to coordinate the use and maintenance of the body-worn camera audio/video files, and the storage of recordings, including (Penal Code § 832.18):

- Establishing a system for downloading, storing and security of recordings.
- Designating persons responsible for downloading recorded data.
- Establishing a maintenance system to ensure the availability of the BWC.
- Establishing a system for tagging and categorizing data according to the type of incident captured.
- Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
- Working with counsel to ensure an appropriate retention schedule is being applied to recording and associated documentation.
- Maintaining logs of access and deletions of recordings.

Department members identified as Administrative Users may access body worn cameras files from a computer or device outside of the Department for the purpose of completing administrative tasks, such as locking or unlocking user, etc.

451.5 TRAINING

Prior to issuance of a body-worn camera officers shall receive:

- Training on operation, maintenance, and care;
- Additional training shall be provided at periodic intervals to ensure the continued effective use of the equipment, proper calibration and performance, and to incorporate changes, updates, or other revisions in policies or equipment;
- Periodic training on significant changes in the law pertaining to legal developments.

451.6 MEMBER RESPONSIBILITIES

Each uniformed member assigned to Patrol, Traffic, Police Community Relations (PCR), and Community Service Officers are to ensure the following when assigned to use the body-worn camera, and prior to going into service:

- Members are responsible for the reasonable care and maintenance of the body-worn camera they are assigned. Members shall ensure the body-worn camera is functioning

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properly. Any apparent damage, malfunction, or loss shall be brought to the attention of a supervisor as soon as reasonably practical.

- If a member's body worn camera has been lost, damaged or stolen, the member shall contact his or her supervisor as soon as practicable to obtain a replacement.
- The body-worn camera shall be affixed to the member's uniform at the beginning of shift; in accordance with training and the manufacturer's guidelines. A "uniform" is to be considered the standard uniform of the day based on assignment. This would include, but is not limited to, any apparel such as traffic officer helmets, or tactical outer vest carriers, that identifies the wearer as a police officer.
- Members shall wear the body-worn camera on their uniform at a location that will facilitate an optimum recording field of view.
- The body-worn camera shall be worn for the entire shift, except for the following exceptions:
 - (a) Uniformed personnel attending a formal event or funeral.
 - (b) Personnel working in an undercover capacity or while conducting plain clothes surveillance where the intent is not to be identified as a police officer and no enforcement is planned.
 - (c) Personnel working in an administrative assignment.
 - (d) Personnel with express managerial approval under special circumstances.
- Detectives or officers in a plain clothes assignment who are assigned a body-worn camera shall wear the camera in a conspicuous manner on their clothing, outer vest carrier or tactical gear when taking enforcement action, or any other time they believe the body-worn camera may be useful.
- Each member shall ensure his or her issued body-worn camera is fully charged and has adequate video storage to complete the shift.
- Members shall only use a body-worn camera that has been approved by the Department.
- Members are authorized to review their own body-worn camera recording at any time, including prior to writing reports, testifying in court or other proceedings, or for any other official use. Members shall not review their own body-worn camera recording prior to giving a statement after being involved in a critical incident, unless authorized by the Chief of Police or his/her designee, in accordance with the Santa Clara County Police Chief's Association Officer-Involved Protocol, Adopted on August 10, 2017.
- At the end of each shift, members shall properly store, upload, and archive the body-worn cameras and corresponding footage.
- Members shall not:
 - (a) Make copies of any recorded event for personal use.
 - (b) Use a recording device such as a cell phone camera or secondary video camera to record a body-worn camera file or image.

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- (c) Copy or upload any body worn camera recordings onto public, private, or social media websites for personal use.
- (d) Members shall not deliberately remove, dismantle or tamper with any hardware and/or software component or part of the body-worn camera.

451.7 SUPERVISOR RESPONSIBILITIES

Supervisors will ensure that members assigned a body-worn camera have completed Department required training and are proficient with applicable policy and procedures. They will conduct periodic inspections of member's body-worn camera equipment and ensure the body-worn cameras are properly affixed to the members' uniforms or uniform apparel such as traffic officer helmets and tactical outter vest carriers, and ensure they are fully operable.

When an incident arises that requires the immediate retrieval of body-worn camera footage for chain of custody purposes, including but not limited to use of force, officer involved shooting or death or other serious incidents, a supervisor will respond to the scene and secure the body-worn camera, and ensure the data is downloaded as soon as practicable (Penal Code § 832.18).

Supervisors may view recordings in the field and prior to contacting citizens to mitigate and address citizen complaints. At no time except at the direction of the Chief of Police or his/her designee, shall the supervisor allow the citizen to view the file footage.

Body-worn camera recordings may be utilized as a training tool for individuals, specific units, and the Department as a whole with the involved officers' concurrence. Department members recommending utilization of a body-worn camera recording for training purposes will submit the recommendation through the chain of command.

EXCEPTION: Field Training Officers may use body-worn camera recording to provide immediate training to recruits and to assist with the completion of the Daily Observation Report (DOR).

451.8 REQUIRED ACTIVATION OF THE BODY-WORN CAMERA

This policy is not intended to describe every possible situation in which the body-worn camera shall be utilized. Moreover, not all situations will clearly start out as necessitating the activation of the body-worn camera, nor will all events have a clear ending when the body worn camera is no longer necessary. Members should activate the recorder any time the member believes it would be appropriate or valuable to record an incident.

If immediate activation of the body-worn camera is not feasible due to an immediate risk to the safety of the member or others, the member shall activate the body-worn camera as soon as it is safe to do so. Failure to activate the body-worn camera under these circumstances shall be documented.

1. Members shall activate their body-worn cameras, when safe and practical to do so, during any enforcement or investigative activity, whether self-initiated-activity or in response to a dispatched call including but not limited to the following:
 - Vehicle stops;

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- When administering field sobriety tests in the field or at a pre-processing center for DUI investigations, public intoxication investigations, and under the influence of a controlled substance investigations;
- Pedestrian and/or vehicle contacts;
- While responding to any in-progress, just occurred and/or any other call for service in which the fleeing suspect and/or vehicle may be captured leaving the crime scene;
- When responding to a call reportedly involving weapons or violence;
- All calls involving suspected suicide and/or suicidal individuals;
- When pursuing a suspect on foot;
- Code 3 responses (including vehicle pursuits) regardless of whether the vehicle is equipped with an in-car camera system;
- While executing warrantless searches of individuals, vehicles, buildings and other places. NOTE: The body-worn camera shall be utilized to record the consent when practical. The intent of the recording is to corroborate the consent and is not intended to replace the use of any form used to gain and/or document the consent to search without a warrant;
- While executing searches of individuals, vehicles, buildings and other places pursuant to conditions of Parole, Probation or Post Release Community Supervision (PRCS);
- Executing a search / arrest warrant;
- When advising suspects of their rights per Miranda;
- All arrests, detentions and/or citations;
- While taking statements from witnesses, victims, and other subjects (see below for exceptions);
- Protests, demonstrations, or civil unrest;
- When ordered to by a supervising officer; and,
- Other contacts that become adversarial, or in which, in the member's judgment, a video recording would assist in documenting the incident for later investigation or review.

2. Members are not required to give notice they are recording when talking with private citizens during the course and scope of their official duties, even when the contact occurs in a private residence. If asked, members should advise citizens they are being recorded. Moreover, members should strongly consider advising citizens that they are being recorded as a tool to de-escalate a situation.

3. The body-worn camera shall continue recording until the investigative or enforcement activity involving a member of the public has reasonably concluded. If enforcement or investigative activity with a member of the public resumes, the officer shall re-activate the body-worn camera and continue recording.

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4. Generally, members should not record informal or casual encounters with members of the public. Members should consider that recording people in some circumstances may inhibit sharing neighborhood information or developing strong ties between members of the community and members of the department.
5. All felony suspect interviews and interviews in cases related to alcohol and controlled substance impairment (i.e. DUI investigations, public intoxication investigations, and under the influence of a controlled substance investigations) that are conducted in the interview rooms, pre-processing area, or substation shall be recorded using the Video Oversight software. Officers shall also comply with Santa Clara County Protocols requiring recorded suspect statements. Officers should record interviews in circumstances not previously mentioned when they believe the interview recording will have evidentiary value in criminal cases or possible complaints. When interviews need to be recorded in the field, or Video Oversight is not available in the interview rooms, pre-processing area, or the substation, officers shall use their assigned body-worn cameras to record the interviews.
6. Absent deliberate and/or repeated pattern, the failure to activate the body-worn camera, alone, shall not constitute cause for discipline.

451.9 DEACTIVATION OR MUTING OF THE BODY-WORN CAMERA

Members of the Milpitas Police Department shall not deactivate or mute the body-worn camera during an investigation, arrest, detention, citation, etc., at any time unless:

1. There is a necessity to conserve battery life. A member on a perimeter or assigned to a static post where he or she is not in contact with citizens or actively part of the investigation may deactivate the body-worn camera to conserve battery life. The body-worn camera should be reactivated when these circumstances no longer apply.
2. Discussing private medical issues or concerns with a doctor, nurse or paramedic.
3. A witness or victim refuses to provide a statement if recorded and the encounter is non-confrontational.
4. Recording is inappropriate because of the victim or witness's physical condition, emotional state, age, location or other sensitive circumstances (e.g., a victim of rape, incest, and other forms of sexual assault and inside a hospital).
5. During a critical incident while the member is present in a designated command post..
6. Extraordinary circumstances exist, with supervisor approval.
7. To ensure conversations between a person in custody and the person's attorney, religious advisor or physician are not recorded, unless there is explicit consent from all parties to the conversation (Penal Code § 636).
8. Where an explosive device may be present.
9. In all instances of deactivation or muting, members shall audibly record the reason for deactivating or muting the body-worn camera, unless it may jeopardize safety. If the

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contact results in a report, the member shall explain the reason for the deactivation or muting in the report.

451.10 RESTRICTED USE OF THE BODY-WORN CAMERA AND/OR STORED MEDIA

1. Under no circumstances, except those instances involving a criminal investigation of Department personnel, will a conversation between Department employees be intentionally recorded without all parties to the conversation being aware of the fact that it was being recorded.
2. The body-worn camera will not be intentionally activated to record Department personnel during briefings, meetings, roll calls or while in private spaces such as locker rooms or restroom where a reasonable expectation of privacy exists.
3. The body-worn camera shall not intentionally be utilized to record confidential informants or undercover employees.
4. Prior to conducting a strip search, the officer shall record a 360-degree video of where the strip search will be conducted. During the strip search, the body-worn camera will be utilized to only capture audio of the event by positioning the camera away from the individual to be searched. Members shall comply with the policies and procedures of strip searches as set forth in MPM Section 902-Custodial Searches.
5. Members should not normally record patients during medical or psychological evaluation by a clinician or similar professional, or during treatment. Members shall be aware of patients' rights to privacy when hospital settings. When recording in Hospitals and other medical facilities officers should be careful to avoid recording persons other than those who are the focus of the investigations.
6. Members shall not play back body-worn footage for citizens or the media without prior approval from the Chief of Police or designee.

451.11 PROHIBITED USE OF THE BODY-WORN CAMERA

Members of the Milpitas Police Department are prohibited from using body-worn cameras for the following:

1. Recording any members for the purpose of embarrassment, harassment or ridicule.
2. Monitoring of persons based solely upon the person's political or religious beliefs or upon the exercise of the person's constitutional rights to freedom of speech and religious expression, petition and assembly under the United States and California Constitutions, or because of the content or viewpoint of the person's protected speech.
3. Recording conversations between a person in custody and the person's attorney, religious advisor or physician, unless there is explicit consent from all parties to the conversation (Penal Code § 636).
4. Encounters not directly related to official activities in the proper performance of police duties.
5. Performance of non-enforcement functions or administrative duties within a Department facility.

BODY WORN CAMERA

451.12 ACCIDENTAL / INADVERTENT BODY-WORN CAMERA RECORDING

Members who have made an accidental or inadvertent recording with a body-worn camera where the resulting recording contains data that does not necessarily have value to aid in an investigation or prosecution, such as data of an incident or encounter that does not lead to an arrest or citation, or data of general activities the officer might perform while on duty, or personal and/or private conversations of an officer unrelated to any ongoing criminal or internal affairs investigation or has no apparent evidentiary or investigatory value, may request for the deletion of the body-worn camera video. The member shall submit a written request through the chain of command to the Division Captain. If the Chief, or his/her designee, determines that a body-worn camera recording contains data that does not necessarily have value to aid in an investigation or prosecution, such as data of an incident or encounter that does not lead to an arrest or citation, or data of general activities the officer might perform while on duty, or personal and/or private conversations of an officer unrelated to any ongoing criminal or internal affairs investigation or has no apparent evidentiary or investigatory value, it may be deleted after sixty days.

No data should be destroyed if it is the subject of a California Public Records Act request or a legal hold.

451.13 REVIEW OF RECORDED MEDIA FILES

All file viewing is for law enforcement use only and subject to a right to know and need to know basis.

Access to the body-worn camera system is logged automatically with the date, time and name of person viewing the files.

When preparing written reports, members may review their recordings as a resource. However, members shall not retain personal copies of recordings. Members should not use the fact that a recording was made as a reason to write a less detailed report.

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct or whenever such recordings would be beneficial in reviewing the member's performance.

Recorded files may be reviewed by:

1. Upon approval by a supervisor, by any member of the Milpitas Police Department who is participating in an official investigation, such as a personnel complaint, administrative or criminal investigation.
2. Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case
3. The Chief of Police or his/her designee prior to sharing the video for community benefit.
4. In compliance with a public records request, if permitted, and in accordance with the Records Release Policy.

BODY WORN CAMERA

All recordings should be reviewed by the Custodian of Records or authorized designee prior to public release. Recordings that unreasonably violate a person's privacy or sense of dignity should not be publicly released unless disclosure is required by law or order of the court.

451.14 ADMINISTRATIVE REVIEW OF BODY-WORN CAMERA FILES

It is not the intent of the Department to review body-worn camera files/recordings for the purpose of general performance review of individual officers or to proactively discover policy violations.

Supervisors who inadvertently discover minor, non-criminal policy violations will continue to have discretion to resolve the violation with training or informal counseling. Should the policy violation rise to the level of more formal discipline, the supervisor will adhere to policies set forth in the Policy Manual.

451.15 RETENTION OF BODY-WORN CAMERA RECORDINGS

Recordings of the following should be retained for a minimum of two years (Penal Code § 832.18)

1. Incident involving use of force by an officer
2. Officer-involved shootings
3. Incidents that lead to the detention or arrest of an individual
4. Recordings relevant to a formal complaint against a member of the Milpitas Police Department

Recordings of incidents involving the use of force by an officer(s), or officer-involved shootings that result in the death of an individual shall not be purged without the authorization of the Chief of Police or his/her designee.

Recordings containing evidence that may be relevant to a criminal prosecution should be retained for any additional period required by law for other evidence relevant to a criminal prosecution (Penal Code § 832.18).

All other recordings should be retained for a period consistent with the requirements of the organization's records retention schedule but in no event for a period less than 180 days. Records or logs of access and deletion of recordings should be retained permanently (Penal Code § 832.18)

No data should be destroyed if it is the subject of a California Public Records Act request or a legal hold.

451.16 REDACTED RECORDINGS

Recordings may only be redacted pursuant to this policy. If the recording contains sensitive information (i.e., confidential conversations, sensitive conversations unrelated to the call for service/contact/investigation, tactical planning, etc.), the recording should be marked as "confidential." The involved officer should notify his/her supervisor of the recording. If the recording is requested as part of the judicial process, the officer should notify the District Attorney's Office of the "confidential" recording to determine the appropriate course of action.

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The Chief of Police or his/her designee should be consulted regarding the use of "confidential" footage during the judicial process and/or any decision about redactions..

Redactions of BWC recordings may be permitted by the Chief of Police or his/her designee when the recordings are to be released pursuant to a lawful California Public Records Act (CPRA) request. When responding to a Public Records Act request for audio and video files, redactions shall be made in accordance with this policy, Government Code section 6254(f), (AB 748), Penal Code section 832.7 (SB 1421), and all other applicable laws. The City Attorney should be consulted on the appropriate redactions.

Medical Marijuana

453.1 PURPOSE AND SCOPE

The purpose of this policy is to provide members of this department with guidelines for investigating the acquisition, possession, transportation, delivery, production or use of marijuana under California's medical marijuana laws.

453.1.1 DEFINITIONS

Definitions related to this policy include:

Cardholder - A person issued a current identification card.

Compassionate Use Act (CUA) (Health and Safety Code § 11362.5) - California law intended to provide protection from prosecution to those who are seriously ill and whose health would benefit from the use of marijuana in the treatment of illness for which marijuana provides relief. The CUA does not grant immunity from arrest but rather provides an affirmative defense from prosecution for possession of medical marijuana.

Identification card - A valid document issued by the California Department of Public Health to both persons authorized to engage in the medical use of marijuana and also to designated primary caregivers.

Medical marijuana - Marijuana possessed by a patient or primary caregiver for legitimate medical purposes.

Medical Marijuana Program (MMP) (Health and Safety Code § 11362.7 et seq.) - California laws passed following the CUA to facilitate the prompt identification of patients and their designated primary caregivers in order to avoid unnecessary arrests and provide needed guidance to law enforcement officers. MMP prohibits arrest for possession of medical marijuana in certain circumstances and provides a defense in others.

Patient - A person who is entitled to the protections of the CUA because he/she has received a written or oral recommendation or approval from a physician to use marijuana for medical purposes or any person issued a valid identification card.

Primary caregiver - A person designated by the patient, who has consistently assumed responsibility for the patient's housing, health or safety, who may assist the patient with the medical use of marijuana under the CUA or the MMP (Health and Safety Code § 11362.5; Health and Safety Code § 11362.7).

Statutory amount - No more than 8 ounces of dried, mature, processed female marijuana flowers ("bud") or the plant conversion (e.g., kief, hash, hash oil), and no more than six mature or 12 immature marijuana plants (roots, stems and stem fibers should not be considered) (Health and Safety Code § 11362.77).

Medical Marijuana

453.2 POLICY

It is the policy of the Milpitas Police Department to prioritize resources to forgo making arrests related to marijuana that the arresting officer reasonably believes would not be prosecuted by state or federal authorities.

California's medical marijuana laws are intended to provide protection to those who are seriously ill and whose health would benefit from the use of medical marijuana.

However, California medical marijuana laws do not affect federal laws and there is no medical exception under federal law for the possession or distribution of marijuana. The Milpitas Police Department will exercise discretion to ensure laws are appropriately enforced without unreasonably burdening both those individuals protected under California law and public resources.

453.3 INVESTIGATION

Investigations involving the possession, delivery, production or use of marijuana generally fall into one of several categories:

- (a) Investigations when no person makes a medicinal claim.
- (b) Investigations when a medicinal claim is made by a cardholder.
- (c) Investigations when a medicinal claim is made by a non-cardholder.

453.3.1 INVESTIGATIONS WITH NO MEDICINAL CLAIM

In any investigation involving the possession, delivery, production or use of marijuana or drug paraphernalia where no person claims that the marijuana is used for medicinal purposes, the officer should proceed with a criminal investigation if the amount is greater than permitted for personal use under the Control, Regulate and Tax Adult Use of Marijuana Act (Health and Safety Code § 11362.1; Health and Safety Code § 11362.2). A medicinal defense may be raised at any time, so officers should document any statements and observations that may be relevant to whether the marijuana was possessed or produced for medicinal purposes.

453.3.2 INVESTIGATIONS INVOLVING A MEDICINAL CLAIM MADE BY A CARDHOLDER

A cardholder or designated primary caregiver in possession of an identification card shall not be arrested for possession, transportation, delivery or cultivation of medical marijuana at or below the statutory amount unless there is probable cause to believe that (Health and Safety Code § 11362.71; Health and Safety Code § 11362.78):

- (a) The information contained in the card is false or falsified.
- (b) The card has been obtained or used by means of fraud.
- (c) The person is otherwise in violation of the provisions of the MMP.
- (d) The person possesses marijuana but not for personal medical purposes.

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Officers who reasonably believe that a person who does not have an identification card in his/her possession has been issued an identification card may treat the investigation as if the person had the card in his/her possession.

Cardholders may possess, transport, deliver or cultivate medical marijuana in amounts above the statutory amount if their doctor has concluded that the statutory amount does not meet the patient's medical needs (Health and Safety Code § 11362.71; Health and Safety Code § 11362.77). Investigations involving cardholders with more than the statutory amount of marijuana should be addressed as provided in this policy for a case involving a medicinal claim made by a non-cardholder.

453.3.3 INVESTIGATIONS INVOLVING A MEDICINAL CLAIM MADE BY A NON-CARDHOLDER

No patient or primary caregiver should be arrested for possession or cultivation of an amount of medical marijuana if the officer reasonably believes that marijuana is in a form and amount reasonably related to the qualified patient's current medical needs (Health and Safety Code § 11362.5). This arrest guidance also applies to sales, transportation or delivery of medical marijuana, or maintaining/renting a drug house or building that may be a nuisance if otherwise in compliance with MMP (Health and Safety Code § 11362.765).

Officers are not obligated to accept a person's claim of having a physician's recommendation when the claim cannot be readily verified with the physician but are expected to use their judgment to assess the validity of the person's medical-use claim.

Officers should review any available written documentation for validity and whether it contains the recommending physician's name, telephone number, address and medical license number for verification.

Officers should generally accept verified recommendations by a physician that statutory amounts do not meet the patient's needs (Health and Safety Code § 11362.77).

453.3.4 ADDITIONAL CONSIDERATIONS

Officers should consider the following when investigating an incident involving marijuana possession, delivery, production, or use:

- (a) Because enforcement of medical marijuana laws can be complex, time consuming, and call for resources unavailable at the time of initial investigation, officers may consider submitting a report to the prosecutor for review, in lieu of making an arrest. This can be particularly appropriate when:
 - 1. The suspect has been identified and can be easily located at a later time.
 - 2. The case would benefit from review by a person with expertise in medical marijuana investigations.
 - 3. Sufficient evidence, such as photographs or samples, has been lawfully obtained.

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4. Other relevant factors, such as available department resources and time constraints prohibit making an immediate arrest.
- (b) Whenever the initial investigation reveals an amount of marijuana greater than the statutory amount, officers should consider the following when determining whether the form and amount is reasonably related to the patient's needs:
 1. The amount of marijuana recommended by a medical professional to be ingested.
 2. The quality of the marijuana.
 3. The method of ingestion (e.g., smoking, eating, nebulizer).
 4. The timing of the possession in relation to a harvest (patient may be storing marijuana).
 5. Whether the marijuana is being cultivated indoors or outdoors.
- (c) Before proceeding with enforcement related to collective gardens or dispensaries, officers should consider conferring with a supervisor, an applicable state regulatory agency or other member with special knowledge in this area, and/or appropriate legal counsel (Business and Professions Code § 26010; Business and Professions Code § 26060). Licensing, zoning, and other related issues can be complex. Patients, primary caregivers, and cardholders who collectively or cooperatively cultivate marijuana for medical purposes may be licensed or may have a defense in certain circumstances (Business and Professions Code § 26032; Business and Professions Code § 26033).
- (d) Investigating members should not order a patient to destroy marijuana plants under threat of arrest.

453.3.5 EXCEPTIONS

This policy does not apply to, and officers should consider taking enforcement action for the following:

- (a) Persons who engage in illegal conduct that endangers others, such as driving under the influence of marijuana in violation of the Vehicle Code (Health and Safety Code § 11362.5).
- (b) Marijuana possession in jails or other correctional facilities that prohibit such possession (Health and Safety Code § 11362.785).
- (c) Smoking marijuana (Health and Safety Code § 11362.79):
 1. In any place where smoking is prohibited by law.
 2. In or within 1,000 feet of the grounds of a school, recreation center or youth center, unless the medical use occurs within a residence.
 3. On a school bus.
 4. While in a motor vehicle that is being operated.
 5. While operating a boat.

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- (d) Use of marijuana by a person on probation or parole, or on bail and use is prohibited by the terms of release (Health and Safety Code § 11362.795).

453.3.6 INVESTIGATIONS INVOLVING A STATE LICENSEE

No person issued a state license under the Business and Professions Code shall be arrested or cited for cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution or sale of medical cannabis or a medical cannabis product related to qualifying patients and primary caregivers when conducted lawfully. Whether conduct is lawful may involve questions of license classifications, local ordinances, specific requirements of the Business and Professions Code and adopted regulations. Officers should consider conferring with a supervisor, the applicable state agency or other member with special knowledge in this area and/or appropriate legal counsel before taking enforcement action against a licensee or an employee or agent (Business and Professions Code § 26032).

453.4 FEDERAL LAW ENFORCEMENT

Officers should provide information regarding a marijuana investigation to federal law enforcement authorities when it is requested by federal law enforcement authorities or whenever the officer believes those authorities would have a particular interest in the information.

453.5 PROPERTY SUPERVISOR RESPONSIBILITIES

The Property supervisor should ensure that marijuana, drug paraphernalia or other related property seized from a person engaged or assisting in the use of medical marijuana is not destroyed pending any charges and without a court order. The Property supervisor is not responsible for caring for live marijuana plants.

Upon the prosecutor's decision to forgo prosecution, or the dismissal of charges or an acquittal, the Property supervisor should, as soon as practicable, return to the person from whom it was seized any useable medical marijuana, plants, drug paraphernalia or other related property.

The Property supervisor may release marijuana to federal law enforcement authorities upon presentation of a valid court order or by a written order of the Detective Bureau supervisor.

Bicycle Patrol Unit

455.1 PURPOSE AND SCOPE

The Milpitas Police Department has established the Bicycle Patrol Unit (BPU) for the purpose of enhancing patrol efforts in the community. Bicycle patrol has been shown to be an effective way to increase officer visibility in congested areas and their quiet operation can provide a tactical approach to crimes in progress. The purpose of this policy is to provide guidelines for the safe and effective operation of the patrol bicycle.

455.2 POLICY

Patrol bicycles may be used for regular patrol duty, traffic enforcement, parking control, or special events. The use of the patrol bicycle will emphasize their mobility and visibility to the community.

Bicycles may be deployed to any area at all hours of the day or night, according to Department needs and as staffing levels allow.

Requests for specific deployment of bicycle patrol officers shall be coordinated through the Bicycle Patrol Unit supervisor or the Watch Commander.

455.3 SELECTION OF PERSONNEL

An announcement, in accordance with MOU 2.02, will be posted when positions are available in the Bicycle Patrol Unit. Interested sworn personnel, who are off probation, shall submit a memorandum of interest to the Field Services Division Commander via the chain of command. Qualified applicants will then be invited to an oral interview.

455.3.1 BICYCLE PATROL UNIT SUPERVISOR

The Bicycle Patrol Unit supervisor will be selected from the rank of sergeant by the Chief of Police or his/her designee.

The Bicycle Patrol Unit supervisor shall have responsibility for the following:

- (a) Organizing bicycle patrol training.
- (b) Inspecting and maintaining inventory of patrol bicycles and program equipment.
- (c) Scheduling maintenance and repairs.
- (d) Evaluating performance of bicycle officers.
- (e) Coordinating BPU officer attendance at special events.
- (f) Other activities as required to maintain the efficient operation of the Bicycle Patrol Unit.

455.4 TRAINING

Participants in the program must complete an initial Department approved bicycle-training course after acceptance into the program. Thereafter bicycle patrol officers should receive annual in-

Bicycle Patrol Unit

service training to improve skills and refresh safety, health and operational procedures. The initial training shall minimally include the following:

- Bicycle patrol strategies.
- Bicycle safety and accident prevention.
- Operational tactics using bicycles.

455.5 UNIFORMS AND EQUIPMENT

Bicycles officers shall wear the departmentally approved uniform and safety equipment while operating the police bicycle. Safety equipment includes departmentally approved helmet, riding gloves, protective eyewear and approved footwear. Soft body armor is mandatory.

The bicycle uniform consists of the standard MOCEAN navy blue long sleeve or short sleeve polo style shirts, department patches, an embroidered badge and name tag, and blue bicycle patrol pants or shorts with uniform appearance.

Bicycle officers shall carry the same equipment on the bicycle patrol duty belt as they would on a regular patrol assignment.

Officers will be responsible for obtaining necessary forms, citation books and other needed equipment to keep available while on bike patrol.

455.6 CARE AND USE OF PATROL BICYCLES

Officers will be assigned a specially marked and equipped patrol bicycle and attached gear bag.

Bicycles utilized for uniformed bicycle patrol shall have a "POLICE" decal affixed to each side of the crossbar or the bike's saddlebag. Every such bicycle shall be equipped with front and rear reflectors front lights and a siren/horn satisfying the requirements of Vehicle Code §2800.1(b).

Bicycles utilized for uniformed bicycle patrol shall be equipped with a rear rack and/or saddle bag(s) sufficient to carry all necessary equipment to handle routine patrol calls including report writing, vehicle storage and citations.

Each bicycle gear bag shall include a first aid kit, tire pump, repair tool, tire tube, security lock, equipment information and use manuals. These items are to remain with/on the bicycle at all times.

Each bicycle shall be equipped with a steady or flashing blue warning light that is visible from the front, sides, or rear of the bicycle. (Vehicle Code § 21201.3)

Bicycle officers shall conduct an inspection of the bicycle and equipment prior to use to insure proper working order of the equipment. Officers are responsible for the routine care and maintenance of their assigned equipment (e.g., tire pressure, chain lubrication, overall cleaning).

If a needed repair is beyond the ability of the bicycle officer, the bicycle officer will notify the BPU supervisor of the needed repairs.

Bicycle Patrol Unit

Each bicycle will receive maintenance annually and performed by a department approved repair shop/technician.

At the end of a bicycle assignment, the bicycle shall be returned clean and ready for the next tour of duty.

Officers shall not modify the patrol bicycle, remove, modify or add components except with the expressed approval of the bicycle supervisor, or in the event of an emergency.

Vehicle bicycle racks are available should the officer need to transport the patrol bicycle. Due to possible component damage, transportation of the patrol bicycle in a trunk or on a patrol car push-bumper is discouraged.

Bicycles shall be properly secured when not in the officer's immediate presence.

455.7 OFFICER RESPONSIBILITY

Officers must operate the bicycle in compliance with the vehicle code under normal operation. Officers may operate the bicycle without lighting equipment during hours of darkness when such operation reasonably appears necessary for officer safety and tactical considerations. Officers must use caution and care when operating the bicycle without lighting equipment.

Officers are exempt from the rules of the road under the following conditions (Vehicle Code § 21200(b)(1)):

- (a) In response to an emergency call.
- (b) While engaged in rescue operations.
- (c) In the immediate pursuit of an actual or suspected violator of the law.

Unmanned Aerial System (UAS) Operations

456.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines and protocol for the deployment and use of the Unmanned Aerial System (UAS) including the retention and/or destruction of media obtained using the UAS in accordance with applicable Federal law, State law, and City of Milpitas regulations.

456.2 DEFINITIONS

Definitions related to this policy include:

- (a) **Unmanned Aerial System (UAS):** Consists of the small, unmanned aircraft weighing less than 55 lbs., the command system, a secure control link and other safety and support systems for operation of the UAS
- (b) **Certificate of Authorization (COA):** Given by the Federal Aviation Administration (FAA) granting permission to fly the UAS within the specific boundaries and perimeters.
- (c) **FAA Part 107 Certification:** Remote Pilot Certification given by the FAA to operate the controls of a small UAS under Part 107.
- (d) **Operator:** A sworn or non-sworn member of the Milpitas Police Department or Milpitas Fire Department who is trained and authorized to control a UAS during flight.
- (e) **Visual Observer:** A member of the Milpitas Police Department or Milpitas Fire Department who is trained and authorized to maintain visual observation of the UAS while in flight.

456.3 POLICY

The UAS may be utilized to enhance the department's mission of protecting lives and property. Any use of a UAS will be in strict accordance with constitutional and privacy rights and Federal Aviation Administration (FAA) regulations, and industry best practices.

Department UAV's may be flown under two FAA regulatory authorizations:

- (a) Per the condition of a Certificate of Authorization (COA); or
- (b) FAA Part 107 Remote Pilot Certification

456.4 PRIVACY

The use of the UAS may generate privacy concerns. Personnel will balance the use of the UAS with the protection of an individual's civil rights and their reasonable expectation of privacy as a key component of any decision made to deploy the UAS. Operators will take reasonable precautions to avoid inadvertently recording or transmitting images that infringe upon an individual's right to privacy.

Unmanned Aerial System (UAS) Operations

456.5 USE OF UAS

Only authorized operators who have completed the required training shall be permitted to operate the UAS. A UAS may be deployed to preserve life, maximize public safety and/or officer safety, or collect investigative data. Uses may include but are not limited to:

- (a) High risk events such as; barricaded suspects, hostage situations, active shooters, apprehension of potentially armed and/or dangerous fleeing suspects, and high-risk search warrants;
- (b) Hot pursuit;
- (c) Mass casualty events;
- (d) Pursuant to a search warrant;
- (e) Rescue events;
- (f) Disaster response and recovery;
- (g) Suspected explosive devices;
- (h) Fire suppression or investigation;
- (i) Hazardous material releases;
- (j) Post-incident crime scene and accident investigation, preservation and documentation;
- (k) Lost or missing persons;
- (l) Special Events;
- (m) When there is probable cause to believe that the UAS will record images of a place, thing, condition, or event, and that those images tend to show a felony has been committed, or tends to show that a particular person has committed a felony;
- (n) Anytime a UAS would enhance public safety, improve operational safety, incident stabilization or incident mitigation as determined by the authorizing person;
- (o) Anti-UAV operations when a person is operating a UAV in a manner which impedes emergency personnel who, in the course of their duties, are coping with an emergency (refer to Penal Code § 402(a) 1);
- (p) Training missions;
- (q) In support of the Milpitas Fire Department when the underlying mission meets the uses outlined in this policy;
- (r) Mutual Aid support when the underlying mission meets the uses outlined in this policy; and
- (s) In support of any City of Milpitas department when the underlying mission meets the uses outlined in this policy

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456.6 PROHIBITED USE

The UAS video surveillance equipment shall not be used:

- (a) To conduct random surveillance activities.
- (b) To target a person based solely on individual characteristics, such as, but not limited to race, ethnicity, national origin, religion, disability, gender or sexual orientation.
- (c) Conduct any business other than official Department business
- (d) Shall not be weaponized

456.7 EVIDENCE COLLECTION AND RETENTION

(a) To avoid missing critical evidence during UAS operations, all UAS video will be recorded during flight. The pilot will manually activate the record feature on the UAS before take-off and will stop recording after landing.

(b) Following a UAS operation by the Milpitas Police Department or the Milpitas Fire Department, a Milpitas Police Department case agent or officer shall meet with the UAS operator to collect the UAS digital media storage device (DMSD) containing the video(s). All recorded video will be uploaded into the approved digital evidence management system (DEMS). After uploading the video(s) into the DEMS, the DMSD will be returned to service after reformatting the DMSD. If uploading video(s) with evidentiary value to the DEMS is unavailable, the DMSD will be booked into MPD property as evidence. The collection and uploading of video(s) will be documented in an police report.

(c) All data collected by the UAS shall be retained in accordance with the Body-Worn Camera data retention policy described in Lexipol section 451.15 (Retention of Body-Worn Camera Recordings).

(d) Unauthorized use, duplication, and/or distribution of UAS videos are prohibited. Personnel shall not make copies of any UAS videos for their personal use and are prohibited from using a recording device such as a personal camera or any secondary video capture device to capture duplicate UAS videos. All recorded media, images and audio are the property of the Milpitas Police Department and shall not be copied, released or disseminated in any form or manner outside the parameters of this policy without the expressed written consent of the Chief of Police or his / her designee.

(e) Supervisors may review recorded UAS video files when there is a legitimate supervisory or business purpose. In addition, Milpitas Police personnel shall only review recorded UAS video files on a need/right to know basis. Authorized review may include the following circumstances:

- (a) For the purpose of completing a criminal investigation and/or preparing official reports.
- (b) Preparing for courtroom testimony or a courtroom presentation.
- (c) Evaluation of a critical incident: with supervisor approval.
- (d) For training purposes.
- (e) California Public Records Act requests.

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(f) Departmental request for a UAS video, including requests from the District Attorney's Office or City Attorney's Office, shall be forwarded as a written request to the Property and Evidence Unit. Requests should contain sufficient information to identify the specific UAS video being requested.

(g) Non-Departmental requests for a UAS video shall be accepted and processed in accordance with Federal, State, and local laws, and Department policy (discovery, media inquiries, subpoenas, Public Records Act requests, etc.).

1. When practical, Department personnel will be advised prior to any release of UAS video under the California Public Records Act (CPRA).

(h) Request for Deletion or Accidental Recording

1. In the event of an accidental or unintentional recording with the UAS camera system, a request that the UAS video be may be requested in writing through the chain of command to the Chief of Police. The request must include sufficient information to locate the UAS video and the reason for the request. The Chief of Police, or his / her designee, is the authority that may approve video deletion. The authorization to delete the video must be documented in an administrative memorandum and shall include sufficient information explaining the rational for the authorization.
2. Videos recorded during authorized department training may be retained for training purposes or deleted with the authorization of the Chief of Police

(i) Copying Procedures

1. A copy of the UAS video can be requested in accordance with the provisions of this policy.
2. Police Evidence Technicians will be responsible for duplication of video footage recorded by the UAS camera system pursuant to a discover request, CPRA request, or other authorized request approved by the Chief of Police or his/her designee.

(j) UAS video may be retained and utilized for training purposes with the approval of the Field Services Division Captain.

- (a) An officer or supervisor recommending the use of a UAS video for training purposes shall submit the recommendation through the Chain of Command to the Field Services Division Captain.
- (b) The Field Services Division Captain will notify the Police Evidence Technician of the approval to produce a training copy of the video. Any video approved to be retained for training will be stored in a UAS Training file. Videos stored in this file shall not be duplicated, downloaded, moved or copied from the file.
- (c) An officer or employee involved in the recorded incident may object to the use of the UAS video for training purposes. Their objection should be submitted in writing through the Chain of Command to the Field Services Division Captain to determine if the employee's objection outweighs the training value of the recording. The Field Services Division Captain may consider a series of factors such as; the identities of the person(s) involved, the sensitive nature of the incident, the benefit of using the video

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versus other means of training (scenario based training, training bulletins, etc.), or any potential negative impacts the video may have on involved parties or those that view it.

456.8 ROLES AND RESPONSIBILITIES

The roles and responsibilities for UAS Program members are as follows:

(a) **Program Coordinator** - A Milpitas Police Lieutenant who manages the UAS Program and ensures the program operates in accordance with all Federal, State and local laws, and within department policy and guidelines. In addition, the Program Coordinator will ensure the UAS Unit completes the following:

1. Maintain all training flight and maintenance records for each operator and observer, as well as individual airframes.
2. Ensure operators and observers stay current with their training and certifications.
3. Maintain contact with the FAA and familiarity with the pertinent FAA regulations.
4. Evaluate airframes based on mission needs.
5. Remain up to date with current UAS case law, best practices, and industry standards.
6. Develop and maintain the UAS Operational Guidelines Manual

(b) **Operator** - The operator's role is to safely operate the UAS in accordance with all applicable law and policy.

1. The operator may reject a flight based on personnel safety or violation of FAA regulations.
2. The operator shall be responsive to requests and input from the observer in order to accomplish the safe and effective deployment of the UAS.
3. Operators are responsible for mission documentation.

(c) **Observer** - The Observer's role is to assist in the safe and effective operation of the UAS. The observer shall:

1. Assist the operator in avoiding obstacles.
2. Operate any attachments to the UAS.
3. Remain alert for safety issues surrounding the operator and observer.
4. Handle radio communications.

Automated License Plate Readers (ALPRs)

458.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for the capture, storage and use of digital data obtained through the use of Automated License Plate Reader (ALPR) technology.

458.2 POLICY

The policy of the Milpitas Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review.

The Milpitas Police Department does not permit the sharing of ALPR data gathered by the City or its contractors/subcontractors for purpose of federal immigration enforcement, pursuant to the California Values Act (Government Code § 7282.5; Government Code § 7284.2 et seq).

458.3 ADMINISTRATION

The ALPR technology, also known as License Plate Recognition (LPR), allows for the automated detection of license plates. It is used by the Milpitas Police Department to convert data associated with vehicle license plates for official law enforcement purposes, including identifying stolen or wanted vehicles, stolen license plates and missing persons. It may also be used to gather information related to active warrants, suspect interdiction and stolen property recovery.

All installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Technical Services Division Captain or authorized designee. The Technical Services Division Captain or authorized designee will assign member(s) under his/her command to administer the day-to-day operation of the ALPR equipment and data.

458.3.1 ALPR ADMINISTRATOR

The Technical Services Division Captain shall be responsible for maintaining an ALPR policy, and ensuring the use of ALPRs complies with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information.
- (b) Training requirements for authorized users.
- (c) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.
- (d) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52.
- (e) The title and name of the current designee in overseeing the ALPR operation.

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- (f) Working with the Custodian of Records on the retention and destruction of ALPR data.
- (g) Ensuring this policy and related procedures are conspicuously posted on the department's website.

458.4 OPERATIONS

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use, or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

- (a) An ALPR shall only be used for official law enforcement business.
- (b) No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.
- (c) ALPR data is accessible to Milpitas police officers, community service officers, analysts, and dispatchers who have been trained by the designee of the Technical Services Division Captain.
- (d) An ALPR may be used in conjunction with any routine patrol operation or criminal investigation. Reasonable suspicion or probable cause is not required before using an ALPR.
- (e) While an ALPR may be used to canvass license plates around any crime scene, particular consideration should be given to using ALPR-equipped cars to canvass areas around homicides, shootings and other major incidents. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.
- (f) No ALPR operator may access department, state or federal data unless otherwise authorized to do so.
- (g) The officer should, when practicable, verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert.
- (h) The Milpitas Police Department will, consistent with Government Code § 7284.8 (b), work to ensure that databases are governed in a manner that limits the availability of information therein to the fullest extent practicable and consistent with federal and state law, to anyone or any entity for the sole purpose of immigration enforcement.

458.5 DATA COLLECTION AND RETENTION

The Technical Services Division Captain or designee is responsible for ensuring systems and processes are in place for the proper collection and retention of ALPR data. Data will be transferred from stationary ALPRs and ALPRs mounted on vehicles to the designated storage server in accordance with department procedures.

All ALPR data downloaded to the server should be stored for a minimum of one year (Government Code § 34090.6) and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a discovery request

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or other lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence.

458.6 ACCOUNTABILITY

All data will be closely safeguarded and protected by both procedural and technological means. The Milpitas Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) All ALPR data downloaded to the mobile or desktop workstation and in storage shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
- (b) Members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action.
- (c) Quarterly audits of the ALPR system will be conducted by the Administration Sergeant to ensure members are using the system properly.
- (d) Quarterly audits at a minimum will include but not be limited to ensuring members list an associated case number and reason for accessing the ALPR system.

For security or data breaches, see the Records Release and Maintenance Policy.

458.7 RELEASING ALPR DATA

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law, using the following procedures:

- (a) The agency makes a written request for the ALPR data that includes:
 - 1. The name of the agency.
 - 2. The name of the person requesting.
 - 3. The intended purpose of obtaining the information.
- (b) The request is reviewed by the Technical Services Division Captain or the authorized designee and approved before the request is fulfilled.
- (c) The approved request is retained on file.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

458.8 TRAINING

The Training Sergeant should ensure that members receive department-approved training for those authorized to use or access the ALPR system (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

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Public Recording of Law Enforcement Activity

467.1 PURPOSE AND SCOPE

This policy provides guidelines for handling situations in which members of the public photograph or audio/video record law enforcement actions and other public activities that involve members of this department. In addition, this policy provides guidelines for situations where the recordings may be evidence.

467.2 POLICY

The Milpitas Police Department recognizes the right of persons to lawfully record members of this department who are performing their official duties. Members of this department will not prohibit or intentionally interfere with such lawful recordings. Any recordings that are deemed to be evidence of a crime or relevant to an investigation will only be collected or seized lawfully.

Officers should exercise restraint and should not resort to highly discretionary arrests for offenses such as interference, failure to comply or disorderly conduct as a means of preventing someone from exercising the right to record members performing their official duties.

467.3 RECORDING LAW ENFORCEMENT ACTIVITY

Members of the public who wish to record law enforcement activities are limited only in certain aspects.

- (a) Recordings may be made from any public place or any private property where the individual has the legal right to be present (Penal Code § 69; Penal Code § 148).
- (b) Beyond the act of photographing or recording, individuals may not interfere with the law enforcement activity. Examples of interference include, but are not limited to:
 - 1. Tampering with a witness or suspect.
 - 2. Inciting others to violate the law.
 - 3. Being so close to the activity as to present a clear safety hazard to the officers.
 - 4. Being so close to the activity as to interfere with an officer's effective communication with a suspect or witness.
- (c) The individual may not present an undue safety risk to the officers, him/herself or others.

467.4 OFFICER RESPONSE

Officers should promptly request that a supervisor respond to the scene whenever it appears that anyone recording activities may be interfering with an investigation or it is believed that the recording may be evidence. If practicable, officers should wait for the supervisor to arrive before taking enforcement action or seizing any cameras or recording media.

Whenever practicable, officers or supervisors should give clear and concise warnings to individuals who are conducting themselves in a manner that would cause their recording or

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behavior to be unlawful. Accompanying the warnings should be clear directions on what an individual can do to be compliant; directions should be specific enough to allow compliance. For example, rather than directing an individual to clear the area, an officer could advise the person that he/she may continue observing and recording from the sidewalk across the street.

If an arrest or other significant enforcement activity is taken as the result of a recording that interferes with law enforcement activity, officers shall document in a report the nature and extent of the interference or other unlawful behavior and the warnings that were issued.

467.5 SUPERVISOR RESPONSIBILITIES

A supervisor should respond to the scene when requested or any time the circumstances indicate a likelihood of interference or other unlawful behavior.

The supervisor should review the situation with the officer and:

- (a) Request any additional assistance as needed to ensure a safe environment.
- (b) Take a lead role in communicating with individuals who are observing or recording regarding any appropriate limitations on their location or behavior. When practical, the encounter should be recorded.
- (c) When practicable, allow adequate time for individuals to respond to requests for a change of location or behavior.
- (d) Ensure that any enforcement, seizure or other actions are consistent with this policy and constitutional and state law.
- (e) Explain alternatives for individuals who wish to express concern about the conduct of Department members, such as how and where to file a complaint.

467.6 SEIZING RECORDINGS AS EVIDENCE

Officers should not seize recording devices or media unless (42 USC § 2000aa):

- (a) There is probable cause to believe the person recording has committed or is committing a crime to which the recording relates, and the recording is reasonably necessary for prosecution of the person.
 - 1. Absent exigency or consent, a warrant should be sought before seizing or viewing such recordings. Reasonable steps may be taken to prevent erasure of the recording.
- (b) There is reason to believe that the immediate seizure of such recordings is necessary to prevent serious bodily injury or death of any person.
- (c) The person consents.
 - 1. To ensure that the consent is voluntary, the request should not be made in a threatening or coercive manner.
 - 2. If the original recording is provided, a copy of the recording should be provided to the recording party, if practicable. The recording party should be permitted to be present while the copy is being made, if feasible. Another way to obtain the

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evidence is to transmit a copy of the recording from a device to a department-owned device.

Recording devices and media that are seized will be submitted within the guidelines of the Property and Evidence Policy.

Medical Aid and Response

469.1 PURPOSE AND SCOPE

This policy recognizes that members often encounter persons in need of medical aid and establishes a law enforcement response to such situations.

469.2 POLICY

It is the policy of the Milpitas Police Department that all officers and other designated members be trained to provide emergency medical aid and to facilitate an emergency medical response.

469.3 FIRST RESPONDING MEMBER RESPONSIBILITIES

Whenever practicable, members should take appropriate steps to provide initial medical aid (e.g., first aid, CPR, use of an automated external defibrillator (AED)) in accordance with their training and current certification levels. This should be done for those in need of immediate care and only when the member can safely do so.

Prior to initiating medical aid, the member should contact the Communications Center and request response by Emergency Medical Services (EMS) as the member deems appropriate.

Members should follow universal precautions when providing medical aid, such as wearing gloves and avoiding contact with bodily fluids, consistent with the Communicable Diseases Policy. Members should use a barrier or bag device to perform rescue breathing.

When requesting EMS, the member should provide the Communications Center with information for relay to EMS personnel in order to enable an appropriate response, including:

- (a) The location where EMS is needed.
- (b) The nature of the incident.
- (c) Any known scene hazards.
- (d) Information on the person in need of EMS, such as:
 - 1. Signs and symptoms as observed by the member.
 - 2. Changes in apparent condition.
 - 3. Number of patients, sex, and age, if known.
 - 4. Whether the person is conscious, breathing, and alert, or is believed to have consumed drugs or alcohol.
 - 5. Whether the person is showing signs or symptoms of excited delirium or other agitated chaotic behavior.

Members should stabilize the scene whenever practicable while awaiting the arrival of EMS.

Members should not direct EMS personnel whether to transport the person for treatment.

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469.4 TRANSPORTING ILL AND INJURED PERSONS

Except in extraordinary cases where alternatives are not reasonably available, members should not transport persons who are unconscious, who have serious injuries or who may be seriously ill. EMS personnel should be called to handle patient transportation.

Officers should search any person who is in custody before releasing that person to EMS for transport.

An officer should accompany any person in custody during transport in an ambulance when requested by EMS personnel, when it reasonably appears necessary to provide security, when it is necessary for investigative purposes or when so directed by a supervisor.

Members should not provide emergency escort for medical transport or civilian vehicles.

469.5 PERSONS REFUSING EMS CARE

If a person who is not in custody refuses EMS care or refuses to be transported to a medical facility, an officer shall not force that person to receive care or be transported. However, members may assist EMS personnel when EMS personnel determine the person lacks mental capacity to understand the consequences of refusing medical care or to make an informed decision and the lack of immediate medical attention may result in serious bodily injury or the death of the person.

In cases where mental illness may be a factor, the officer should consider proceeding with a 72-hour treatment and evaluation commitment (5150 commitment) process in accordance with the Mental Illness Commitments Policy.

If an officer believes that a person who is in custody requires EMS care and the person refuses, he/she should encourage the person to receive medical treatment. The officer may also consider contacting a family member to help persuade the person to agree to treatment or who may be able to authorize treatment for the person.

If the person who is in custody still refuses, the officer will require the person to be transported to the nearest medical facility. In such cases, the officer should consult with a supervisor prior to the transport.

Members shall not sign refusal-for-treatment forms or forms accepting financial responsibility for treatment.

469.6 MEDICAL ATTENTION RELATED TO USE OF FORCE

Specific guidelines for medical attention for injuries sustained from a use of force may be found in the Use of Force, Handcuffing and Restraints, Control Devices and Techniques, and Conducted Energy Device policies.

469.7 AIR AMBULANCE

Generally, when on-scene, EMS personnel will be responsible for determining whether an air ambulance response should be requested. An air ambulance may be appropriate when there are

Medical Aid and Response

victims with life-threatening injuries or who require specialized treatment (e.g., gunshot wounds, burns, obstetrical cases), and distance or other known delays will affect the EMS response.

The Field Services Captain should develop guidelines for air ambulance landings or enter into local operating agreements for the use of air ambulances, as applicable. In creating those guidelines, the Department should identify:

- Responsibility and authority for designating a landing zone and determining the size of the landing zone.
- Responsibility for securing the area and maintaining that security once the landing zone is identified.
- Consideration of the air ambulance provider's minimum standards for proximity to vertical obstructions and surface composition (e.g., dirt, gravel, pavement, concrete, grass).
- Consideration of the air ambulance provider's minimum standards for horizontal clearance from structures, fences, power poles, antennas or roadways.
- Responsibility for notifying the appropriate highway or transportation agencies if a roadway is selected as a landing zone.
- Procedures for ground personnel to communicate with flight personnel during the operation.

One department member at the scene should be designated as the air ambulance communications contact. Headlights, spotlights and flashlights should not be aimed upward at the air ambulance. Members should direct vehicle and pedestrian traffic away from the landing zone.

Members should follow these cautions when near an air ambulance:

- Never approach the aircraft until signaled by the flight crew.
- Always approach the aircraft from the front.
- Avoid the aircraft's tail rotor area.
- Wear eye protection during landing and take-off.
- Do not carry or hold items, such as IV bags, above the head.
- Ensure that no one smokes near the aircraft.

469.8 AUTOMATED EXTERNAL DEFIBRILLATOR (AED) USE

A member may use an AED only after receiving appropriate training from an approved public safety first aid and CPR course (22 CCR 100014; 22 CCR 100017; 22 CCR 100018).

469.8.1 AED USER RESPONSIBILITY

Members who are issued AEDs for use in department vehicles should check the AED at the beginning of the shift to ensure it is properly charged and functioning. Any AED that is not functioning properly will be taken out of service and given to the Training Sergeant who is responsible for ensuring appropriate maintenance.

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Following use of an AED, the device shall be cleaned and/or decontaminated as required. The electrodes and/or pads will be replaced as recommended by the AED manufacturer.

Any member who uses an AED should contact the Communications Center as soon as possible and request response by EMS.

469.8.2 AED REPORTING

Any member using an AED will complete an incident report detailing its use.

469.8.3 AED TRAINING AND MAINTENANCE

The Training Sergeant should ensure appropriate training and refresher training is provided to members authorized to use an AED. A list of authorized members and training records shall be made available for inspection by the local EMS agency (LEMSA) or EMS authority upon request (22 CCR 100021; 22 CCR 100022; 22 CCR 100029).

The Training Sergeant is responsible for ensuring AED devices are appropriately maintained and will retain records of all maintenance in accordance with the established records retention schedule (22 CCR 100021).

469.9 ADMINISTRATION OF OPIOID OVERDOSE MEDICATION

Members may administer opioid overdose medication in accordance with protocol specified by the licensed health care provider who prescribed the overdose medication for use by the member and (Civil Code § 1714.22; Business and Professions Code § 4119.9):

- (a) When trained and tested to demonstrate competence following initial instruction.
- (b) When authorized by the medical director of the LEMSAs.
- (c) In accordance with California Peace Officer Standards and Training (POST) standards.

469.9.1 OPIOID OVERDOSE MEDICATION USER RESPONSIBILITIES

Members who are qualified to administer opioid overdose medication, such as naloxone, should handle, store and administer the medication consistent with their training. Members should check the medication and associated administration equipment at the beginning of their shift to ensure they are serviceable and not expired. Any expired medication or unserviceable administration equipment should be removed from service and given to Life Support Unit personnel.

Any member who administers an opioid overdose medication should contact the Communications Center as soon as possible and request response by EMS.

469.9.2 OPIOID OVERDOSE MEDICATION REPORTING

Any member administering opioid overdose medication should detail its use in an appropriate report.

The Life Support Unit personnel will ensure that the Records Supervisor is provided enough information to meet applicable state reporting requirements.

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469.9.3 OPIOID OVERDOSE MEDICATION TRAINING

The Training Sergeant should ensure initial and refresher training is provided to members authorized to administer opioid overdose medication. Training should be coordinated with the local health department and comply with the requirements in 22 CCR 100019 and any applicable POST standards (Civil Code § 1714.22).

469.9.4 DESTRUCTION OF OPIOID OVERDOSE MEDICATION

The Life Support Unit Coordinator shall ensure the destruction of any expired opioid overdose medication (Business and Professions Code § 4119.9).

469.9.5 OPIOID OVERDOSE MEDICATION RECORD MANAGEMENT

Records regarding acquisition and disposition of opioid overdose medications shall be maintained and retained in accordance with the established records retention schedule and at a minimum of three years from the date the record was created (Business and Professions Code § 4119.9).

469.10 SICK OR INJURED ARRESTEE

If an arrestee appears ill or injured, or claims illness or injury, he/she should be medically cleared prior to booking. If the officer has reason to believe the arrestee is feigning injury or illness, the officer should contact a supervisor, who will determine whether medical clearance will be obtained prior to booking.

If the jail or detention facility refuses to accept custody of an arrestee based on medical screening, the officer should note the name of the facility person refusing to accept custody and the reason for refusal, and should notify a supervisor to determine the appropriate action.

Arrestees who appear to have a serious medical issue should be transported by ambulance. Officers shall not transport an arrestee to a hospital without a supervisor's approval.

Nothing in this section should delay an officer from requesting EMS when an arrestee reasonably appears to be exhibiting symptoms that appear to be life threatening, including breathing problems or an altered level of consciousness, or is claiming an illness or injury that reasonably warrants an EMS response in accordance with the officer's training.

469.11 FIRST AID TRAINING

The Training Sergeant should ensure officers receive initial first aid training within one year of employment and refresher training every two years thereafter (22 CCR 100016; 22 CCR 100022).

USE OF NALOXONE (NARCAN)

470.1 PURPOSE

To establish guidelines and regulations governing the utilization of Naloxone by the Milpitas Police Department with the objective to reduce the number of fatal opiate overdoses and increase officer safety.

470.2 POLICY

It is the policy of the Milpitas Police Department that sworn and designated non-sworn personnel are required to be trained in the use and appropriate application of Naloxone. The Santa Clara County EMS Agency in addition to recent legislation has authorized law enforcement personnel who have received training in the application of Naloxone, to possess and administer Naloxone.

470.3 DEFINITIONS

A. **Naloxone Hydrochloride (Narcan):** Naloxone, also commonly known as Narcan, is a medication used for the treatment of a possible opioid or suspected opioid overdose.

B. **Intranasal:** Naloxone is a narcotic antagonist which works by affecting opiate receptor sites within the brain. Naloxone is administered into the subject's nose via intranasal administration (spray). The nasal cavity is covered by a thin mucosa, which is extremely vascular and provides a direct route into the blood stream of the subject. This method of administration is non-invasive and quickly effective.

C. **Opioid Overdose:** An opioid overdose is an acute, life threatening, medical condition caused excessive intake of opiates, such as heroin, morphine, tramadol, and oxycodone. This serious medical condition causes the victim to suffer from an altered level of consciousness, pinpoint pupils, respiratory arrest, and can lead to death.

470.4 PROCEDURE

A. ISSUING NALOXONE KITS:

1. Only authorized personnel who have completed prescribed training in the use and application of Naloxone will be assigned to carry and/or utilize Naloxone.
2. The Chief of Police shall designate a Naloxone Coordinator within the Milpitas Police Department. When trained personnel are assigned to carry Naloxone, or specific locations are designated as deployment locations an Equipment Inventory Log shall be completed and maintained by the Naloxone Coordinator. This log shall include the assigned Naloxone kit number, date, and time the equipment was issued, and the location that particular kit number will be stored.

USE OF NALOXONE (NARCAN)

3. Naloxone must be stored in a climate controlled area within manufacturer temperature specifications and in a location where access to the medication can be controlled pending issuance to a specific location, vehicle or person.

4. On a monthly basis, designated personnel (Life Support Personnel) shall conduct an inspection of each Naloxone Kit and confirm its condition. Inspections of the secured safety case will be to ensure it is clean and not damaged or expired.

5. The Naloxone kit will be stored in a secured location that can be easily accessed and utilized when needed. Storage locations may include but not be limited to the following examples:

- a. Watch Commander's SUV - Glove Box
- b. Field Supervisor's SUV - Storage Cabinet
- c. Property Room - Interior (Work Area and High Security Area)
- d. Property/ Evidence Processing Room
- e. Pre-Processing Center
- f. Great Mall of the Bay Area Substation
- g. Desk Officer Workstation
- h. Investigation's Search Kit (2)
- i. Drug Detection Canine Handler
- j. Canine Handler's (3)
- k. SWAT Medical Officer (2)
- l. Patrol Pool (2)
- m. RATTF Officer
- n. Watch Commander's Supply Closet

6. Due to the manufacturers recommended storage temperature requirements, Patrol personnel must ensure the storage of the Medical Kits containing Naloxone is not subjected to high temperatures within the vehicle for extended periods of time.

B. USING NALOXONE:

1. Personnel who are trained in the use of Naloxone, are authorized to use it without prior approval in cases where an opiate overdose is suspected.

2. When using Naloxone trained personnel will maintain universal precautions against blood borne pathogens.

USE OF NALOXONE (NARCAN)

3. Prior to administration of Naloxone, personnel must assess the victim for lack of breathing, pulse, and unresponsiveness. If the victim is not breathing and/or has no pulse, personnel should immediately begin CPR. Administering personnel should conduct a brief visual survey for any obvious evidence of drug use or exposure. Signs and symptoms may include, but are not limited to, the victim is unable to awaken with loud noise or rubbing firmly on the middle of the chest (sternum rub), slow or shallow breathing, lack of breathing and/or pinpoint pupils.
4. If administering personnel determine the victim is suffering from opiate based overdose an immediate request for Emergency Medical Services (EMS) will be made prior to administering Naloxone.
5. Naloxone shall be administered by trained personnel utilizing intra-nasal method only as approved by the Santa Clara County EMS and in accordance with training guidelines. Department issued Adapt Pharma Narcan (Naloxone HCL) Nasal Spray 4mg is the authorized Naloxone to be used by Milpitas Police Department Personnel.
6. If after 3 minutes no patient response to the Naloxone is observed, a second dose may be administered, in the opposite nostril, if EMS personnel have not yet arrived on scene.
7. On-scene medical personnel shall be informed when Naloxone has been administered so necessary further medical assessments can be made.

470.5 TRAINING

- A. Senate Bill 1438 authorizes Law Enforcement Personnel to administer Naloxone to a person at risk of an opioid-related overdose without being subject to civil or criminal liability.
- B. Training is required prior to the authorization of personnel to administer Naloxone. The training will consist of patient assessment (signs and symptoms of overdose), distinguishing between different types of overdose, rescue breathing, the use of intra-nasal Naloxone as described in this policy and follow-up care.
- C. The training delivery will be presented through the viewing of the specific training video authorized by the EMS Agency. Prior to being issued and/or administering Naloxone personnel must view the training video, "Adapt Pharma Narcan Law Enforcement Roll Call Video" (<https://vimeo.com/235617263> or <https://www.narcan.com/#section-how-to-use>). Refresher training will be provided on a bi-annual bases by Life Support Unit instructors.
- D. Each training session will include a knowledge question and answer component and a Naloxone training acknowledgement form shall be signed at the completion of each initial training session. These acknowledgement forms shall be provided and collected by the designated instructor at the time of training and retained in the employees training file.
- E. The Naloxone Coordinator or his/her designee can facilitate any necessary training of personnel as needed and authorized by the Chief of Police.

USE OF NALOXONE (NARCAN)

470.6 MAINTENANCE AND REPLACEMENT

A. Inspection of the Naloxone kit shall be the responsibility of the Life Support Unit. During Patrol deployment, the Naloxone kit shall be kept inside the vehicle and not in the trunk while the officer is in service. This is imperative since extreme temperature changes may affect the effectiveness and integrity of the medication. Fixed location with Naloxone kits shall store them in such a way as to avoid the kit's exposure to extreme temperature.

B. The Naloxone Coordinator or his/her designee will facilitate an inspection of the Naloxone kits on a monthly basis and maintain issuing and replacement logs for auditing and compliance purposes.

C. Missing or damaged Naloxone kits will be reported as missing or damaged equipment to the on-duty supervisor. The supervisor will notify the Naloxone Coordinator who will re-issue supplies.

D. Naloxone can only be obtained by the Naloxone Coordinator on an as needed basis. All replenishment supply orders shall be directed to the Life Support Unit manager for processing.

470.7 DOCUMENTATION AND REPORTING

A. Upon administering Naloxone and advising appropriate medical staff, the involved personnel shall complete a police report in addition to a Naloxone Use Report describing the details, circumstances and results of the incident. The report should include any information for victims, witnesses or suspects and include a detailed narrative describing the details, circumstances and results of the incident. The report should include any information for victims, witnesses or suspects and include a detailed narrative describing symptoms observed and any evidence of drug use observed at the scene. This report is imperative for EMS Agency to conduct an audit of Naloxone administration within Santa Clara County. A copy of the Naloxone Use Report shall be sent the EMS Agency for tracking purposes.

470.8 QUALITY IMPROVEMENT PROGRAM

The Milpitas Police Department is dedicated to continuous quality improvement with the storage, training, and administration of Naloxone by department personnel. In an effort to ensure appropriate administration of Naloxone the Milpitas Police Department will review 100% of administrations of the medication by department personnel. Personnel are required to follow the appropriate documentation standards prescribed within this policy and submit them to the on-duty Watch Commander for review. All medication administration incident report forms will be forwarded to the Santa Clara County EMS Agency via email within 96 hours of administration.

First Amendment Assemblies

473.1 PURPOSE AND SCOPE

This policy provides guidance for responding to public assemblies or demonstrations.

473.2 POLICY

The Milpitas Police Department respects the rights of people to peaceably assemble. It is the policy of this department 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.

473.3 GENERAL CONSIDERATIONS

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 leafleting, and loitering. However, officers 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:

- Lawful, constitutionally protected actions and speech.
- Civil disobedience (typically involving minor criminal acts).
- 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 officers 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 prevent the destruction of property.

Officers should not:

- (a) Engage in assembly or demonstration-related discussion with participants.
- (b) Harass, confront or intimidate participants.
- (c) Seize the cameras, cell phones or materials of participants or observers unless an officer is placing a person under lawful arrest.

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

First Amendment Assemblies

473.3.1 PHOTOGRAPHS AND VIDEO RECORDINGS

Photographs and video recording, when appropriate, can serve a number of purposes, including support of criminal prosecutions by documenting criminal acts; assistance in evaluating department performance; serving as training material; recording the use of dispersal orders; and facilitating a response to allegations of improper law enforcement conduct.

Photographs and videos will not be used or retained for the sole purpose of collecting or maintaining information about the political, religious or social views of associations, or the activities of any individual, group, association, organization, corporation, business or partnership, unless such information directly relates to an investigation of criminal activities and there is reasonable suspicion that the subject of the information is involved in criminal conduct.

473.4 UNPLANNED EVENTS

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

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

Initial assessment information should be promptly communicated to the Communications Center, 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.

473.5 PLANNED EVENT PREPARATION

For planned events, comprehensive, incident-specific operational plans should be developed. The ICS should be considered for such events.

473.5.1 INFORMATION GATHERING AND ASSESSMENT

In order to properly assess the potential impact of a public assembly or demonstration on public safety and order, relevant information should be collected and vetted. This may include:

- Information obtained from outreach to group organizers or leaders.
- Information about past and potential unlawful conduct associated with the event or similar events.

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- The potential time, duration, scope, and type of planned activities.
- Any other information related to the goal of providing a balanced response to criminal activity and the protection of public safety interests.

Information should be obtained in a transparent manner, and the sources documented. Relevant information should be communicated to the appropriate parties in a timely manner.

Information will be obtained in a lawful manner and will not be based solely on the purpose or content of the assembly or demonstration, or actual or perceived characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, or disability of the participants (or any other characteristic that is unrelated to criminal conduct or the identification of a criminal subject).

473.5.2 OPERATIONAL PLANS

An operational planning team with responsibility for event planning and management should be established. The planning team should develop an operational plan for the event.

The operational plan will minimally provide for:

- (a) Command assignments, chain of command structure, roles and responsibilities.
- (b) Staffing and resource allocation.
- (c) Management of criminal investigations.
- (d) Designation of uniform of the day and related safety equipment (e.g., helmets, shields).
- (e) Deployment of specialized resources.
- (f) Event communications and interoperability in a multijurisdictional event.
- (g) Liaison with demonstration leaders and external agencies.
- (h) Liaison with City government and legal staff.
- (i) Media relations.
- (j) Logistics: food, fuel, replacement equipment, duty hours, relief and transportation.
- (k) Traffic management plans.
- (l) First aid and emergency medical service provider availability.
- (m) Prisoner transport and detention.
- (n) Review of policies regarding public assemblies and use of force in crowd control.
- (o) Parameters for declaring an unlawful assembly.
- (p) Arrest protocol, including management of mass arrests.
- (q) Protocol for recording information flow and decisions.
- (r) Rules of engagement, including rules of conduct, protocols for field force extraction and arrests, and any authorization required for the use of force.
- (s) Protocol for handling complaints during the event.

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- (t) Parameters for the use of body-worn cameras and other portable recording devices.

473.5.3 MUTUAL AID AND EXTERNAL RESOURCES

The magnitude and anticipated duration of an event may necessitate interagency cooperation and coordination. The assigned Incident Commander should ensure that any required memorandums of understanding or other agreements are properly executed, and that any anticipated mutual aid is requested and facilitated (see the Mutual Aid and Outside Agency Assistance Policy).

473.5.4 MILPITAS CITY COUNCIL RESOLUTION NO. 8236

On March 5, 2013, the Milpitas City Council adopted Resolution No. 8236 regarding high-profile visits, stopovers, or drive-bys by representatives and officials of the Socialist Republic of Vietnam government. Resolution No. 8236 states:

- (a) The City Council of Milpitas does not condone or sanction high-profile visits, stopovers, or drive-bys by representatives and officials of the Socialist Republic of Vietnam government or that of any delegations affiliated with or organized by the same, within the physical boundary of the City of Milpitas.
- (b) The City Council of Milpitas is opposed to the expenditure of City funds and resources that promotes visits from the Socialist Republic of Vietnam delegations to Milpitas; however, the Chief of Police is permitted to implement measures to ensure community safety.
- (c) A "Prior Notice" policy requesting outside organizers, agencies and jurisdictions to inform on the nature, purpose and duration of visits, drive-bys, or stopovers of government delegations and affiliated groups from the Socialist Republic of Vietnam at least fourteen (14) calendar days before such occurrence, will be implemented.
- (d) The Chief of Police or his or her designee will report the visits, drive-bys, and stopovers of delegations of the Socialist Republic of Vietnam, at the earliest available opportunity, once notification is made from the requesting organizer, agency or jurisdiction.
- (e) If the fourteen (14) calendar day prior notice is not provided by an outside organizer, agency or jurisdiction, the Chief of Police or his or her designee will prepare an invoice for police services rendered resulting from a visit, drive-by or stopover by delegations affiliated with the Socialist Republic of Vietnam. The invoice will be submitted to the City Council of Milpitas for approval.

A copy of the Milpitas City Council Resolution No. 8236 can be found using the following attachment:

[See attachment: Milpitas City Council Resolution No. 8236.pdf](#)

473.6 UNLAWFUL ASSEMBLY DISPERSAL ORDERS

If a public gathering or demonstration remains peaceful and nonviolent, and there is no reasonably imminent threat to persons or property, the Incident Commander should generally authorize continued monitoring of the event.

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Should the Incident Commander make a determination that public safety is presently or is about to be jeopardized, he/she or the authorized designee should attempt to verbally persuade event organizers or participants to disperse of their own accord. Warnings and advisements may be communicated through established communications links with leaders and/or participants or to the group.

When initial attempts at verbal persuasion are unsuccessful, the Incident Commander or the authorized designee should make a clear standardized announcement to the gathering that the event is an unlawful assembly, and should order the dispersal of the participants. The announcement should be communicated by whatever methods are reasonably available to ensure that the content of the message is clear and that it has been heard by the participants. The announcement should be amplified, made in different languages as appropriate, made from multiple locations in the affected area and documented by audio and video. The announcement should provide information about what law enforcement actions will take place if illegal behavior continues and should identify routes for egress. A reasonable time to disperse should be allowed following a dispersal order.

473.7 USE OF FORCE

Use of force is governed by current department policy and applicable law (see the Use of Force, Handcuffing and Restraints, Control Devices and Techniques, and Conducted Energy Device policies).

Individuals refusing to comply with lawful orders (e.g., nonviolent refusal to disperse) should be given a clear verbal warning and a reasonable opportunity to comply. If an individual refuses to comply with lawful orders, the Incident Commander shall evaluate the type of resistance and adopt a reasonable response in order to accomplish the law enforcement mission (such as dispersal or arrest of those acting in violation of the law). Control devices and TASER® devices should be considered only when the participants' conduct reasonably appears to present the potential to harm officers, themselves or others, or will result in substantial property loss or damage (see the Control Devices and Techniques and the Conducted Energy Device policies).

Force or control devices, including oleoresin capsaicin (OC), should be directed toward individuals and not toward groups or crowds, unless specific individuals cannot reasonably be targeted due to extreme circumstances, such as a riotous crowd.

Any use of force by a member of this department shall be documented promptly, completely and accurately in an appropriate report. The type of report required may depend on the nature of the incident.

473.8 ARRESTS

The Milpitas Police Department should respond to unlawful behavior in a manner that is consistent with the operational plan. If practicable, warnings or advisements should be communicated prior to arrest.

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Mass arrests should be employed only when alternate tactics and strategies have been, or reasonably appear likely to be, unsuccessful. Mass arrests shall only be undertaken upon the order of the Incident Commander or the authorized designee. There must be probable cause for each arrest.

If employed, mass arrest protocols should fully integrate:

- (a) Reasonable measures to address the safety of officers and arrestees.
- (b) Dedicated arrest, booking and report writing teams.
- (c) Timely access to medical care.
- (d) Timely access to legal resources.
- (e) Timely processing of arrestees.
- (f) Full accountability for arrestees and evidence.
- (g) Coordination and cooperation with the prosecuting authority, jail and courts (see the Cite and Release Policy).

473.9 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 (see the Media Relations Policy).

473.10 DEMOBILIZATION

When appropriate, the Incident Commander or the authorized designee should implement a phased and orderly withdrawal of law enforcement resources. All relieved personnel should promptly complete any required reports, including use of force reports, and account for all issued equipment and vehicles to their supervisors prior to returning to normal operational duties.

473.11 POST EVENT

The Incident Commander should designate a member to assemble full documentation of the event, to include the following:

- (a) Operational plan
- (b) Any incident logs
- (c) Any assignment logs
- (d) Vehicle, fuel, equipment and supply records
- (e) Incident, arrest, use of force, injury and property damage reports
- (f) Photographs, audio/video recordings, the Communications Center records/tapes
- (g) Media accounts (print and broadcast media)

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473.11.1 AFTER-ACTION REPORTING

The Incident Commander should work with City legal counsel, as appropriate, to prepare a comprehensive after-action report of the event, explaining all incidents where force was used including the following:

- (a) Date, time and description of the event
- (b) Actions taken and outcomes (e.g., injuries, property damage, arrests)
- (c) Problems identified
- (d) Significant events
- (e) Recommendations for improvement; opportunities for training should be documented in a generic manner, without identifying individuals or specific incidents, facts or circumstances.

473.12 TRAINING

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