

# Walnut Creek Police Department

Walnut Creek PD Policy Manual

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## **CHIEFS PREFACE**

### CHIEFS PREFACE

Providing police services to Walnut Creek involves a special trust given to us by the public to fairly and impartially uphold and enforce the law. As servants of the public, policing entails and requires us to have thousands of interactions with the public and the community we serve. Often times these contacts are during times of crisis and distress and can unfold rapidly and in unforeseen directions. This manual cannot predict every aspect of policing, nor can it reasonably anticipate all the potential situations that might be encountered by employees of this Department. This manual serves to establish a framework of rules and expected performance for all department members in order for us to complete our mission of serving the community while always having our values of Safety, Service, and Honor in every action we take.

Each employee is equally important and plays an essential role in our efforts and in the measurement of our performance. Policing in the City of Walnut Creek requires that we work in partnership with the community to solve long-term problems. As a partner in the community, all employees will work cooperatively with both members of the Department and the community. Jointly we will work to identify and prioritize problems within the agency and the community to develop solutions to problems of mutual concern. In interacting with one another and with the public, we will be professional and consider how our conduct may impact others. Never lose sight of the trust and confidence that our community has invested in the Walnut Creek Police Department. We must work daily to maintain that trust and confidence.

Each member of the Walnut Creek Police Department is required to familiarize themselves with the directives in this manual and when necessary, seek guidance and clarification from a supervisor. If there is a question of the interpretation of this manual, that interpretation rests with the Chief of Police. It is strongly encouraged that if there are recommendations for constructive changes to improve efficiency and effectiveness of our service, employees will submit those recommendations. This manual will be updated as necessary to reflect changes in the law, personnel responsibilities, and Department goals and objectives.

As Chief of Police, I am extremely proud of our Department and each of its members. Every member of our Department has an opportunity to help improve the quality of life in Walnut Creek. In serving our community with professionalism, dedication, and distinction; you can make a difference. When our community needs us, they should expect our best performance every time. Together we can continue to make the Walnut Creek Police Department a premier law enforcement agency in California.

Thomas Chaplin, Chief of Police

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## **LAW ENFORCEMENT CODE OF ETHICS**

As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality and justice.

I will keep my private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or to my agency. I will maintain courageous calm in the face of danger, scorn or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed both in my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of police service. I will never engage in acts of corruption or bribery, nor will I condone such acts by other police officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice.

I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence.

I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession . . . law enforcement.

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## MISSION AND VALUES STATEMENT

### Walnut Creek Police Department Mission Statement

- The Walnut Creek Police Department protects and serves the community through professional conduct and proactive enforcement of the law.

### Values

- ***Integrity:*** By serving honorably and behaving ethically we uphold the trust of our community and our organization.
- ***Professionalism:*** We, the dedicated and highly trained employees of the Walnut Creek Police Department, commit ourselves to superior community service.
- ***Respect:*** We treat everyone with impartiality, courtesy and dignity while maintaining our loyalty to the community, our department and our profession.

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## **Chapter 1 - Law Enforcement Role and Authority**

## Law Enforcement Authority

### 100.1 PURPOSE AND SCOPE

The purpose of this policy is to affirm the authority of the members of the Walnut Creek Police Department to perform their functions based on established legal authority.

### 100.2 PEACE OFFICER POWERS

Sworn members of this department are authorized to exercise peace officer powers pursuant to applicable state law (Penal Code § 830.1 et seq.).

#### 100.2.1 DELIVERY TO NEAREST MAGISTRATE

When an officer makes an arrest pursuant to a warrant with bail set, and the warrant was issued in a county other than where the person was arrested, the officer shall inform the person in writing of the right to be taken before a magistrate in the county where the arrest occurred (Penal Code § 821; Penal Code § 822).

#### 100.2.2 ARREST AUTHORITY OUTSIDE THE JURISDICTION OF THE WALNUT CREEK POLICE DEPARTMENT

The arrest authority outside the jurisdiction of the Walnut Creek Police Department includes (Penal Code § 830.1; Penal Code § 836):

- (a) When the officer has probable cause to believe the person committed a felony.
- (b) When the officer has probable cause to believe the person has committed a misdemeanor in the presence of the officer and the officer reasonably believes there is immediate danger to person or property or of escape.
- (c) When the officer has probable cause to believe the person has committed a misdemeanor for which an arrest is authorized even if not committed in the presence of the officer such as certain domestic violence offenses and there is immediate danger to person or property or of escape or the arrest is mandated by statute.
- (d) When authorized by a cross jurisdictional agreement with the jurisdiction in which the arrest is made.
- (e) In compliance with an arrest warrant.

On-duty arrests will not generally be made outside the jurisdiction of this department except in cases of hot or fresh pursuit, while following up on crimes committed with the City or while assisting another agency.

On-duty officers who discover criminal activity outside the jurisdiction of the City should when circumstances permit, consider contacting the agency having primary jurisdiction before attempting an arrest.

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### 100.2.3 ARREST AUTHORITY INSIDE THE JURISDICTION OF THE WALNUT CREEK POLICE DEPARTMENT

The arrest authority within the jurisdiction of the Walnut Creek Police Department includes (Penal Code § 830.1; Penal Code § 836):

- (a) When the officer has probable cause to believe the person has committed a felony, whether or not committed in the presence of the officer.
- (b) When the officer has probable cause to believe the person has committed a misdemeanor in this jurisdiction and in the presence of the officer.
- (c) When the officer has probable cause to believe the person has committed a public offense outside this jurisdiction, in the presence of the officer and the officer reasonably believes there is an immediate danger to person or property, or of escape.
- (d) When the officer has probable cause to believe the person has committed a misdemeanor for which an arrest is authorized or required by statute even though the offense has not been committed in the presence of the officer such as certain domestic violence offenses.
- (e) In compliance with an arrest warrant.

### 100.2.4 TIME OF MISDEMEANOR ARRESTS

Officers shall not arrest a person for a misdemeanor between the hours of 10:00 p.m. of any day and 6:00 a.m. of the next day unless (Penal Code § 840):

- (a) The arrest is made without a warrant pursuant to Penal Code § 836 which includes:
  - 1. A misdemeanor committed in the presence of the officer.
  - 2. Misdemeanor domestic violence offenses (See the Domestic Violence Policy).
- (b) The arrest is made in a public place.
- (c) The arrest is made with the person in custody pursuant to another lawful arrest.
- (d) The arrest is made pursuant to a warrant which, for good cause shown, directs that it may be served at any time of the day or night.

### 100.2.5 OREGON AUTHORITY

Sworn members of this department who enter the state of Oregon in order to provide or attempt to provide law enforcement assistance have Oregon peace officer authority within 50 miles from the California-Oregon border (ORS 133.405). Such authority shall only apply when officers are acting:

- (a) In response to a request for law enforcement assistance initiated by an Oregon sheriff, constable, marshal, municipal police officer or member of the Oregon State Police.
- (b) In response to a reasonable belief that emergency law enforcement assistance is necessary to preserve life, and circumstances make it impractical for Oregon law enforcement officials to formally request assistance.
- (c) For the purpose of assisting Oregon law enforcement officials with emergency assistance in response to criminal activity, traffic accidents, emergency incidents

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or other similar public safety situations, regardless of whether an Oregon law enforcement official is present at the scene of the incident.

Walnut Creek Police Department officers have no authority to enforce Oregon traffic or motor vehicle laws.

Whenever practicable, officers should seek permission from a department supervisor before entering Oregon to provide law enforcement services. As soon as practicable, officers exercising law enforcement authority in Oregon shall submit any appropriate written reports concerning the incident to the Oregon agency having primary jurisdiction over the area in which the incident occurred.

### **100.3 POLICY**

It is the policy of the Walnut Creek Police Department to limit its members to only exercise the authority granted to them by law.

While this department recognizes the power of peace officers to make arrests and take other enforcement action, officers are encouraged to use sound discretion in the enforcement of the law. This department does not tolerate the abuse of law enforcement authority.

### **100.4 INTERSTATE PEACE OFFICER POWERS**

Peace officer powers may be extended to other states:

- (a) As applicable under interstate compacts, memorandums of understanding or mutual aid agreements in compliance with the laws of each state.
- (b) When an officer enters an adjoining state in close or fresh pursuit of a person believed to have committed a felony (ARS § 13-3832; NRS 171.158; ORS 133.430).

The person arrested out of state must be taken without unnecessary delay before a magistrate of the county in which the arrest was made (ARS § 13-3833; NRS 171.158; ORS 133.440).

### **100.5 CONSTITUTIONAL REQUIREMENTS**

All members shall observe and comply with every person's clearly established rights under the United States and California Constitutions.

## Chief Executive Officer

### 101.1 PURPOSE AND SCOPE

The California Commission on Peace Officer Standards and Training (POST) has mandated that all sworn officers and dispatchers employed within the State of California shall receive certification by POST within prescribed time periods.

#### 101.1.1 CHIEF EXECUTIVE OFFICER REQUIREMENTS

Any chief executive officer of this department appointed after January 1, 1999, shall, as a condition of continued employment, complete the course of training prescribed by POST and obtain the Basic Certificate by POST within two years of appointment (Penal Code § 832.4).

## Oath of Office

### 102.1 PURPOSE AND SCOPE

The purpose of this policy is to ensure that oaths, when appropriate, are administered to department members.

### 102.2 POLICY

It is the policy of the Walnut Creek Police Department that, when appropriate, department members affirm the oath of their office as an expression of commitment to the constitutional rights of those served by the Department and the dedication of its members to their duties.

### 102.3 OATH OF OFFICE

All department members, when appropriate, shall take and subscribe to the oaths or affirmations applicable to their positions. All sworn members shall be required to affirm the oath of office expressing commitment and intent to respect constitutional rights in discharging the duties of a law enforcement officer (Cal. Const. Art. 20, § 3; Government Code § 3102). The oath shall be as follows:

“I, (employee name), do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.”

### 102.4 MAINTENANCE OF RECORDS

The oath of office shall be filed as prescribed by law (Government Code § 3105).

# Policy Manual

## 103.1 PURPOSE AND SCOPE

The manual of the Walnut Creek Police Department is hereby established and shall be referred to as the Policy Manual or the manual. The manual is a statement of the current policies, rules and guidelines of this department. All members are to conform to the provisions of this manual.

All prior and existing manuals, orders and regulations that are in conflict with this manual are rescinded, except to the extent that portions of existing manuals, procedures, orders and other regulations that have not been included herein shall remain in effect, provided that they do not conflict with the provisions of this manual.

## 103.2 POLICY

Except where otherwise expressly stated, the provisions of this manual shall be considered as guidelines. It is recognized that the work of law enforcement is not always predictable and circumstances may arise which warrant departure from these guidelines. It is the intent of this manual to be viewed from an objective standard, taking into consideration the sound discretion entrusted to members of this department under the circumstances reasonably available at the time of any incident.

### 103.2.1 DISCLAIMER

The provisions contained in the Policy Manual are not intended to create an employment contract nor any employment rights or entitlements. The policies contained within this manual are for the internal use of the Walnut Creek Police Department and shall not be construed to create a higher standard or duty of care for civil or criminal liability against the City, its officials or members. Violations of any provision of any policy contained within this manual shall only form the basis for department administrative action, training or discipline. The Walnut Creek Police Department reserves the right to revise any policy content, in whole or in part.

## 103.3 AUTHORITY

The Chief of Police shall be considered the ultimate authority for the content and adoption of the provisions of this manual and shall ensure compliance with all applicable federal, state and local laws. The Chief of Police or the authorized designee is authorized to issue Departmental Directives, which shall modify those provisions of the manual to which they pertain. Departmental Directives shall remain in effect until such time as they may be permanently incorporated into the manual.

## 103.4 DEFINITIONS

The following words and terms shall have these assigned meanings throughout the Policy Manual, unless it is apparent from the content that they have a different meaning:

**Adult** - Any person 18 years of age or older.

**CCR** - California Code of Regulations (Example: 15 CCR 1151).

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**CHP**- The California Highway Patrol.

**CFR** - Code of Federal Regulations.

**City** - The City of Walnut Creek.

**Civilian** - Employees and volunteers who are not sworn peace officers.

**Department/WCPD** - The Walnut Creek Police Department.

**DMV** - The Department of Motor Vehicles.

**Employee** - Any person employed by the Department.

**Juvenile**- Any person under the age of 18 years.

**Manual** - The Walnut Creek Police Department Policy Manual.

**May** - Indicates a permissive, discretionary or conditional action.

**Member** - Any person employed or appointed by the Walnut Creek Police Department, including:

- Full- and part-time employees
- Sworn peace officers
- Reserve, auxiliary officers
- Civilian employees
- Volunteers.

**Officer** - Those employees, regardless of rank, who are sworn peace officers of the Walnut Creek Police Department.

**On-duty** - A member's status during the period when he/she is actually engaged in the performance of his/her assigned duties.

**Order** - A written or verbal instruction issued by a superior.

**POST** - The California Commission on Peace Officer Standards and Training.

**Rank** - The title of the classification held by an officer.

**Shall or will** - Indicates a mandatory action.

**Should** - Indicates a generally required or expected action, absent a rational basis for failing to conform.

**Supervisor** - A person in a position of authority that may include responsibility for hiring, transfer, suspension, promotion, discharge, assignment, reward or discipline of other department members, directing the work of other members or having the authority to adjust grievances. The supervisory exercise of authority may not be merely routine or clerical in nature but requires the use of independent judgment.



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The term "supervisor" may also include any person (e.g., officer-in-charge, lead or senior worker) given responsibility for the direction of the work of others without regard to a formal job title, rank or compensation.

When there is only one department member on-duty, that person may also be the supervisor, except when circumstances reasonably require the notification or involvement of the member's off-duty supervisor or an on-call supervisor.

**USC** - United States Code.

### **103.5 ISSUING THE POLICY MANUAL**

An electronic version of the Policy Manual will be made available to all members on the department network for viewing and printing. No changes shall be made to the manual without authorization from the Chief of Police or the authorized designee.

Each member shall acknowledge that he/she has been provided access to, and has had the opportunity to review the Policy Manual and Departmental Directives. Members shall seek clarification as needed from an appropriate supervisor for any provisions that they do not fully understand.

### **103.6 PERIODIC REVIEW OF THE POLICY MANUAL**

The Chief of Police will ensure that the Policy Manual is periodically reviewed and updated as necessary.

### **103.7 REVISIONS TO POLICIES**

All revisions to the Policy Manual will be provided to each member on or before the date the policy becomes effective. Each member will be required to acknowledge that he/she has reviewed the revisions and shall seek clarification from an appropriate supervisor as needed.

Members are responsible for keeping abreast of all Policy Manual revisions.

Each Bureau Commander will ensure that members under his/her command are aware of any Policy Manual revision.

All department members suggesting revision of the contents of the Policy Manual shall forward their written suggestions to their Bureau Commanders, who will consider the recommendations and forward them to the command staff as appropriate.

## **Chapter 2 - Organization and Administration**

## Departmental Directives

### 200.1 PURPOSE AND SCOPE

Departmental Directives establish an interdepartmental communication that may be used by the Chief of Police to make immediate changes to policy and procedure consistent with the current Memorandum of Understanding and as permitted by Government Code § 3500 et seq. Departmental Directives will immediately modify or change and supersede sections of this manual to which they pertain.

#### 200.1.1 DEPARTMENTAL DIRECTIVE PROTOCOL

Departmental Directives will be incorporated into the manual as required upon approval of Staff. Departmental Directives will modify existing policies or create a new policy as appropriate and will be rescinded upon incorporation into the manual.

All existing Departmental Directives have now been incorporated in the updated Policy Manual as of the below revision date.

Any Departmental Directives issued after publication of the manual shall be issued in memo form from the Chief of Police or his designee.

### 200.2 RESPONSIBILITIES

The staff shall review and approve revisions of the Policy Manual, which will incorporate changes originally made by a Departmental Directive.

#### 200.2.1 CHIEF OF POLICE

The Chief of Police shall issue all Departmental Directives.

## Disaster Plan

### **201.1 PURPOSE AND SCOPE**

The City has prepared an Emergency Management Plan for use by all employees in the event of a major disaster or other emergency event. The plan provides for a strategic response by all employees and assigns specific responsibilities in the event that the plan is activated (Government Code § 8610).

### **201.2 ACTIVATING THE EMERGENCY PLAN**

The Emergency Management Plan can be activated in a number of ways. For the Police Department, the Chief of Police or the highest ranking official on duty may activate the Emergency Management Plan in response to a major emergency.

### **201.3 LOCATION OF MANUALS**

The manual for the employees is available on the City's Intranet Site (<http://cww/Disaster%20Preparedness/default.htm>) and in Watch Commander's office. All supervisors should familiarize themselves with the Emergency Management Plan and what roles police personnel will play when the plan is implemented.

### **201.4 UPDATING OF MANUALS**

The Chief of Police or designee shall review the Emergency Management Plan Manual at least once every two years to ensure that the manual conforms to any revisions made by the National Incident Management System (NIMS) and the Standardized Emergency Management System (SEMS) and should appropriately address any needed revisions.

## Training Policy

### 202.1 PURPOSE AND SCOPE

It is the policy of this department to administer a training program that will provide for the professional growth and continued development of its personnel. By doing so, the Department will ensure its personnel possess the knowledge and skills necessary to provide a professional level of service that meets the needs of the community.

### 202.2 PHILOSOPHY

The Department seeks to provide ongoing training and encourages all personnel to participate in advanced training and formal education on a continual basis. Training is provided within the confines of funding, requirements of a given assignment, staffing levels, and legal mandates. Whenever possible, the Department will use courses certified by the California Commission on Peace Officer Standards and Training (POST).

### 202.3 OBJECTIVES

The objectives of the Training Program are to:

- (a) Enhance the level of law enforcement service to the public
- (b) Increase the technical expertise and overall effectiveness of our personnel
- (c) Provide for continued professional development of department personnel

### 202.4 TRAINING PLAN

A training plan will be developed and maintained by the Training Manager. It is the responsibility of the Training Manager to maintain, review, and update the training plan on an annual basis. The plan will address the following areas:

- Legislative Changes
- State Mandated Training
- Critical Issues Training

### 202.5 TRAINING NEEDS ASSESSMENT

The Training Section will conduct an annual training-needs assessment of the Department. The needs assessment will be reviewed by staff. Upon approval by the staff, the needs assessment will form the basis for the training plan for the fiscal year.

### 202.6 TRAINING MANAGER

The Training Manager will consult and coordinate with department managers and supervisors which will serve to assist with identifying training needs for the Department.

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The appropriate training team managers will review certain incidents to determine whether training would likely improve future outcomes or reduce or prevent the recurrence of the undesirable issues related to the incident. Specific incidents that should be reviewed include, but are not limited to:

- (a) Any incident involving the death or injury of an employee.
- (b) Incidents involving a high risk of death, serious injury or civil liability.
- (c) Incidents identified by a supervisor as appropriate to review to identify possible training needs.
- (d) Incidents involving injury or complaint of pain to a civilian.

The appropriate training team member will review the identified incidents as recommended in the completed after action report. The training team member shall determine whether a training need exists and then submit written recommendations of its findings to the training team manager. The recommendation should not identify specific facts of any incidents, such as identities of employees involved or the date, time and location of the incident, but should focus on the type of training being recommended.

The training team manager will follow up with the personnel in question and coordinate any appropriate training as determined in the review.

### **202.7 TRAINING PROCEDURES**

- (a) All employees assigned to attend training shall attend as scheduled unless previously excused by their immediate supervisor. Excused absences from mandatory training should be limited to the following:
  - 1. Court appearances
  - 2. Extended vacation
  - 3. Sick leave
  - 4. Physical limitations preventing the employee's participation
  - 5. Emergency situations
- (b) When an employee is unable to attend mandatory training, that employee shall:
  - 1. Notify his/her supervisor as soon as possible
  - 2. Make arrangements through his/her supervisor and the Training Manager to attend the required training on an alternate date

### **202.8 DAILY TRAINING BULLETINS**

The Lexipol Daily Training Bulletins (DTBs) is a web-accessed system that provides training on the Walnut Creek Police Department Policy Manual and other important topics. Generally, one

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training bulletin is available for each day of the month. However, the number of DTBs may be adjusted by the Training Manager.

Personnel assigned to participate in DTBs should only use the password and login name assigned to them by the Training Manager. Personnel should not share their password with others and should frequently change their password to protect the security of the system. After each session, employees should log off the system to prevent unauthorized access. The content of the DTBs is copyrighted material and shall not be shared with others outside of the Department.

Employees who are assigned to participate in the DTB program should complete each DTB at the beginning of their shift or as otherwise directed by their supervisor or the Training Manager. Employees should not allow uncompleted DTBs to build up over time. Personnel may be required to complete DTBs missed during extended absences (e.g., vacation, medical leave) upon returning to duty. Although the DTB system can be accessed from any Internet active computer, employees shall only take DTBs as part of their on-duty assignment unless directed otherwise by a supervisor.

Supervisors will be responsible for monitoring the progress of personnel under their command to ensure compliance with this policy.

### **202.9 WCPD TRAINING NOTICE**

WCPD Training Notices are not to be confused with Lexipol Daily Training Bulletins or verbiage in various Lexipol policies referring to them as “training bulletins”.

The purpose of a Training Notice is to document important announcements, procedures, updates, and practices that do not rise to the level of a Lexipol Policy.

Training Notices can only be approved by the Administration Division Captain or the Training Manager. Requests for Training Notices should be forwarded to the Training Manager for approval. If approved, the Training Notice will be assigned a permanent number and disseminated as appropriate.

All Training Notices will be maintained indefinitely. The Training Manager or Administration Captain can authorize the cancelation of a Training Notice in which case the number will be reassigned.

## Electronic Mail

### 203.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for the proper use and application of the Department's electronic mail (email) system by employees of this department. Email is a communication tool available to employees to enhance efficiency in the performance of job duties and is to be used in accordance with generally accepted business practices and current law (e.g., California Public Records Act). Messages transmitted over the email system must only be those that involve official business activities or contain information essential to employees for the accomplishment of business-related tasks and/or communication directly related to the business, administration, or practices of the Department.

### 203.2 EMAIL RIGHT OF PRIVACY

All email messages, including any attachments, that are transmitted over department networks are considered department records and therefore are department property. The Department reserves the right to access, audit or disclose, for any lawful reason, any message including any attachment that is transmitted over its email system or that is stored on any department system.

The email system is not a confidential system since all communications transmitted on, to or from the system are the property of the Department. Therefore, the email system is not appropriate for confidential communications. If a communication must be private, an alternative method to communicate the message should be used instead of email. Employees using the Department's email system shall have no expectation of privacy concerning communications utilizing the system.

Employees should not use personal accounts to exchange email or other information that is related to the official business of the Department.

### 203.3 PROHIBITED USE OF E-MAIL

The City Administrative Policy regarding sexual harassment and discrimination also applies to electronic communications. Sending derogatory, defamatory, obscene, disrespectful, sexually suggestive and harassing or any other inappropriate messages on the e-mail system is prohibited and may result in discipline.

E-mail messages addressed to the entire department are only to be used for official business related items that are of particular interest to all users. Personal advertisements are not acceptable.

It is a violation of this policy to transmit a message under another user's name. Users are strongly encouraged to log off the network when their computer is unattended. This added security measure would minimize the misuse of an individual's e-mail, name and/or password by others.



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### **203.4 EMAIL RECORD MANAGEMENT**

Email may, depending upon the individual content, be a public record under the California Public Records Act and must be managed in accordance with the established records retention schedule and in compliance with state law.

The Custodian of Records shall ensure that email messages are retained and recoverable as outlined in the Records Maintenance and Release Policy.

## **Administrative Communications**

### **204.1 PURPOSE AND SCOPE**

Administrative communications of this Department are governed by the following policies.

### **204.2 DEPARTMENT E-MAIL**

Department E-mail may be issued periodically by the Chief of Police or his designee to announce and document all promotions, transfers, hiring of new personnel, separations, personnel and group commendations, or other changes in status. Email correspondence sent by the Chief of Police and/or the Administration Division is subject to guidelines set forth in the City of Walnut Creek's Technology Use Policy, 96-1 and Lexipol Policy 212, Electronic Mail.

### **204.3 CORRESPONDENCE**

In order to ensure that the letterhead and name of the Department are not misused, all external correspondence shall be on Department letterhead. All Department letterhead shall bear the signature element of the Chief of Police. Personnel should use Department letterhead only for official business and with approval of their supervisor.

### **204.4 SURVEYS**

All surveys made in the name of the Department shall be authorized by the Chief of Police or a Captain.

## Staffing Levels

### 205.1 PURPOSE AND SCOPE

The purpose of this policy is to ensure that proper staffing is available for all shifts. The Department intends to balance the employee's needs against the need to have flexibility and discretion in using personnel to meet operational needs. While balance is desirable, the paramount concern is the need to meet operational requirements of the Department.

### 205.2 MINIMUM STAFFING LEVELS

K9 units will be allowed to sign up for modified hours on Team's 2, 3, 4, 6 and 7 and will count towards the current minimum staffing levels. K9 units must sign up for teams that will insure seven day a week coverage.

At least one field supervisor will be deployed during each shift. Two supervisors, or a Watch Commander and a supervisor, should be deployed Friday and Saturday nights (*generally 1800 to 0200 hours*).

Patrol team staffing minimums are subject to change by the Watch Commander, at any time, based on Departmental needs.

#### 205.2.1 SUPERVISION DEPLOYMENTS

In order to accommodate training and other unforeseen circumstances, an officer may be used as a field supervisor in place of a field sergeant.

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With prior authorization from the Patrol Bureau Commander, an officer may also act as the Watch Commander for a limited period of time.

### 205.3 PATROL SCHEDULING GUIDLINES - 7 PATROL TEAMS

#### Shift Selection:

- (a) Officers will be notified two weeks prior to the beginning of a shift sign-up. No proxies will be distributed. If an officer is going to be unavailable during the shift sign-up period, it will be the officer's responsibility to submit their shift preferences via proxy to the scheduling Lieutenant beforehand.
- (b) The shift sign-up will include 3 tiers with one week allotted to complete each tier. When the sign-up reaches an officer who is on vacation and/or on their RDO's, an email and/or phone call notification will be placed advising the officer that they have a maximum of 72 hours to sign-up. If the officer does not sign-up within the 72 hour time period, the sign-up will continue to the next officer. The skipped officer can sign-up for whatever available shift(s) remain when they are reached.
- (c) Officers shall select their shift in order of seniority.
- (d) Officers shall not select the same shift for two consecutive team cycles.
- (e) Officers on leave with an unknown anticipated return date will not be included on the patrol sign-up. Officers on leave who are expected to return by the beginning of the shift cycle or shortly thereafter will be on the sign-up roster.
- (f) Officers anticipated to return during the six month cycle will complete a shift preference form and be assigned to the team they would have been eligible for based on their seniority and preference.
- (g) Officers who sign-up for the final slot on a team should be aware that they may be moved when an officer with more seniority returns to full duty.

#### Shift Trades:

- (a) Officers will be allowed to trade shifts when they obtain written approval from the officers who are between them on the patrol seniority list. Officers will be allowed only one shift trade every three shift cycles within a 12-month period. Both parties involved in a shift trade will be considered to have exercised their trade option.
- (b) In the event that an officer, or officers, initiates a shift trade, and either officer involved in the trade is unable to work a full duty assignment before the start of the shift cycle (due to injury or other reasons), the trade will be nullified.
- (c) All trades are subject to review by the Chief of Police who has final approval authority.

#### Exceptions:

- (a) Staff will be allowed to assign a maximum of three probationary officers to shifts for developmental purposes. Probationary officers should not be assigned to the same team.
- (b) If an officer is required to work (involuntarily) on the same team for three consecutive shift cycles, or on team 3 and/or team 6 for three consecutive shift cycles, that officer

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will be placed at the top of Tier 2 for the next shift selection process. This does not apply to shift trades or voluntarily signing up for team 3 or 6 when there are still openings on one of the other 5 teams.

- (c) If an officer is involuntarily reassigned to a different shift for more than 90 calendar days, the officer will be allowed to sign-up for any shift (the one they came from or the one they were assigned to) during the next shift cycle without it counting as a consecutive cycle or double-back. This does not apply to officers who are on probation and assigned or reassigned to a shift.

#### **205.4 TEAM STAFFING PRIORITIES**

- (a) If staffing allocations drop below minimum designations for patrol, adjustments will be made depending on organizational needs.
- (b) When necessary, officers will be transferred from special assignments to patrol to make all patrol teams one officer over minimum staffing.
- (c) Team staffing priorities are subject to change by the Chief of Police, at any time, based on departmental needs.

#### **205.5 MAXIMUM OVERTIME**

If there are staffing shortages and an officer is required to work in patrol beyond their normal 12.5 hour shift, the officer shall not be required to work a combined total of more than 14.5 hours. This maximum total does not apply to emergencies such as disasters or major incidents.

Maximum overtime is subject to change by the Chief of Police, at any time, based on departmental need.

#### **205.6 TIME BETWEEN SHIFTS**

When officers work enforcement assignments that are scheduled in advance, there should be a minimum of eight hours between the enforcement assignments. This requirement would exclude emergency incidents where pre-planning is not an option and the event dictates the need for personnel.

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## License to Carry a Firearm

### 206.1 PURPOSE AND SCOPE

The Chief of Police is given the statutory discretion to issue a license to carry a firearm to residents within the community (Penal Code § 26150; Penal Code § 26155). This policy will provide a written process for the application and issuance of such licenses. Pursuant to Penal Code § 26160, this policy shall be made accessible to the public.

#### 206.1.2 APPLICATION OF POLICY

Nothing in this policy shall preclude the Chief of Police from entering into an agreement with the Sheriff to process all applications and licenses for the carrying of concealed weapons (Penal Code § 12050(g)).

### 206.2 POLICY

The Walnut Creek Police Department will fairly and impartially consider all applications to carry firearms in accordance with applicable law and this policy.

### 206.3 QUALIFIED APPLICANTS

In order to qualify for a license to carry a firearm, the applicant must meet certain requirements, including:

- (a) Be a resident of the City of Walnut Creek (Penal Code § 26150; Penal Code § 26155).
- (b) Be at least 21 years of age (Penal Code § 29610).
- (c) Fully complete an application that will include substantial personal information. Much of the information in the application may be subject to public access under the Public Records Act.
- (d) Be free from criminal convictions that would disqualify the applicant from carrying a firearm. Fingerprints will be required and a complete criminal background check will be conducted.
- (e) Be of good moral character (Penal Code § 26150; Penal Code § 26155). The applicant should provide at least three letters of character reference.
- (f) Show good cause for the issuance of the license (Penal Code § 26150; Penal Code § 26155).
- (g) Pay all associated application fees. These fees are set by statute and may not be refunded if the application is denied.
- (h) Provide proof of ownership or registration of any firearm to be licensed.
- (i) Be free from any psychological conditions that might make the applicant unsuitable for carrying a firearm (Penal Code § 26190).

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## *License to Carry a Firearm*

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- (j) Complete required training (Penal Code § 26165).

### **206.4 APPLICATION PROCESS**

The application process for a license to carry a firearm shall consist of two phases. Upon the successful completion of each phase, the applicant will advance to the next phase until the process is completed and the license is either issued or denied.

#### **206.4.1 PHASE ONE (TO BE COMPLETED BY ALL APPLICANTS)**

- (a) Any individual applying for a license to carry a firearm shall first fully complete a California Department of Justice (DOJ) application to be signed under penalty of perjury. Any applicant who provides false information or statements on the application will be removed from further consideration and may be prosecuted for a criminal offense (Penal Code § 26180).
  - 1. In the event of any discrepancies in the application or background investigation, the applicant may be required to undergo a polygraph examination, at no cost to the applicant.
  - 2. If an incomplete application package is received, the Chief of Police or authorized designee may do any of the following:
    - (a) Require the applicant to complete the package before any further processing.
    - (b) Advance the incomplete package to phase two for conditional processing pending completion of all mandatory conditions.
    - (c) Issue a denial if the materials submitted at the time demonstrate that the applicant would not qualify for a license to carry a firearm even if the package was completed (e.g., not a resident, disqualifying criminal conviction, absence of good cause).
- (b) At the time the completed application is submitted, the applicant shall submit a check made payable to the California Department of Justice for the required California DOJ application fee, along with a separate check made payable to the City of Walnut Creek for a nonrefundable 20 percent of the application fee to cover the cost of processing the application (Penal Code § 26190).
  - 1. Additional fees may be required for fingerprinting, training or psychological testing, in addition to the application fee.
  - 2. Full payment of the remainder of the application fee will be required upon issuance of a license.
  - 3. Payment of related fees may be waived if the applicant is a duly appointed reserve peace officer as defined in Penal Code § 830.6 (a) or (b) (Penal Code § 26170).
- (c) The applicant shall be required to submit to fingerprinting and a complete criminal background check by the California DOJ. A second set of fingerprints may be required for retention in department files. Two recent passport-size photos (2 inches by 2

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inches) of the applicant shall be submitted for department use. No person determined to fall within a prohibited class described in Penal Code § 29800, Penal Code § 29900, Welfare and Institutions Code § 8100 or Welfare and Institutions Code § 8103 will be issued a license to carry a firearm. A license shall not be issued if the California DOJ determines that the applicant is prohibited by state or federal law from possessing, receiving, owning or purchasing a firearm (Penal Code § 26195).

- (d) The applicant should submit at least three signed letters of character reference from individuals other than relatives.
- (e) The applicant shall submit proof of ownership or registration of each firearm to be licensed.

Once the Chief of Police or authorized designee has reviewed the completed application package and relevant background information, the application will either be advanced to phase two or denied.

In the event that an application is denied at the conclusion of, or during, phase one, the applicant shall be notified in writing within 90 days of the initial application or within 30 days after receipt of the applicant's criminal background check from the California DOJ, whichever is later. If the license is denied, the notice shall state which requirement was not satisfied (Penal Code § 26205).

### 206.4.2 PHASE TWO

This phase is to be completed only by those applicants successfully completing phase one.

- (a) Upon successful completion of phase one, the applicant shall be scheduled for a personal interview with the Chief of Police or authorized designee. During this stage, there will be further discussion of the applicant's statement of good cause and any potential restrictions or conditions that might be placed on the license.
  - 1. The determination of good cause should consider the totality of circumstances in each individual case.
  - 2. Any denial for lack of good cause should be rational, articulable and not arbitrary in nature.
  - 3. The Department will provide written notice to the applicant as to the determination of good cause (Penal Code § 26202).
- (b) The Chief of Police may, based upon criteria established by the Chief of Police, require that the applicant be referred to an authorized psychologist used by the Department for psychological testing. The cost of such psychological testing (not to exceed \$150) shall be paid by the applicant. The purpose of any such psychological testing is intended only to identify any outward indications or history of psychological problems that might render the applicant unfit to carry a firearm. This testing is not intended to certify in any other respect that the applicant is psychologically fit. If it is determined that the applicant is not a suitable candidate for carrying a firearm, the applicant shall be removed from further consideration (Penal Code § 26190).



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- (c) The applicant shall complete a course of training approved by the agency, which complies with Penal Code § 26165. The applicant will not be required to complete and pay for any training courses prior to any determination of good cause (Penal Code § 26165; Penal Code § 26202).
- (d) The applicant shall submit any firearm to be considered for a license to the Firearms Team or other departmentally authorized gunsmith, at no cost to the applicant, for a full safety inspection. The Chief of Police reserves the right to deny a license for any firearm that has been altered from the manufacturer's specifications or that is unsafe (Penal Code § 31910).
- (e) The applicant shall successfully complete a firearms safety and proficiency examination with the firearm to be licensed, to be administered by the department Firearms Team, or provide proof of successful completion of another departmentally approved firearms safety and proficiency examination, including completion of all releases and other forms. The cost of any outside inspection/examination shall be the responsibility of the applicant.

Once the Chief of Police or authorized designee has verified the successful completion of phase two, the license to carry a firearm will either be granted or denied.

Whether an application is approved or denied at the conclusion of or during phase two, the applicant shall be notified in writing within 90 days of the initial application or within 30 days after receipt of the applicant's criminal background check from the California DOJ, whichever is later. If the license is denied, the notice shall state which requirement was not satisfied (Penal Code § 26205).

### **206.5 LIMITED BUSINESS LICENSE TO CARRY A CONCEALED FIREARM**

The authority to issue a limited business license to carry a concealed firearm to a non-resident applicant is granted only to the Sheriff of the county in which the applicant works. A chief of a municipal police department may not issue limited licenses (Penal Code § 26150). Therefore, such applicants may be referred to the Sheriff for processing.

An individual who is not a resident of the county but who otherwise successfully completes all portions of phases one and two above, may apply for and be issued a limited license subject to approval by the Sheriff and subject to the following:

- (a) The applicant physically spends a substantial period of working hours in the applicant's principal place of employment or business within the City of Walnut Creek (Penal Code § 26150).
- (b) Such a license will be valid for a period not to exceed 90 days from the date of issuance (Penal Code § 26220).
- (c) The applicant shall provide a copy of the license to the licensing authority of the city or county in which the applicant resides (Penal Code § 26220).

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- (d) Any application for renewal or reissuance of such a license may be granted only upon concurrence of the original issuing authority and the licensing authority of the city or county in which the applicant resides (Penal Code § 26220).

### **206.6 ISSUED FIREARMS PERMITS**

In the event a license to carry a firearm is issued by the Chief of Police, the following shall apply:

- (a) The license will not be valid outside the state of California.
- (b) The license will be subject to any and all reasonable restrictions or conditions the Chief of Police has deemed warranted, including restrictions as to the time, place, manner and circumstances under which the person may carry the firearm.
  - 1. All such restrictions or conditions shall be conspicuously noted on any license issued (Penal Code § 26200).
  - 2. The licensee will be required to sign a Restrictions and Conditions Agreement. Any violation of any of the restrictions and conditions may result in the immediate revocation of the license.
- (c) The license shall be laminated, bearing a photograph of the licensee with the expiration date, type of firearm, restrictions and other pertinent information clearly visible.
  - 1. Each license shall be numbered and clearly identify the licensee.
  - 2. All licenses shall be subjected to inspection by the Chief of Police or any law enforcement officer.
- (d) The license will be valid for a period not to exceed two years from the date of issuance (Penal Code § 26220).
  - 1. A license issued to a state or federal magistrate, commissioner or judge will be valid for a period not to exceed three years.
  - 2. A license issued to any reserve peace officer as defined in Penal Code § 830.6(a) or (b), or a custodial officer employed by the Sheriff as provided in Penal Code § 831.5 will be valid for a period not to exceed four years, except that such license shall be invalid upon the individual's conclusion of service as a reserve officer.
- (e) If the licensee's place of residence was the basis for issuance of a license and the licensee moves out of the county of issuance, the license shall expire 90 days after the licensee has moved (Penal Code § 26210).
- (f) The licensee shall notify this department in writing within 10 days of any change of place of residency.

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### 206.6.1 LICENSE RESTRICTIONS

- (a) The Chief of Police may place special restrictions limiting time, place, manner and circumstances under which any license shall be valid. In general, these restrictions will prohibit the licensee from:
  - 1. Consuming any alcoholic beverage while armed.
  - 2. Falsely representing him/herself as a peace officer.
  - 3. Unjustified or unreasonable displaying of a firearm.
  - 4. Committing any crime.
  - 5. Being under the influence of any medication or drug while armed.
  - 6. Interfering with any law enforcement officer's duties.
  - 7. Refusing to display his/her license or firearm for inspection upon demand of any peace officer.
  - 8. Loading the permitted firearm with illegal ammunition.
- (b) The Chief of Police reserves the right to inspect any license or licensed firearm at any time.
- (c) The alteration of any previously approved firearm including, but not limited to adjusting the trigger pull, adding laser sights or modifications shall void any license and serve as grounds for revocation.

### 206.6.2 AMENDMENTS TO LICENSES

Any licensee may apply to amend a license at any time during the period of validity by completing and submitting a written Application for License Amendment along with the current processing fee to the Department in order to (Penal Code § 26215):

- (a) Add or delete authority to carry a firearm listed on the license.
- (b) Change restrictions or conditions previously placed on the license.
- (c) Change the address or other personal information of the licensee (Penal Code § 26210).

In the event that any amendment to a valid license is approved by the Chief of Police, a new license will be issued reflecting the amendment. An amendment to any license will not serve to extend the original expiration date and an application for an amendment will not constitute an application for renewal of the license.

### 206.6.3 REVOCATION OF LICENSES

Any license issued pursuant to this policy may be immediately revoked by the Chief of Police for any of the following reasons:

- (a) The licensee has violated any of the restrictions or conditions placed upon the license.

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- (b) The licensee becomes psychologically unsuitable to carry a firearm.
- (c) The licensee is determined to be within a prohibited class described in Penal Code § 29800, Penal Code § 29900, Welfare and Institutions Code § 8100, Welfare and Institutions Code § 8103 or any state or federal law.
- (d) The licensee engages in any conduct which involves a lack of good moral character or that might otherwise remove the good cause for the original issuance of the license.
- (e) If the license is one to carry "loaded and exposed," the license shall be revoked immediately upon a change of the licensee's place of residence to another county (Penal Code § 26210).

The issuance of a license by the Chief of Police shall not entitle the holder to either a property or liberty interest as the issuance, amendment or revocation of such license remains exclusively within the discretion of the Chief of Police as set forth herein.

If any license is revoked, the Department will immediately notify the licensee in writing and the California DOJ (Penal Code § 26225).

### 206.6.4 LICENSE RENEWAL

No later than 90 days prior to the expiration of any valid license to carry a firearm, the licensee may apply to the Chief of Police for a renewal by:

- (a) Verifying all information submitted in the original application under penalty of perjury.
- (b) Completing a department-approved training course pursuant to Penal Code § 26165. The applicant shall not be required to pay for a training course prior to the determination of good cause (Penal Code § 26165).
- (c) Submitting any firearm to be considered for a license renewal to the Firearms Team for a full safety inspection. The Chief of Police reserves the right to deny a license for any firearm that has been altered from the manufacturer's specifications or that is unsafe (Penal Code § 31910).
- (d) Paying a non-refundable renewal application fee.

Once the Chief of Police or authorized designee has verified the successful completion of the renewal process, the renewal of the license to carry a firearm will either be granted or denied. Prior issuance of a license shall not entitle any licensee to any property or liberty right to renewal.

Whether an application for renewal is approved or denied, the applicant shall be notified in writing within 90 days of the renewal application or within 30 days after receipt of the applicant's criminal background check from the California DOJ, whichever is later (Penal Code § 26205).

### **206.7 DEPARTMENT REPORTING AND RECORDS**

Pursuant to Penal Code § 26225, the Chief of Police shall maintain a record of the following and immediately provide copies of each to the California DOJ:

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- (a) The denial of a license
- (b) The denial of an amendment to a license
- (c) The issuance of a license
- (d) The amendment of a license
- (e) The revocation of a license

The Chief of Police shall annually submit to the State Attorney General the total number of licenses to carry firearms issued to reserve peace officers and judges.

### **206.8 CONFIDENTIAL RECORDS**

The home address and telephone numbers of any peace officer, public defender, prosecutor, magistrate, court commissioner or judge contained in an application shall not be considered public record (Government Code § 6254(u)(2)).

Any information in an application for a license to carry a firearm that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of his/her family shall not be considered public record (Government Code § 6254(u)(1)).

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## Retiree Concealed Firearms

### 207.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the issuance, denial, suspension or revocation of Walnut Creek Police Department identification cards under the Law Enforcement Officers' Safety Act (LEOSA) and California law (18 USC § 926C; Penal Code § 25455).

### 207.2 POLICY

It is the policy of the Walnut Creek Police Department to provide identification cards to qualified former or retired officers as provided in this policy.

### 207.3 LEOSA

The Chief of Police may issue an identification card for LEOSA purposes to any qualified former officer of this department who (18 USC § 926C(c)):

- (a) Separated from service in good standing from this department as an officer.
- (b) Before such separation, had regular employment as a law enforcement officer for an aggregate of 10 years or more or, if employed as a law enforcement officer for less than 10 years, separated from service after completing any applicable probationary period due to a service-connected disability as determined by this department.
- (c) Has not been disqualified for reasons related to mental health.
- (d) Has not entered into an agreement with this department where the officer acknowledges that he/she is not qualified to receive a firearm qualification certificate for reasons related to mental health.
- (e) Is not prohibited by federal law from receiving or possessing a firearm.

#### 207.3.1 LEOSA IDENTIFICATION CARD FORMAT

The LEOSA identification card should contain a photograph of the former officer and identify him/her as having been employed as an officer.

If the Walnut Creek Police Department qualifies the former officer, the LEOSA identification card or separate certification should indicate the date the former officer was tested or otherwise found by the Department to meet the active duty standards for qualification to carry a firearm.

#### 207.3.2 AUTHORIZATION

Any qualified former law enforcement officer, including a former officer of this department, may carry a concealed firearm under 18 USC § 926C when he/she is:

- (a) In possession of photographic identification that identifies him/her as having been employed as a law enforcement officer, and one of the following:
  1. An indication from the person's former law enforcement agency that he/she has, within the past year, been tested or otherwise found by the law enforcement

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agency to meet agency-established active duty standards for qualification in firearms training to carry a firearm of the same type as the concealed firearm.

2. A certification, issued by either the state in which the person resides or by a certified firearms instructor who is qualified to conduct a firearms qualification test for active duty law enforcement officers within that state, indicating that the person has, within the past year, been tested or otherwise found to meet the standards established by the state or, if not applicable, the standards of any agency in that state.
  - (b) Not under the influence of alcohol or another intoxicating or hallucinatory drug or substance.
  - (c) Not prohibited by federal law from receiving a firearm.
  - (d) Not in a location prohibited by California law or by a private person or entity on his/her property if such prohibition is permitted by California law.

### **207.4 CALIFORNIA IDENTIFICATION CARD ISSUANCE**

Any full-time sworn officer of this department who was authorized to, and did, carry a concealed firearm during the course and scope of his/her employment shall be issued an identification card with a Carrying Concealed Weapon endorsement, "CCW Approved," upon honorable retirement (Penal Code § 25455).

- (a) For the purpose of this policy, honorably retired includes all peace officers who have qualified for, and accepted, a service or disability retirement. It shall not include any officer who retires in lieu of termination.
- (b) No CCW Approved endorsement shall be issued to any officer retiring because of a psychological disability (Penal Code § 26305).

#### **207.4.1 QUALIFIED RETIRED RESERVES**

Qualified retired reserve officers who meet the department requirements shall be provided an identification card with a CCW Approved endorsement (Penal Code § 26300).

### **207.5 FORMER OFFICER RESPONSIBILITIES**

A former officer with a card issued under this policy shall immediately notify the Watch Commander of his/her arrest or conviction in any jurisdiction, or that he/she is the subject of a court order, in accordance with the Reporting of Employee Convictions policy.

#### **207.5.1 RESPONSIBILITIES UNDER LEOSA**

In order to obtain or retain a LEOSA identification card, the former officer shall:

- (a) Sign a waiver of liability of the Department for all acts taken related to carrying a concealed firearm, acknowledging both his/her personal responsibility as a private person for all acts taken when carrying a concealed firearm as permitted by LEOSA and also that these acts were not taken as an employee or former employee of the Department.
- (b) Remain subject to all applicable department policies and federal, state and local laws.

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- (c) Demonstrate good judgment and character commensurate with carrying a loaded and concealed firearm.
- (d) Successfully pass an annual criminal history background check indicating that he/she is not prohibited by law from receiving or possessing a firearm.

### **207.5.2 MAINTAINING A CALIFORNIA IDENTIFICATION CARD CCW ENDORSEMENT**

In order to maintain a CCW Approved endorsement on an identification card issued under California law, the retired officer shall (Penal Code § 26305):

- (a) Qualify annually with the authorized firearm at a course approved by this department at the retired officer's expense.
- (b) Remain subject to all applicable department policies and federal, state and local laws.
- (c) Not engage in conduct that compromises public safety.
- (d) Only be authorized to carry a concealed firearm inspected and approved by the Department.

### **207.6 DENIAL, SUSPENSION OR REVOCATION OF A LEOSA IDENTIFICATION CARD**

A LEOSA identification card may be denied or revoked upon a showing of good cause as determined by the Department. In the event that an identification card is denied, suspended or revoked, the former officer may request a review by the Chief of Police. The decision of the Chief of Police is final.

### **207.7 DENIAL, SUSPENSION OR REVOCATION OF A CALIFORNIA CCW ENDORSEMENT CARD**

A CCW endorsement under Penal Code § 25470 for any officer retired from this department may be denied or revoked only upon a showing of good cause. The CCW endorsement may be immediately and temporarily revoked by the Watch Commander when the conduct of a retired peace officer compromises public safety.

- (a) In the event that a CCW endorsement is initially denied, the retired officer shall have 15 days from the date of denial to request a formal hearing. The failure to submit a timely written request for a hearing shall be deemed a waiver of such right. The hearing, absent written agreement between the parties, shall be held no later than 120 days after the request is received.
- (b) Prior to revocation of any CCW endorsement, the Department shall provide the affected retiree with written notice of a hearing by either personal service or first class mail, postage prepaid, return receipt requested to the retiree's last known address (Penal Code § 26315).
  1. The retiree shall have 15 days from the date of service to file a written request for a hearing.
  2. The hearing, absent written agreement between the parties, shall be held no later than 120 days after the request is received (Penal Code § 26315).



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3. The failure to submit a timely written request for a hearing shall be deemed a waiver of such right.
- (c) A hearing for the denial or revocation of any CCW endorsement shall be conducted before a hearing board composed of three members, one selected by the Department, one selected by the retiree or his/her employee organization and one selected jointly (Penal Code § 26320).
1. The decision of such hearing board shall be binding on the Department and the retiree.
  2. Any retiree who waives the right to a hearing or whose CCW endorsement has been revoked at a hearing shall immediately surrender his/her identification card. The Department will then reissue a new identification card which shall be stamped "No CCW Privilege."
- (d) Members who have reason to suspect the conduct of a retiree has compromised public safety shall notify the Watch Commander as soon as practicable. The Watch Commander should promptly take appropriate steps to look into the matter and, if warranted, contact the retiree in person and advise him/her of the temporary suspension and hearing information listed below.
1. Notification of the temporary suspension should also be promptly mailed to the retiree via first class mail, postage prepaid, return receipt requested (Penal Code § 26312).
  2. The Watch Commander should document the investigation, the actions taken and, if applicable, any notification made to the retiree. The memo should be forwarded to the Chief of Police.
  3. The personal and written notification should be as follows:
    - (a) The retiree's CCW endorsement is immediately and temporarily suspended.
    - (b) The retiree has 15 days to request a hearing to determine whether the temporary suspension should become permanent revocation.
    - (c) The retiree will forfeit his/her right to a hearing and the CCW endorsement will be permanently revoked if the retiree fails to respond to the notice of hearing within the 15-day period.
  4. In the event that personal contact with the retiree cannot be reasonably achieved in a timely manner, the Watch Commander should attempt to make the above notice of temporary suspension through another law enforcement officer. For example, if a retiree was arrested or detained by a distant agency, the Watch Commander may request that a law enforcement officer from that agency act as the agent of the Department to deliver the written notification.

### **207.8 FIREARM QUALIFICATIONS**

The Firearms Team may provide former officers from this department an opportunity to qualify. Written evidence of the qualification and the weapons used will be provided and will contain

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the date of the qualification. The Firearms Team will maintain a record of the qualifications and weapons used.

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# Fire/Emergency Procedures - City Hall and Police Department

## 221.1 PURPOSE AND SCOPE

The City Hall building is equipped with a fully operational fire evacuation system. There are several manual pull stations located throughout the building. Most of these stations have a red bell above them so they can be easily seen from a distance.

When activated, the alarm will ring throughout all of City Hall and will activate an alarm in the police dispatch center on a zone board. In addition, a bell will ring on the outside of the police building and a zone board located at the N Main St entrance will indicate to the Fire Department where the fire alarm is coming from.

## 221.2 PROCEDURE

In the event of a fire, an employee should immediately activate one of the manual pull stations. All employees are to evacuate the building using the stairways only. **DO NOT USE THE ELEVATOR**. Elevators will become inoperable. Refer to City of Walnut Creek, City Hall Building Evacuation Procedures Policy on the City Intranet.

Upon receipt of an alarm, dispatch will immediately notify the fire department and a WCPD supervisor. If during business hours, building maintenance will also be notified by dispatch.

A supervisor or a dispatcher should press "local silence" on the main panel in dispatch, to silence the alarm in dispatch only. Building maintenance, a supervisor, or an officer, if no supervisor is available, will look at the main panel display to see the location of the alarm, i.e., 3rd floor smoke detector. There will also be a 3 digit number displayed which is listed in the blue binder (located below the alarm panel) along with a more detailed location. Once the location is determined building maintenance, a supervisor or officer will physically go check the location for fire, smoke, etc.

If it is determined there is a fire then dispatch will update the fire department with the new information. An employee will need to meet the fire department downstairs to allow them access to the building. The fire department will then respond to the location of the alarm and extinguish the fire. In the event of a fire, the doors on the outside of the elevators will close automatically and the elevators will return to the ground floor. When this occurs the elevator doors will need to be re-opened manually.

In the event of a fire in dispatch, personal safety is paramount. The dispatcher(s) should first notify the Fire Department and if possible, try to extinguish the fire with the fire extinguisher in dispatch (located behind the entry/exit door). If this is not possible, the dispatcher will advise all units of the fire and also that dispatch will be inoperable. The dispatcher(s) will then evacuate taking with them the dispatch Nextel phone, resource binder and a portable radio. As soon as possible, the dispatcher(s) will notify CCCSO of the situation and ask them to activate the alternate routing switch, which will transfer Walnut Creek 911 calls to CCCSO dispatch. CCCSO will also

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## *Fire/Emergency Procedures - City Hall and Police Department*

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be provided with the NEXTEL number so they can relay information to our dispatcher(s). The dispatcher(s) will then dispatch the calls over WCPD channel 1 from a patrol vehicle until an alternate dispatch center can be set up where appropriate (DUI Trailer, the range).

If it is determined there is no fire, dispatch will cancel the fire department and the alarm can then be completely silenced by pressing the "alarm silence" button. If after hours, dispatch will notify the building maintenance supervisor via email of the alarm activation and the disposition. The dispatch supervisor should be copied on that email.

**JAIL EVACUATION** Evacuation of the jail will be the responsibility of the watch commander or, in his/her absence, any other officer on duty. Using the sally port exit of the jail evacuate all prisoners from the facility and secure them in a patrol vehicle. If our jail becomes inoperative, prisoners should be transported to the County Jail.

**EMPLOYEE EVACUATION** Evacuation routes have been distributed to all city departments and copies are maintained at each evacuation exit throughout the city. After a fire alarm activation, the system must be reset in two places to return it to normal; the individual pull station that was activated and the main alarm panel in the dispatch center.

### **221.3 PROCEDURE FOR EMERGENCIES WITHIN CITY HALL**

For a police emergency in city hall or the police department, an employee will call dispatch by dialing 9-911 or 2300. Upon receiving this call, dispatch will advise the nature of the call and location over the PA in the station, i.e.: "All officers in the station please respond to 3rd floor city attorney's office for a 415". Dispatch will also advise of any officer safety issues, such as weapons, at the time of the page since not all officers in the station will have radios with them. Once the page has been put out all on-duty officers and detectives, who are in the station, will respond to the location of the incident. A patrol officer will also be dispatched from the street for cover and to handle the report.

For medical or fire emergencies in city hall or the police department, an employee will call dispatch by dialing 9-911 or 2300. Once dispatch determines that the emergency is a medical or fire call they will transfer the call to Consolidated Fire and stay on the line to gather more information. If it is determined that an officer is needed, dispatch will follow the procedures above.

## Chapter 3 - General Operations

## Use of Force

### 300.1 PURPOSE AND SCOPE

This policy provides guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this department is expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner.

#### 300.1.1 DEFINITIONS

Definitions related to this policy include:

**Deadly force** - Any use of force that creates a substantial risk of causing death or serious bodily injury, including but not limited to the discharge of a firearm (Penal Code § 835a).

**Force** - The application of physical techniques or tactics, chemical agents, or weapons to another person. It is not a use of force when a person allows him/herself to be searched, escorted, handcuffed, or restrained.

### 300.2 POLICY

The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.

Officers must have an understanding of, and true appreciation for, their authority and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties.

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation and a careful balancing of all interests.

#### 300.2.1 DUTY TO INTERCEDE

Any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force. An officer who observes another employee use force that exceeds the degree of force permitted by law should promptly report these observations to a supervisor.

### 300.3 USE OF FORCE

Officers shall use only that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to or perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose (Penal Code § 835a).

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably

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appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain, and rapidly evolving.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident.

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons, or methods provided by the Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be objectively reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

#### 300.3.1 USE OF FORCE TO EFFECT AN ARREST

Any peace officer may use objectively reasonable force to effect an arrest, to prevent escape, or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance on the part of the person being arrested; nor shall an officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest, prevent escape, or to overcome resistance. Retreat does not mean tactical repositioning or other de-escalation techniques (Penal Code § 835a).

#### 300.3.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit. These factors include but are not limited to:

- (a) The apparent immediacy and severity of the threat to officers or others (Penal Code § 835a).
- (b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- (c) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (d) The conduct of the involved officer (Penal Code § 835a).
- (e) The effects of drugs or alcohol.
- (f) The individual's apparent mental state or capacity (Penal Code § 835a).
- (g) The individual's apparent ability to understand and comply with officer commands (Penal Code § 835a).

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- (h) Proximity of weapons or dangerous improvised devices.
- (i) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (j) The availability of other reasonable and feasible options and their possible effectiveness (Penal Code § 835a).
- (k) Seriousness of the suspected offense or reason for contact with the individual.
- (l) Training and experience of the officer.
- (m) Potential for injury to officers, suspects, and others.
- (n) Whether the person appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.
- (o) The risk and reasonably foreseeable consequences of escape.
- (p) The apparent need for immediate control of the subject or a prompt resolution of the situation.
- (q) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- (r) Prior contacts with the subject or awareness of any propensity for violence.
- (s) Any other exigent circumstances.

### 300.3.3 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be effective in controlling a physically or actively resisting individual. Officers may only apply those pain compliance techniques for which they have successfully completed department-approved training. Officers utilizing any pain compliance technique should consider:

- (a) The degree to which the application of the technique may be controlled given the level of resistance.
- (b) Whether the person can comply with the direction or orders of the officer.
- (c) Whether the person has been given sufficient opportunity to comply

The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved.

### 300.3.4 CAROTID CONTROL HOLD

The proper application of the carotid control hold may be effective in restraining a violent or combative individual. However, due to the potential for injury, the use of the carotid control hold is subject to the following:

- (a) The officer shall have successfully completed department-approved training in the use and application of the carotid control hold.



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- (b) The carotid control hold may only be used when circumstances perceived by the officer at the time indicate that such application reasonably appears necessary to control a person in any of the following circumstances:
  - 1. The subject is violent or physically resisting.
  - 2. The subject, by words or actions, has demonstrated an intention to be violent and reasonably appears to have the potential to harm officers, him/herself or others.
- (c) The application of a carotid control hold on the following individuals should generally be avoided unless the totality of the circumstances indicates that other available options reasonably appear ineffective, or would present a greater danger to the officer, the subject or others, and the officer reasonably believes that the need to control the individual outweighs the risk of applying a carotid control hold:
  - 1. Females who are known to be pregnant
  - 2. Elderly individuals
  - 3. Obvious juveniles
  - 4. Individuals who appear to have Down syndrome or who appear to have obvious neck deformities or malformations, or visible neck injuries
- (d) Any individual who has had the carotid control hold applied, regardless of whether he/she was rendered unconscious, shall be promptly examined by paramedics or other qualified medical personnel and should be monitored until examined by paramedics or other appropriate medical personnel.
- (e) The officer shall inform any person receiving custody, or any person placed in a position of providing care, that the individual has been subjected to the carotid control hold and whether the subject lost consciousness as a result.
- (f) Any officer attempting or applying the carotid control hold shall promptly notify a supervisor of the use or attempted use of such hold.
- (g) The use or attempted use of the carotid control hold shall be thoroughly documented by the officer in any related reports.

#### 300.3.5 USE OF FORCE TO SEIZE EVIDENCE

In general, officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, officers are discouraged from using force solely to prevent a person from swallowing evidence or contraband. In the instance when force is used, officers should not intentionally use any technique that restricts blood flow to the head, restricts respiration or which creates a reasonable likelihood that blood flow to the head or respiration would be restricted. Officers are encouraged to use techniques and methods taught by the Walnut Creek Police Department for this specific purpose.

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### **300.4 DEADLY FORCE APPLICATIONS**

If an objectively reasonable officer would consider it safe and feasible to do so under the totality of the circumstances, officers should evaluate the use of other reasonably available resources and techniques when determining whether to use deadly force. The use of deadly force is only justified in the following circumstances (Penal Code § 835a):

- (a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes is an imminent threat of death or serious bodily injury to the officer or another person.
- (b) An officer may use deadly force to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, the officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

Officers shall not use deadly force against a person based on the danger that person poses to him/herself, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or to another person (Penal Code § 835a).

An “imminent” threat of death or serious bodily injury exists when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. An officer’s subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention (Penal Code § 835a).

#### **300.4.1 SHOOTING AT OR FROM MOVING VEHICLES**

Shots fired at or from a moving vehicle are rarely effective. Officers should move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants. An officer should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others.

Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle.

### **300.5 REPORTING THE USE OF FORCE**

Any use of force by a member of this department shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident. The officer should articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances. To collect data for purposes of training, resource allocation, analysis and related purposes, the Department may require the completion of additional report forms, as specified in department policy, procedure or law.

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### 300.5.1 NOTIFICATION TO SUPERVISORS

Supervisory notification shall be made as soon as practicable following the application of force in any of the following circumstances:

- (a) The application caused a visible injury.
- (b) The application would lead a reasonable officer to conclude that the individual may have experienced more than momentary discomfort.
- (c) The individual subjected to the force complained of injury or continuing pain.
- (d) The individual indicates intent to pursue litigation.
- (e) Any application of a CEW or control device.
- (f) Any application of a restraint device other than handcuffs, shackles or belly chains.
- (g) The individual subjected to the force was rendered unconscious.
- (h) An individual was struck or kicked.
- (i) An individual alleges any of the above has occurred.

### 300.5.2 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

Statistical data regarding all officer-involved shootings and incidents involving use of force resulting in serious bodily injury is to be reported to the California Department of Justice as required by Government Code § 12525.2. See the Records Bureau policy.

## **300.6 MEDICAL CONSIDERATION**

Prior to booking or release, medical assistance shall be obtained for any person who exhibits signs of physical distress, who has sustained visible injury, expresses a complaint of injury or continuing pain, or who was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until he/she can be medically assessed.

Based upon the officer's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff or medical staff at the jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another officer and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible.

The on-scene supervisor or, if the on-scene supervisor is not available, the primary handling officer shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force. This notification shall include a description of the force used and any other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

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Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain (sometimes called "excited delirium"), or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Officers who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage away if appropriate.

### **300.7 REPORTING AND REVIEWING INDIVIDUAL USE OF FORCE INCIDENTS**

(a) Reportable Force Defined

- Any on duty or off duty incident in which officers, pursuant to their official capacity, use the intermediate level of force or higher; or any incident in which an injury occurs; or complaint of pain by the subject at the time of release from WCPD custody, shall be reported immediately or as soon as practical. An intermediate level of force includes the use of chemical agents such as mace or an oleoresin capsicum based product (OC); the use of a Conducted Energy Weapon (Taser); the use of a Carotid Restraint upper-body control hold; Impact Weapons when used in an impact mode; Personal Body Weapons (PBW) such as hands, feet, elbows, and knees when used to strike the subject; and the deployment of a Police Canine (K9) when such deployment results in an injury to the subject.

(b) Officer Responsibilities

- Officers using reportable force shall:
  - Obtain medical assistance for subjects who have suffered injuries or complaint of injury or who have been rendered unconscious.
  - Promptly notify their supervisor, or the on duty field supervisor if their supervisor is not on duty, unless exigent circumstances delay the notification. Once the exigent circumstances have been resolved, then notification will be made.
  - Document the use of force in an arrest/crime report. Documentation shall include:
    1. A detailed description of the incident describing the severity of the crime.
    2. A detailed description of the subject's actions and officer's response to those actions and why.
    3. When appropriate, statements from witnesses and involved parties and collection of evidence, including photographs of injuries or alleged injuries.
    4. Complete the Use of Force (UF) "Detail" page and populate the study flag field, on the first page of the report, with "UF" for Use of Force.

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- Officers observing a use of reportable force, who do not believe the spirit and intent of the reporting requirements are being met, shall advise his/her immediate supervisor.
- (c) Supervisor's Responsibilities
  - When the supervisor has been notified of a reportable force incident, the supervisor shall:
    - Ensure the case is thoroughly investigated and documented following department procedures and guidelines.
    - Ensure that the study flag field, on the first page of the report, has been populated with "UF" for Use of Force.
    - Notify the shift watch commander of the incident. If the sergeant is also assuming watch commander duties, the sergeant would also assume the initial reporting requirements of the watch commander.
- (d) Watch Commander Responsibilities
  - When a reportable force incident occurs, the watch commander or supervisor shall complete an after action report and forward it to the Operations Division Commander within 5 days of the incident.
- (e) Department Responsibilities
  - In every reportable force incident, the department will:
    - Have the Operations Division Commander, or designee, review the incident and initiate any additional action deemed necessary. If necessary, the Chief of Police should be notified of the incident and the status of the investigation.
    - Forward appropriate information regarding the incident to the Defensive Tactics Team Lieutenant for review by the Tactical Review Committee. The Tactical Review Committee will include the Defensive Tactics Team Lieutenant and the supervisors from the Defensive Tactics Team and the supervisors of the Firearms Team as appropriate. They will review each reportable force incident from a purely tactical standpoint. Recommendations of the committee can include both policy or procedure revisions and training needs. This committee does not determine whether a particular use of force is within policy and it does not recommend disciplinary action. The Defensive Tactics Team Lieutenant will complete an annual memorandum and forward the report to the Operation's Division Commander, outlining the individual incident findings and any identified trends, training or departmental needs.
  - Reportable force incidents are not a part of an officer's personnel file and may be purged after 3 years or may be retained longer if appropriate.

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## *Use of Force*

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### **300.8 TRAINING**

Officers will receive periodic training on this policy and demonstrate their knowledge and understanding.

### **300.9 USE OF FORCE ANALYSIS**

At least annually, the Defensive Tactics Team should prepare an analysis report on use of force incidents. The report should be submitted to the Operations Division Commander. The report should not contain the names of officers, suspects or case numbers, and should include:

- (a) The identification of any trends in the use of force by members.
- (b) Training needs recommendations.
- (c) Equipment needs recommendations.
- (d) Policy revision recommendations.

## Deadly Force Review

### 301.1 PURPOSE AND SCOPE

The purpose of this policy is to establish a process to review the use of deadly force by employees of this department.

### 301.2 REVIEW BOARD

The Walnut Creek Police Department is charged with the important responsibility of objectively evaluating the use of deadly force. It is the policy of this department to convene a Use of Deadly Force Review Board when the use of deadly force by an employee results in injury or death to a person.

The Use of Deadly Force Review Board will also investigate and review the circumstances surrounding every accidental or intentional discharge of a firearm, whether the employee is on or off duty, excluding range training or recreational use.

The Chief of Police may convene the Use of Deadly Force Review Board to investigate the circumstances surrounding any use of force incident.

#### 301.2.1 COMPOSITION OF THE BOARD

The Use of Deadly Force Review Board shall be comprised of the following persons:

- Command representative of each bureau
- Training Manager
- Non-administrative supervisor

The senior ranking member not of the same bureau of the involved employee will serve as chairperson.

The chairperson will convene the Use of Deadly Force Review Board as necessary. It will be the responsibility of the bureau or unit commander of the involved employee(s) to notify the appropriate bureau commander of any incidents requiring board review. The bureau or unit commander will also ensure that all relevant reports, documents, and materials are available for consideration and review by the Board.

#### 301.2.2 RESPONSIBILITIES OF THE BOARD

The Use of Deadly Force Review Board is empowered to conduct an administrative investigation into the circumstances of an incident. The board members may request further investigation, call persons to present information, and may request that the involved employee appear before the board. The involved employee will be notified of the meeting of the board and may be represented by legal counsel and/or other representation through all phases of the review process.

Absent an express waiver from the employee, no more than two members of the board may ask questions of the involved employee (Government Code § 3303).

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The review shall be based upon those facts which were reasonably believed by the officer at the time of the incident, applying legal requirements, department policy and procedures, and approved training to those facts. Facts later discovered but unknown to the officer at the time, can neither justify nor call into question an officer's decision regarding use of force.

If it appears that the actions of the employee may result in criminal charges or disciplinary action by the Department, the board will conduct the interviews in accordance with department disciplinary procedures. The board does not have the authority to recommend discipline. The board shall make a finding and such finding will be limited to one of the following:

- (a) The employee's actions were within department policy and procedures.
- (b) The employee's actions were in violation of department policy and procedures.

A finding will represent the consensus of the board. After the board has concluded, the board chairperson will submit written findings of the board to the Chief of Police. After review by the Chief of Police, a copy of the findings will be forwarded to the involved employee's Bureau Commander for review and appropriate action.

At the conclusion of the review process, a copy of all relevant reports and information will be filed with the Chief of Police.

Once the board has reached its specific finding, the Training Manager may convene a separate training committee to address training needs and to make recommendations for this department without specific reference to the facts of the incident considered by the board.



## Handcuffing and Restraints

### 302.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of handcuffs and other restraints during detentions and arrests.

### 302.2 POLICY

The Walnut Creek Police Department authorizes the use of restraint devices in accordance with this policy, the Use of Force Policy, and department training. Restraint devices shall not be used to punish, to display authority, or as a show of force.

### 302.3 USE OF RESTRAINTS

Only members who have successfully completed Walnut Creek Police Department-approved training on the use of restraint devices described in this policy are authorized to use these devices.

When deciding whether to use any restraint, officers should carefully balance officer safety concerns with factors that include but are not limited to:

- The circumstances or crime leading to the arrest.
- The demeanor and behavior of the arrested person.
- The age and health of the person.
- Whether the person is known to be pregnant.
- Whether the person has a hearing or speaking disability. In such cases, consideration should be given, safety permitting, to handcuffing to the front in order to allow the person to sign or write notes.
- Whether the person has any other apparent disability.

### 302.4 APPLICATION OF WRAP RESTRAINT DEVICE

When an officer deems it reasonable to restrain the legs of a violent or potentially violent person during the course of detention, arrest and/or transportation, only WRAP Restraint Devices approved by the Department shall be used, and only in the departmentally approved manner for such temporary immobilization of the legs.

The WRAP Restraint Device is designed to reduce the likelihood of injury to the restrained person or others, and to reduce the likelihood of property damage caused by the restrained person by preventing them from using his/her legs in a manner likely to result in injury or damage. Only those officers trained in the use of the WRAP Restraint Device are authorized to employ it on any person. The following guidelines shall be used when applying the restraint device:

- (a) In all cases, a supervisor shall be notified as soon as practical after the application of the restraint.

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## *Handcuffing and Restraints*

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- (b) Absent a medical emergency, the person being restrained shall remain restrained until the officer arrives at the jail or other facility or the person no longer poses a threat.
- (c) Once secured, the person should be placed in a seated or upright position.
- (d) The restrained person should be constantly watched by an officer while in the restraint.
- (e) The officer should look for signs of labored breathing and, where practical, take appropriate steps to relieve and minimize any obvious factors contributing to this condition.

### **302.5 APPLICATION OF HANDCUFFS OR PLASTIC CUFFS**

Handcuffs, including temporary nylon or plastic cuffs, may be used only to restrain a person's hands to ensure officer safety.

Although recommended for most arrest situations, handcuffing is discretionary and not an absolute requirement of the Department. Officers should consider handcuffing any person they reasonably believe warrants that degree of restraint. However, officers should not conclude that in order to avoid risk every person should be handcuffed, regardless of the circumstances.

In most situations, handcuffs should be applied with the hands behind the person's back. When feasible, handcuffs should be double-locked to prevent tightening, which may cause undue discomfort or injury to the hands or wrists.

In situations where one pair of handcuffs does not appear sufficient to restrain the person or may cause unreasonable discomfort due to the person's size, officers should consider alternatives, such as using an additional set of handcuffs or multiple plastic cuffs.

Handcuffs should be removed as soon as it is reasonable or after the person has been searched and is safely confined within a detention facility.

#### **302.5.1 MEDICAL CONSIDERATIONS**

Prior to booking or release, medical assistance shall be obtained for any person(s) who has sustained visible injury, expressed a complaint of an injury or continuing pain, or who has been rendered unconscious. Based upon the officer's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff or medical staff at the jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practical, should be witnessed by another officer and/or medical personnel and a supervisor notified. If an audio or video recording is made of the contact or an interview with the individual, any refusal should be included, if possible.

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond physical characteristics, unusually high tolerance to pain or who require a protracted physical encounter with multiple officers to bring under control may be at an increased risk of sudden death and should be examined by qualified medical personnel as soon as practicable. Any individual exhibiting signs of distress after such an encounter shall be medically cleared prior to booking.

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### **302.6 APPLICATION OF SPIT HOODS**

Spit hoods are temporary protective devices designed to prevent the wearer from biting and/or transferring or transmitting fluids (saliva and mucous) to others.

Spit hoods may be placed upon persons in custody when the officer reasonably believes the person will bite or spit, either on a person or in an inappropriate place. They are generally used during application of a physical restraint, while the person is restrained, or during or after transport.

Officers utilizing spit hoods should ensure that the spit hood is fastened properly to allow for adequate ventilation and so that the restrained person can breathe normally. Officers should provide assistance during the movement of a restrained person due to the potential for impairing or distorting that person's vision. Officers should avoid comingling those wearing spit hoods with other detainees.

Spit hoods should not be used in situations where the restrained person is bleeding profusely from the area around the mouth or nose, or if there are indications that the person has a medical condition, such as difficulty breathing or vomiting. In such cases, prompt medical care should be obtained. If the person vomits while wearing a spit hood, the spit hood should be promptly removed and discarded. Persons who have been sprayed with oleoresin capsicum (OC) spray should be thoroughly decontaminated, including hair, head, and clothing, prior to application of a spit hood.

Those who have been placed in a spit hood should be continually monitored and shall not be left unattended until the spit hood is removed. Spit hoods shall be discarded after each use.

#### **302.6.1 TRANSPORTING RESTRAINED PERSONS**

When transporting a person who has been restrained, officers shall observe the following procedures:

- (a) Restrained suspects may be transported in a patrol unit. They should be seated in an upright position and secured by a seat belt. When the person cannot be transported in a seated position he/she should be taken by ambulance/paramedic unit.
- (b) If medical personnel determine that it is in the best interest of the restrained person to be transported while lying down, the person should be taken by ambulance/paramedic unit.
- (c) Officers shall inform the jail staff that a WRAP Restraint Device was used on the arrestee prior to arrival at the jail.

### **302.7 DOCUMENTATION**

Anytime the WRAP Restraint Device is used, the circumstances requiring its use shall be documented in the related report(s). The officer should include the following in the report:

- (a) The amount of time the suspect was restrained
- (b) How the suspect was transported and the position of the suspect
- (c) Observations of the suspect's physical and physiological actions
- (d) Any known or suspected drug use or other medical problems

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### **302.8 TRAINING**

Subject to available resources, the Training Manager should ensure that officers receive periodic training on the proper use of handcuffs and other restraints, including:

- (a) Proper placement and fit of handcuffs and other restraint devices approved for use by the Department.
- (b) Response to complaints of pain by restrained persons.
- (c) Options for restraining those who may be pregnant without the use of leg irons, waist chains, or handcuffs behind the body.
- (d) Options for restraining amputees or those with medical conditions or other physical conditions that may be aggravated by being restrained.

## Control Devices and Techniques

### 303.1 PURPOSE AND SCOPE

To reduce and minimize altercation-related injuries to officers and suspects, the Department authorizes the use of selected control devices. Certain control devices are provided in order to control violent or potentially violent suspects. It is anticipated that the use of these devices will generally result in fewer altercation-related injuries to officers and suspects. The below procedures are for the use and maintenance of control devices (e.g., baton, oleoresin capsicum (OC) spray and tear gas). Only those control devices that have been approved by the Chief of Police or his/her designee are authorized to be carried by members of this Department.

#### 303.1.1 POLICY

In order to control subjects who are violent or who demonstrate the intent to be violent, the Walnut Creek Police Department authorizes officers to use control devices in accordance with the guidelines in this policy and the Use of Force Policy.

#### 303.1.2 WHEN DEVICES MAY BE USED

When a decision has been made to restrain or arrest a violent or threatening suspect, an approved control device may only be used when its use appears reasonable under the circumstances.

#### 303.1.3 REVIEW, INSPECTION AND APPROVAL

Every control device will be periodically inspected by a member of the Defensive Tactics Team, or the designated instructor for a particular control device.

#### 303.1.4 TRAINING FOR CONTROL DEVICES

- (a) Only officers trained and having shown adequate proficiency in the use of any control device and this agency's Use of Force policy are authorized to carry the device. Proficiency training must be monitored and documented by a certified weapons or tactics instructor.
- (b) Training for all control devices should occur every two years at a minimum.
- (c) All training and proficiency for control devices will be documented in the officer's training file.
- (d) Officers failing to demonstrate proficiency with the weapon or knowledge of this agency's Use of Force policy will be provided remedial training.

### 303.2 ISSUING, CARRYING AND USING CONTROL DEVICES

Control devices described in this policy may be carried and used by members of this department only if the device has been issued by the Department or approved by the Chief of Police or the authorized designee.

Only officers who have successfully completed department-approved training in the use of any control device are authorized to carry and use the device.

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## *Control Devices and Techniques*

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Control devices may be used when a decision has been made to control, restrain or arrest a subject who is violent or who demonstrates the intent to be violent, and the use of the device appears reasonable under the circumstances. When reasonable, a verbal warning and opportunity to comply should precede the use of these devices.

When using control devices, officers should carefully consider potential impact areas in order to minimize injuries and unintentional targets.

### **303.3 TEAR GAS GUIDELINES**

The use of tear gas for crowd control, crowd dispersal or against barricaded suspects shall be based on the circumstances. The Watch Commander, Incident Commander or SWAT Unit Commander may authorize the delivery and use of tear gas, evaluating all conditions known at the time and determining that such force reasonably appears justified and necessary to result in the safe control of the suspect(s). When practical, fire personnel should be alerted or summoned to the scene to control any fires and to assist in providing medical aid or gas evacuation when the scene is safe. Only officers or supervisors trained in the use of tear gas weapons should discharge such devices at the scene.

### **303.4 CHEMICAL AGENTS SPRAY GUIDELINES**

Only authorized personnel may possess and maintain Department issued oleoresin capsicum spray. Chemical agents are weapons used to minimize the potential for injury to officers, offenders, or other persons. They should be used only in situations where such force reasonably appears justified and necessary.

#### **303.4.1 REQUIRED INSTRUCTION FOR USE**

All personnel authorized to carry oleoresin capsicum spray, shall complete the required course of instruction prior to possessing and using the oleoresin capsicum spray.

#### **303.4.2 DEFENSIVE TACTICS AND FIREARMS TEAMS RESPONSIBILITIES**

The Defensive Tactics and Firearms Teams shall control the inventory and issuance of all control devices and shall ensure that all damaged, inoperative, outdated or expended control devices or munitions are properly disposed of, repaired or replaced.

Every control device will be periodically inspected by the Firearms Team or the designated instructor for a particular control device. The inspection shall be documented.

#### **303.4.3**

#### **303.4.4 TREATMENT FOR OC SPRAY EXPOSURE**

Persons who have been affected by the use of chemical agents should be promptly provided with the proper solution to cleanse the affected areas. Those persons shall be medically cleared by competent medical personnel.

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### 303.4.5 REPORT OF USE

All uses of chemical agents shall be documented in the related arrest/crime report.

### **303.5 KINETIC ENERGY PROJECTILES**

This Department is committed to reducing the potential for violent confrontations when suspects are encountered. Kinetic energy projectiles, when used properly, are less likely to result in death or serious physical injury.

Kinetic energy projectiles are approved by the Department and are fired from 12 gauge shotguns or 37/40 mm launchers. Certain munitions can be used in an attempt to de-escalate a potentially deadly situation, with a reduced potential for death or serious physical injury.

### **303.6 BATON GUIDELINES**

The need to immediately control a suspect must be weighed against the risk of causing serious injury. The head, neck, throat, spine, heart, kidneys and groin should not be intentionally targeted except when the officer reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the officer or others.

When carrying a baton, uniformed personnel shall carry the baton in its authorized holder on the equipment belt. Plainclothes and non-field personnel may carry the baton as authorized and in accordance with the needs of their assignment or at the direction of their supervisor.

#### 303.6.1 DEPLOYMENT

Approved munitions are justified and may be used to compel an individual to cease his/her actions when such munitions present a reasonable option for resolving the situation at hand.

Officers are not required or compelled to use approved munitions in lieu of other reasonable tactics if the involved officer(s) determine that deployment of these munitions cannot be done safely. The safety of hostages, innocent persons, and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior.

#### 303.6.2 EXAMPLES OF CIRCUMSTANCES APPROPRIATE FOR DEPLOYMENT

Examples include, but are not limited to, the following types of situations where the subject:

- (a) Is armed with a weapon and the tactical circumstances allow for the safe application of approved munitions
- (b) Has made credible threats to harm her/himself or others
- (c) Is engaged in violent or riotous behavior or is throwing objects at people and/or officers

#### 303.6.3 DEPLOYMENT CONSIDERATIONS

Before discharging projectiles, the officer should consider the following factors:

- (a) Severity of the crime or incident.
- (b) Subject's capability to pose an imminent threat to the safety of officers or others.

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- (c) If the subject is actively resisting arrest or attempting to evade arrest by flight.
- (d) The credibility of the subject's threat as evaluated by the officers present, and physical capacity/capability.
- (e) The proximity of weapons available to the subject.
- (f) The officer's versus the subject's physical factors (e.g., age, size relative strength, skill level, injury/exhaustion, the number of officer(s) versus subject(s)).
- (g) The availability of other force options and their possible effectiveness.
- (h) Distance and angle to target.
- (i) Type of munitions employed.
- (j) Type and thickness of subject's clothing.
- (k) The subject's actions dictate the need for an immediate response and the use of control devices appears appropriate.

### 303.6.4 DEPLOYMENT DISTANCES

Officers should keep in mind the recommended firing distances of not less than 10 feet and no greater than 75 feet regarding deployment when using Kinetic Energy rounds, but are not solely restricted to use according to these recommendations. Each tactical situation must be evaluated on the totality of circumstances at the time of deployment.

### 303.6.5 SHOT PLACEMENT

The need to immediately incapacitate the subject must be weighed against the risk of causing serious injury or death. The head and neck should not be intentionally targeted when deadly force is not reasonably justified.

Officers should generally not deploy Kinetic energy rounds at distance of less than 10 feet or at distances greater than 75 feet. Target areas are limited to large muscle groups, the buttocks, thighs, limbs, and lower abdomen (between the naval and the beltline). Target areas or distances may be considered when it reasonably appears necessary to accomplish immediate incapacitation in order to prevent serious injury or death and other reasonable methods have failed or reasonably appear ineffective.

### 303.6.6 APPROVED MUNITIONS

Only Department approved kinetic energy munitions shall be carried and deployed.

### 303.6.7 USE OF KINETIC ENERGY PROJECTILES BY SWAT

Officers assigned to the SWAT Team, who have completed a departmental training course may carry and employ 12 gauge or 40 mm projectiles while on duty or while performing Special Weapons and Tactics (SWAT) missions.



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### **303.6.8 TRAINING REQUIRED FOR USE**

Personnel who have successfully completed an approved departmental training course shall be authorized to use kinetic energy projectiles. Officers deploying kinetic energy projectiles will complete an annual recertification course.

### **303.7 OLEORESIN CAPSICUM (OC) GUIDELINES**

As with other control devices, oleoresin capsicum (OC) spray and pepper projectiles may be considered for use to bring under control an individual or groups of individuals who are engaging in, or are about to engage in violent behavior. Pepper projectiles and OC spray should not, however, be used against individuals or groups who merely fail to disperse or do not reasonably appear to present a risk to the safety of officers or the public.

### **303.8 WATCH COMMANDER RESPONSIBILITIES**

The Watch Commander or supervisor shall monitor the use of control devices in the same manner as all other use of force incidents.

- (a) The Watch Commander may authorize the use of a control device by selected personnel or members of specialized units provided the person(s) authorized has/have the required training. The request for a control device should be made through the Watch Commander.
- (b) The Watch Commander or supervisor shall review each use of control devices by any personnel within his or her command.
- (c) The Watch Commander or supervisor shall ensure training on the use of control devices is provided as needed.

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## Conducted Energy Weapon

### 304.1 PURPOSE AND SCOPE

This policy provides guidelines for the issuance and use of CEWs.

### 304.2 POLICY

The CEW is intended to control a violent or potentially violent individual, while minimizing the risk of serious injury. The appropriate use of such a device should result in fewer serious injuries to officers and suspects.

### 304.3 ISSUANCE AND CARRYING CEWS

Only members who have successfully completed department-approved training may be issued and carry the CEW.

CEWs are issued for use during a member's current assignment. Those leaving a particular assignment may be required to return the device to the department's inventory.

Officers shall only use the CEW and cartridges that have been issued by the Department. Uniformed officers who have been issued the CEW shall wear the device in an approved holster on their person.

Members carrying the CEW should perform a spark test on the unit prior to every shift.

When carried while in uniform, officers shall carry the CEW in a holster on the side opposite the duty weapon.

- (a) All CEWs shall be distinctly different from the duty weapon and any other device
- (b) Although not required, officers may carry more than one cartridge on their person when carrying the CEW
- (c) Officers shall be responsible for ensuring that their issued CEW is properly maintained and in good working order
- (d) Officers should not hold both a firearm and the CEW at the same time

### 304.4 VERBAL AND VISUAL WARNINGS

A verbal warning of the intended use of the CEW should precede its application, unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances. The purpose of the warning is to:

- (a) Provide the individual with a reasonable opportunity to voluntarily comply
- (b) Provide other officers and individuals with a warning that the CEW may be deployed

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If, after a verbal warning, an individual is unwilling to voluntarily comply with an officer's lawful orders and it appears both reasonable and feasible under the circumstances, the officer may, but is not required to, display the electrical arc (provided that a cartridge has not been loaded into the device), or the laser in a further attempt to gain compliance prior to the application of the CEW. The aiming laser should never be intentionally directed into the eyes of another as it may permanently impair his/her vision.

The fact that a verbal or other warning was given or the reasons it was not given shall be documented by the officer deploying the CEW in the related report.

### 304.4.1 FACTORS TO DETERMINE REASONABLENESS OF FORCE

The application of the CEW is likely to cause intense, but momentary, pain. As such, officers should carefully consider and balance the totality of circumstances available prior to using the CEW including, but not limited to, the following factors:

- (a) The conduct of the individual being confronted (as reasonably perceived by the officer at the time)
- (b) Officer/subject factors (i.e., age, size, relative strength, skill level, injury/exhaustion, number of officers vs. subjects)
- (c) Influence of drugs/alcohol (mental capacity)
- (d) Proximity of weapons
- (e) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained
- (f) Time and circumstances permitting, the availability of other options (what resources are reasonably available to the officer under the circumstances)
- (g) Seriousness of the suspected offense or the reason for contact with the individual
- (h) Training and experience of the officer
- (i) Potential for injury to citizens, officers and suspects
- (j) Risk of escape
- (k) Other exigent circumstances

### 304.4.2 APPLICATION OF THE CEW

Authorized personnel may use the CEW when circumstances known to the officer at the time indicate that such application is reasonable to control a person in any of the following circumstances:

- (a) The subject is violent or physically resisting

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- (b) A subject who by words or action has demonstrated an intention to be violent or to physically resist and who reasonably appears to present the potential to harm officers, him/herself or others
  - 1. When practicable, the officer should give a verbal warning of the intended use of the CEW followed by a reasonable opportunity to voluntarily comply
- (c) Absent meeting the conditions set forth in (a) or (b) above, or a reasonable belief that an individual has committed or threatened to commit a serious offense, mere flight from a pursuing officer shall not serve as good cause for the use of the CEW to apprehend an individual

### 304.4.3 SPECIAL DEPLOYMENT CONSIDERATIONS

The use of the CEW should generally be avoided in the following situations unless the totality of the circumstances indicate that other available options reasonably appear ineffective, impractical, or would present a greater danger to the officer, the subject or others, and the officer reasonably believes that the need to control the individual outweighs the risk of using the CEW:

- (a) Pregnant females
- (b) Elderly individuals or obvious juveniles
- (c) Individuals who are handcuffed or otherwise restrained
- (d) Individuals whose position or activity may result in collateral injury (e.g., falls from height, operating vehicles)

Because the application of the CEW in the drive-stun mode (i.e., direct contact without darts) relies primarily on pain compliance and requires close proximity to the subject, additional caution should be exercised. The application in drive-stun mode should be limited to brief applications in which pain compliance would reasonably appear necessary to achieve control or used as a two-point application technique.

The CEW shall not be used to torture, psychologically torment, elicit statements or to punish any individual.

### 304.4.4 TARGETING CONSIDERATIONS

While manufacturers generally recommend that reasonable efforts should be made to target lower center mass and to avoid intentionally targeting the head, neck, chest and groin, it is recognized that the dynamics of each situation and officer safety may not permit the officer to limit the application of the CEW darts to a precise target area. As such, officers should take prompt and ongoing care to monitor the condition of the subject if one or more darts strikes the head, neck, chest or groin until he/she is released to the care of paramedics or other medical personnel.

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### 304.4.5 MULTIPLE APPLICATIONS OF THE CEW

If the first application of the CEW appears to be ineffective in gaining control of an individual and if circumstances allow, the officer should consider the following before additional applications of the CEW:

- (a) Whether the probes or darts are making proper contact
- (b) Whether the application of the CEW is interfering with the ability of the individual to comply
- (c) Whether verbal commands, other options or tactics may be more effective

This, however, shall not preclude any officer from deploying multiple, reasonable applications of the CEW on an individual, with a total of three (3) applications being the maximum per individual, per incident, unless extraordinary circumstances dictate otherwise.

### 304.4.6 REPORT OF USE

All CEW discharges shall be documented in the related arrest/crime report, the CEW report form and notification made to a supervisor in compliance with Policy § 300.4.1. Any report documenting the discharge of a CEW cartridge will include the cartridge serial number and an explanation of the circumstances surrounding the discharge.

The onboard CEW memory will be downloaded through the data port by a supervisor or a member of the Defensive Tactics Team and saved with the related arrest/crime report. Photographs of probe sites should be taken, the expended cartridge along with both probes and wire should be submitted by the officer collecting the cartridge into evidence for future reference. The cartridge serial number should be noted and documented on the evidence paperwork. The evidence packaging should be marked "Biohazard" if the probes penetrated the subject's skin.

### **304.5 USE OF THE CEW**

The CEW has limitations and restrictions requiring consideration before its use. The CEW should only be used when its operator can safely approach the subject within the operational range of the device. Although the CEW is generally effective in controlling most individuals, officers should be aware that the device may not achieve the intended results and be prepared with other options.

### **304.7 MEDICAL TREATMENT**

Consistent with local medical personnel protocols and absent extenuating circumstances, only appropriate medical personnel should remove CEW probes from a person's body. Used CEW probes shall be treated as a sharps biohazard, similar to a used hypodermic needle, and handled appropriately. Universal precautions should be taken.

All persons who have been struck by CEW probes or who have been subjected to the electric discharge of the device shall be medically assessed prior to booking. Additionally, any such

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## *Conducted Energy Weapon*

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individual who falls under any of the following categories should, as soon as practicable, be examined by paramedics or other qualified medical personnel:

- (a) The person is suspected of being under the influence of controlled substances and/or alcohol
- (b) The person may be pregnant
- (c) The person reasonably appears to be in need of medical attention
- (d) The CEW probes are lodged in a sensitive area (e.g., groin, female breast, head, face, neck)
- (e) The person requests medical treatment

Any individual exhibiting signs of distress or who has been exposed to multiple or prolonged applications (i.e., more than 15 seconds) shall be transported to a medical facility for examination or medically evaluated prior to booking. If any individual refuses medical attention, such a refusal should be witnessed by another officer and/or medical personnel and shall be fully documented in related reports. If an audio recording is made of the contact or an interview with the individual, any refusal should be included, if possible.

The transporting officer shall inform any person providing medical care or receiving custody that the individual has been subjected to the application of the CEW.

## Officer-Involved Shootings and Deaths

### 305.1 PURPOSE AND SCOPE

The purpose of this policy is to establish policy and procedures for the investigation of an incident in which a person is injured or dies as the result of an officer-involved shooting or dies as a result of other action of an officer.

In other incidents not covered by this policy, the Chief of Police may decide that the investigation will follow the process provided in this policy.

### 305.2 POLICY

The policy of the Walnut Creek Police Department is to ensure that officer-involved shootings and deaths are investigated in a thorough, fair and impartial manner.

### 305.3 TYPES OF INVESTIGATIONS

Officer-involved shootings and deaths involve several separate investigations. The investigations may include:

- A criminal investigation of the suspect's actions.
- A criminal investigation of the involved officer's actions.
- An administrative investigation as to policy compliance by involved officers.
- A civil investigation to determine potential liability.

### 305.4 CONTROL OF INVESTIGATIONS

Investigators from surrounding agencies may be assigned to work on the criminal investigation of officer-involved shootings and deaths. This may include at least one investigator from the agency that employs the involved officer.

Jurisdiction is determined by the location of the shooting or death and the agency employing the involved officer. The following scenarios outline the jurisdictional responsibilities for investigating officer-involved shootings and deaths.

#### 305.4.1 CRIMINAL INVESTIGATION OF SUSPECT ACTIONS

The investigation of any possible criminal conduct by the suspect is controlled by the agency in whose jurisdiction the suspect's crime occurred. For example, the Walnut Creek Police Department would control the investigation if the suspect's crime occurred in Walnut Creek.

If multiple crimes have been committed in multiple jurisdictions, identification of the agency that will control the investigation may be reached in the same way as with any other crime. The investigation may be conducted by the agency in control of the criminal investigation of the involved officer, at the discretion of the Chief of Police and with concurrence from the other agency.

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### 305.4.2 CRIMINAL INVESTIGATION OF OFFICER ACTIONS

The control of the criminal investigation into the involved officer's conduct during the incident will be determined by the employing agency's protocol. When an officer from this department is involved, the criminal investigation will be handled according to the Criminal Investigation section of this policy.

Requests made of this department to investigate a shooting or death involving an outside agency's officer shall be referred to the Chief of Police or the authorized designee for approval.

### 305.4.3 ADMINISTRATIVE AND CIVIL INVESTIGATION

Regardless of where the incident occurs, the administrative and civil investigation of each involved officer is controlled by the respective employing agency.

## **305.5 INVESTIGATION PROCESS**

The following procedures are guidelines used in the investigation of an officer-involved shooting or death.

### 305.5.1 UNINVOLVED OFFICER RESPONSIBILITIES

Upon arrival at the scene of an officer-involved shooting, the first uninvolved WCPD officer will be the officer-in-charge and will assume the responsibilities of a supervisor until properly relieved. This officer should, as appropriate:

- (a) Secure the scene and identify and eliminate hazards for all those involved.
- (b) Take reasonable steps to obtain emergency medical attention for injured individuals.
- (c) Request additional resources from the Department or other agencies.
- (d) Coordinate a perimeter or pursuit of suspects.
- (e) Check for injured persons and evacuate as needed.
- (f) Brief the supervisor upon arrival.

### 305.5.2 WATCH COMMANDER RESPONSIBILITIES

Upon learning of an officer-involved shooting or death, the Watch Commander shall be responsible for coordinating all aspects of the incident until he/she is relieved by the Chief of Police or a Bureau Commander.

All outside inquiries about the incident shall be directed to the Watch Commander.

### 305.5.3 NOTIFICATIONS

The following person(s) shall be notified as soon as practicable:

- Chief of Police
- Investigation Bureau Commander
- Officer-Involved Shooting Protocol rollout team
- Outside agency investigator (if appropriate)



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- Internal Affairs Unit supervisor
- Civil liability response team
- Psychological/peer support personnel
- Chaplain
- Coroner (if necessary)
- Involved officer's agency representative (if requested)
- Press Information Officer

### 305.5.4 SUPERVISOR RESPONSIBILITIES

Upon arrival at the scene, the first uninvolved WCPD supervisor should ensure completion of the duties as outlined above, plus:

- (a) Attempt to obtain a brief overview of the situation from any uninvolved officers.
  1. In the event that there are no uninvolved officers who can supply adequate overview, the supervisor should attempt to obtain a brief voluntary overview from one involved officer.
- (b) If necessary, the supervisor may administratively order any WCPD officer to immediately provide public safety information necessary to secure the scene, identify injured parties and pursue suspects.
  1. Public safety information shall be limited to such things as outstanding suspect information, number and direction of any shots fired, perimeter of the incident scene, identity of known or potential witnesses and any other pertinent information.
  2. The initial on-scene supervisor should not attempt to order any involved officer to provide any information other than public safety information.
- (c) Provide all available information to the Watch Commander and Dispatch. If feasible, sensitive information should be communicated over secure networks.
- (d) Take command of and secure the incident scene with additional WCPD members until properly relieved by another supervisor or other assigned personnel or investigator.
- (e) As soon as practicable, ensure that involved officers are transported (separately, if feasible) to a suitable location for further direction.
  1. Each involved WCPD officer should be given an administrative order not to discuss the incident with other involved officers or WCPD members pending further direction from a supervisor.
  2. When an involved officer's weapon is taken or left at the scene for other than officer-safety reasons (e.g., evidence), ensure that he/she is provided with a comparable replacement weapon or transported by other officers.

### 305.5.5 INVOLVED OFFICERS

The following shall be considered for the involved officer:

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- (a) Any request for legal or union representation will be accommodated.
  - 1. Involved WCPD officers shall not be permitted to meet collectively or in a group with an attorney or any representative prior to providing a formal interview or report.
  - 2. Requests from involved non-WCPD officers should be referred to their employing agency.
- (b) Discussions with licensed attorneys will be considered privileged as attorney-client communications.
- (c) Discussions with agency representatives/employee groups will be privileged only as to the discussion of non-criminal information (Government Code § 3303(i)).
- (d) A licensed psychotherapist shall be provided by the Department to each involved WCPD officer. A licensed psychotherapist may also be provided to any other affected WCPD members, upon request.
  - 1. Interviews with a licensed psychotherapist will be considered privileged.
  - 2. An interview or session with a licensed psychotherapist may take place prior to the member providing a formal interview or report. However, involved members shall not be permitted to consult or meet collectively or in a group with a licensed psychotherapist prior to providing a formal interview or report.
  - 3. A separate fitness-for-duty exam may also be required (see the Fitness for Duty Policy).
- (e) Peer counselors are cautioned against discussing the facts of any incident with an involved or witness officer (Government Code § 8669.4).

Care should be taken to preserve the integrity of any physical evidence present on the involved officer's equipment or clothing, such as blood or fingerprints, until investigators or lab personnel can properly retrieve it.

Each involved WCPD officer shall be given reasonable paid administrative leave following an officer-involved shooting or death. It shall be the responsibility of the Watch Commander to make schedule adjustments to accommodate such leave.

### **305.6 CRIMINAL INVESTIGATION**

The District Attorney's Office is responsible for the criminal investigation into the circumstances of any officer-involved shooting or death.

If available, investigative personnel from this department may be assigned to partner with investigators from outside agencies or the District Attorney's Office to avoid duplicating efforts in related criminal investigations.

Once public safety issues have been addressed, criminal investigators should be given the opportunity to obtain a voluntary statement from involved officers and to complete their interviews. The following shall be considered for the involved officer:

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- (a) WCPD supervisors and Internal Affairs Unit personnel should not participate directly in any voluntary interview of WCPD officers. This will not prohibit such personnel from monitoring interviews or providing the criminal investigators with topics for inquiry.
- (b) If requested, any involved officer will be afforded the opportunity to consult individually with a representative of his/her choosing or an attorney prior to speaking with criminal investigators (Government Code § 3303(i)). However, in order to maintain the integrity of each involved officer's statement, involved officers shall not consult or meet with a representative or an attorney collectively or in groups prior to being interviewed.
- (c) If any involved officer is physically, emotionally or otherwise not in a position to provide a voluntary statement when interviewed by criminal investigators, consideration should be given to allowing a reasonable period for the officer to schedule an alternate time for the interview.
- (d) Any voluntary statement provided by an involved officer will be made available for inclusion in any related investigation, including administrative investigations. However, no administratively coerced statement will be provided to any criminal investigators unless the officer consents.

### 305.6.1 REPORTS BY INVOLVED WCPD OFFICERS

In the event that suspects remain outstanding or subject to prosecution for related offenses, this department shall retain the authority to require involved WCPD officers to provide sufficient information for related criminal reports to facilitate the apprehension and prosecution of those individuals (Government Code § 3304(a)).

While the involved WCPD officer may write the report, it is generally recommended that such reports be completed by assigned investigators, who should interview all involved officers as victims/witnesses. Since the purpose of these reports will be to facilitate criminal prosecution, statements of involved officers should focus on evidence to establish the elements of criminal activities by suspects. Care should be taken not to duplicate information provided by involved officers in other reports.

Nothing in this section shall be construed to deprive an involved WCPD officer of the right to consult with legal counsel prior to completing any such criminal report.

Reports related to the prosecution of criminal suspects will be processed according to normal procedures but should also be included for reference in the investigation of the officer-involved shooting or death.

### 305.6.2 WITNESS IDENTIFICATION AND INTERVIEWS

Because potential witnesses to an officer-involved shooting or death may become unavailable or the integrity of their statements compromised with the passage of time, a supervisor should take reasonable steps to promptly coordinate with criminal investigators to utilize available personnel for the following:

- (a) Identification of all persons present at the scene and in the immediate area.

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1. When feasible, a recorded statement should be obtained from those persons who claim not to have witnessed the incident but who were present at the time it occurred.
  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 a member of the Department.
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 transportation.
- (c) Promptly contacting the suspect's known family and associates to obtain any available and untainted background information about the suspect's activities and state of mind prior to the incident.

### **305.6.3 INVESTIGATIVE PERSONNEL**

Once notified of an officer-involved shooting or death, it shall be the responsibility of the designated Detective Bureau supervisor to assign appropriate investigative personnel to handle the investigation of related crimes. Department investigators will be assigned to work with investigators from the District Attorney's Office and may be assigned to separately handle the investigation of any related crimes not being investigated by the District Attorney's Office.

All related department reports, except administrative and/or privileged reports, will be forwarded to the designated Detective Bureau supervisor for approval. Privileged reports shall be maintained exclusively by members who are authorized such access. Administrative reports will be forwarded to the appropriate Bureau Commander.

### **305.7 ADMINISTRATIVE INVESTIGATION**

In addition to all other investigations associated with an officer-involved shooting or death, this department will conduct an internal administrative investigation of WCPD officers to determine conformance with department policy. The investigation will be conducted under the supervision of the Internal Affairs Unit and will be considered a confidential officer personnel file.

Interviews of members shall be subject to department policies and applicable laws (see the Personnel Complaints Policy).

- (a) Any officer involved in a shooting or death may be requested or administratively compelled to provide a blood sample for alcohol/drug screening. Absent consent from

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the officer, such compelled samples and the results of any such testing shall not be disclosed to any criminal investigative agency.

- (b) If any officer has voluntarily elected to provide a statement to criminal investigators, the assigned administrative investigator should review that statement before proceeding with any further interview of that involved officer.
  - 1. If a further interview of the officer is deemed necessary to determine policy compliance, care should be taken to limit the inquiry to new areas with minimal, if any, duplication of questions addressed in the voluntary statement. The involved officer shall be provided with a copy of his/her prior statement before proceeding with any subsequent interviews.
- (c) In the event that an involved officer has elected to not provide criminal investigators with a voluntary statement, the assigned administrative investigator shall conduct an administrative interview to determine all relevant information.
  - 1. Although this interview should not be unreasonably delayed, care should be taken to ensure that the officer's physical and psychological needs have been addressed before commencing the interview.
  - 2. If requested, the officer shall have the opportunity to select an uninvolved representative to be present during the interview. However, in order to maintain the integrity of each individual officer's statement, involved officers shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed (Government Code § 3303(i)).
  - 3. Administrative interviews should be recorded by the investigator. The officer may also record the interview (Government Code § 3303(g)).
  - 4. The officer shall be informed of the nature of the investigation. If an officer refuses to answer questions, he/she should be given his/her *Lybarger* or *Garrity* rights and ordered to provide full and truthful answers to all questions. The officer shall be informed that the interview will be for administrative purposes only and that the statement cannot be used criminally.
  - 5. The Internal Affairs Unit shall compile all relevant information and reports necessary for the Department to determine compliance with applicable policies.
  - 6. Regardless of whether the use of force is an issue in the case, the completed administrative investigation shall be submitted to the Use of Force Review Board, which will restrict its findings as to whether there was compliance with the Use of Force Policy.
  - 7. Any other indications of potential policy violations shall be determined in accordance with standard disciplinary procedures.

### **305.8 AUDIO AND VIDEO RECORDINGS**

Any officer involved in a shooting or death may be permitted to review available Mobile Audio/Video (MAV), body-worn video, or other video or audio recordings prior to providing a recorded statement or completing reports.

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Upon request, non-law enforcement witnesses who are able to verify their presence and their ability to contemporaneously perceive events at the scene of an incident may also be permitted to review available MAV, body-worn video, or other video or audio recordings with approval of assigned investigators or a supervisor.

Any MAV, body-worn and other known video or audio recordings of an incident should not be publicly released during an ongoing investigation without consulting the prosecuting attorney or City Attorney's Office, as appropriate.

### **305.9 CIVIL LIABILITY RESPONSE**

A member of this department may be assigned to work exclusively under the direction of the legal counsel for the Department to assist in the preparation of materials deemed necessary in anticipation of potential civil litigation.

All materials generated in this capacity shall be considered attorney work product and may not be used for any other purpose. The civil liability response is not intended to interfere with any other investigation but shall be given reasonable access to all other investigations.

### **305.10 DEBRIEFING**

Following an officer-involved shooting or death, the Walnut Creek Police Department should conduct both a critical incident/stress debriefing and a tactical debriefing.

#### **305.10.1 CRITICAL INCIDENT/STRESS DEBRIEFING**

A critical incident/stress debriefing should occur as soon as practicable. The Administration Bureau Commander is responsible for organizing the debriefing. Notes and recorded statements should not be taken because the sole purpose of the debriefing is to help mitigate the stress-related effects of a traumatic event.

The debriefing is not part of any investigative process. Care should be taken not to release or repeat any communication made during a debriefing unless otherwise authorized by policy, law, or a valid court order.

Attendance at the debriefing shall only include those members of the Department directly involved in the incident, which can include support personnel (e.g., dispatchers, other civilian personnel). Family or other support personnel may attend with the concurrence of those involved in the incident. The debriefing shall be closed to the public and should be closed to all other members of the Department, including supervisory and Internal Affairs Unit personnel.

#### **305.10.2 TACTICAL DEBRIEFING**

A tactical debriefing should take place to identify any training or areas of policy that need improvement. The Chief of Police should identify the appropriate participants. This debriefing should not be conducted until all involved members have provided recorded or formal statements to criminal and/or administrative investigators.

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### **305.11 MEDIA RELATIONS**

Any media release shall be prepared with input and concurrence from the supervisor and department representative responsible for each phase of the investigation. Releases will be available to the Watch Commander, Investigation Bureau Commander and Press Information Officer in the event of inquiries from the media.

The Department shall not subject any involved WCPD officer to visits by the media (Government Code § 3303(e)). No involved WCPD officer shall make any comment to the media unless he/she is authorized by the Chief of Police or a Bureau Commander. Department members receiving inquiries regarding officer-involved shootings or deaths occurring in other jurisdictions shall refrain from public comment and will direct those inquiries to the agency having jurisdiction and primary responsibility for the investigation.

### **305.12 REPORTING**

If the death of an individual occurs in the Walnut Creek Police Department jurisdiction and qualifies to be reported to the state as a justifiable homicide or an in-custody death, the Patrol Bureau Commander will ensure that the Records Manager is provided with enough information to meet the reporting requirements (Penal Code § 196; Penal Code § 13022; Government Code § 12525).

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# Administration of Cardiopulmonary Resuscitation (CPR)

## 306.1 POLICY

It shall be the policy of the Walnut Creek Police Department to initiate cardiopulmonary resuscitation (CPR) on a victim who has suffered injury or sudden illness which has resulted in the cessation of breathing, heartbeat, or both. Unless there are obvious signs of death, a Pre hospital Do Not Resuscitate Order (DNR) is presented, or the victim possesses a DNR MedicAlert bracelet or necklace, CPR shall be started.

### 306.1.1 PURPOSE

One of our primary responsibilities as police officers is the protection of human life. We may encounter victims who have suffered life threatening injury or sudden illness. Since we have limited medical training, we may be unable to determine if a victim is alive or dead and we may not be able to establish the time of death. This may cause an officer to question whether or not to initiate CPR.

The purpose of this directive is to standardize guidelines for initiating CPR. It is necessary to align this directive with those established by the Contra Costa County Health Services Department and the State EMS Authority.

## 306.2 PROCEDURES

The following will be the policy of the Walnut Creek Police Department regarding initiation of CPR to victims:

- (a) CPR will be administered in a manner prescribed by the Commission on Peace Officer Standards and Training, the American Heart Association, and/or the American Red Cross. CPR re-certification training will be provided once every two years.
- (b) Breathing masks with one way valves have been provided to each officer to help administer CPR to a victim. Officers are required by CAL/OSHA to carry a "barrier device" and should use the mask when performing CPR on a victim. Each officer is responsible for his/her own mask. The mask is designed to be cleaned and reused. They should be checked periodically for maintenance. Inoperable masks should be reported to the First Aid/CPR Training Team supervisor.
- (c) The following conditions are exceptions to initiating CPR:
  1. Decapitation
  2. A severe wound with separation of vital organs where no life signs exist
  3. Existence of postmortem lividity. (This condition occurs after death when blood circulation ceases and the blood settles to the lowest part of the body.)
  4. Existence of rigor mortis. (This condition occurs after death but the onset varies depending on the environmental conditions. It affects the muscles and body



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fibers, making them temporarily stiff and locking the joints in a fixed position. They will eventually return to a relaxed state. The condition normally occurs in conjunction with postmortem lividity, and both conditions precede putrefication or decomposition.)

5. Extreme burning or charring of the victim's head and/or torso with no life signs
6. Mass casualty incidents
7. Presentation of a Contra Costa County Pre hospital Do Not Resuscitate Order, State of California DNR Order, or possession of a DNR MedicAlert bracelet or necklace, when identity is confirmed as explained in section V.

### **306.3 PRE-HOSPITAL DO-NOT-RESUSCITATE ORDER (DNR)**

It is within a patient's right to request that no "heroic" measures be taken to prolong his/her life, whether or not the patient has a terminal illness. A Pre hospital Do Not Resuscitate Order documents that right. In the event that a DNR patient dies, the family/caretaker has been instructed to call the local police department for an officer to verify the death.

- (a) A "Do Not Resuscitate Order" (DNR) means that no chest compressions, ventilations, defibrillation, or other methods of life support shall be used to revive a victim. (Note: the Heimlich Maneuver for relief of a choking victim because of a foreign body airway obstruction is permitted.)
- (b) The DNR Order is a form provided to patients under the care of a doctor by the State of California EMS Authority or the Contra Costa County Health Services Department. It must be completed fully and accurately. They are the **ONLY** forms accepted by Emergency Medical Services (EMS) personnel. It must include the following:
  1. The patient's name, address, and birth date
  2. The patient's signature OR the signature of the Attorney in Fact for Health Care Decisions. (A copy of the Durable Power of Attorney for Health Care Decisions must accompany the DNR form when signed by the Attorney in Fact.)
  3. Date of signature
  4. One witness signature and date signed
  5. Signature and name printed of attending doctor, date signed, address, telephone number, and (if applicable) the agency or facility affiliation
- (c) If police personnel are the first to arrive at the scene of a medical emergency, and a DNR Order is in effect, the following must be done:
  1. The DNR Order must be physically presented to the officer.
  2. The officer must verify that the Order is filled out completely. **THE PATIENT MAY VERBALLY RESCIND THE DNR ORDER AT ANY TIME.**

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3. Verify the patient's identity as being the person for whom the order was intended. In a home, the patient must be positively identified either by at least one witness (preferably a family member) or a legal form of identification (i.e., a California driver's license or a California ID card). The name of the witness or manner of ID shall be documented. The patient may also have a hospital type ID bracelet which may be used. The responding ambulance may be canceled if not needed and not yet on scene.
  4. If applicable, the patient shall be given comfort measures and treatment other than resuscitative measures (i.e., passive oxygen, control of external bleeding, splinting of fractures, the Heimlich Maneuver).
  5. Upon arrival of ambulance personnel, present them with the DNR Order and allow them to proceed with any comfort measures or transportation to a hospital.
- (d) If a DNR Order is presented but relatives or other persons at the scene object to the DNR Order or the validity of the Order is questionable:
1. Appropriate care and resuscitative measures for the patient shall be provided. Request paramedic personnel to respond.
  2. Ambulance personnel, upon arrival, shall contact their appropriate base hospital. Base hospital physicians retain full responsibility and authority for determining the appropriateness and extent of pre hospital resuscitation decisions.
- (e) If CPR is initiated prior to the presentation of a DNR Order, CPR shall continue until ambulance personnel establish base hospital contact. The base hospital physician may order discontinuation of resuscitative measures upon oral verification of a valid and complete DNR Order and verification of the patient's identity.
- (f) If no DNR Order is present, all appropriate interventions and resuscitative measures shall be given to the victim.
- (g) In the event that the victim dies before or during an officer's presence, a numbered Sudden Death case shall be taken with all appropriate documentation. Retain a copy of the DNR Order for the case.

### **306.4 "MEDICALERT" MEDALLION/BRACELET**

In addition to the state and county forms, in cooperative agreement with the State EMS Authority, MedicAlert Foundation has established a DNR program. Possession of a medallion/bracelet indicates a DNR Order in place and will be recognized by EMS personnel.

There are two program phases old and new. The older program did not have a DNR form to accompany the patient. They may or may not currently possess a form but have been notified to do so. Their medallion/bracelet will state "DO NOT RESUSCITATE."

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In the newer program, a DNR form is to be completed by the patient. It will be a state or county form and must be accurate. Their bracelet will state "DO NOT RESUSCITATE-- EMS." In either case, the patient will possess a wallet card identifying the patient and any medical information.

- (a) The officer shall verify the victim's identity by comparing the bracelet/medallion reference numbers with the wallet card.
- (b) Then the officer shall verify the victim's name by comparing the name on the wallet card with a valid identification of/from the victim.
- (c) If there is no wallet card, the officer shall call the MedicAlert "800" number on the bracelet/medallion to verify the victim's ID.
- (d) A DNR form is not required when a victim is in possession of a MedicAlert bracelet/medallion indicating "DO NOT RESUSCITATE," but it is helpful. The bracelet/medallion alone is enough.

## Vehicle Pursuits

### 307.1 PURPOSE AND SCOPE

Vehicle pursuits expose innocent citizens, law enforcement officers and fleeing violators to the risk of serious injury or death. The primary purpose of this policy is to provide officers with guidance in balancing the safety of the public and themselves against law enforcement's duty to apprehend violators of the law. Another purpose of this policy is to reduce the potential for pursuit-related collisions. Vehicular pursuits require officers to exhibit a high degree of common sense and sound judgment. Officers must not forget that the immediate apprehension of a suspect is generally not more important than the safety of the public and pursuing officers.

Deciding whether to pursue a motor vehicle is a critical decision that must be made quickly and under difficult and unpredictable circumstances. In recognizing the potential risk to public safety created by vehicular pursuits, no officer or supervisor shall be criticized or disciplined for deciding not to engage in a vehicular pursuit because of the risk involved. This includes circumstances where department policy would permit the initiation or continuation of the pursuit. It is recognized that vehicular pursuits are not always predictable and decisions made pursuant to this policy will be evaluated according to the totality of the circumstances reasonably available at the time of the pursuit.

Officers must remember that the most important factors to the successful conclusion of a pursuit are proper self-discipline and sound professional judgment. Officer's conduct during the course of a pursuit must be objectively reasonable; that is, what a reasonable officer would do under the circumstances. An unreasonable individual's desire to apprehend a fleeing suspect at all costs has no place in professional law enforcement.

#### 307.1.1 EMERGENCY RESPONSE PROCEDURES

- (a) The California Vehicle Code Section 21055 provides that the driver of an authorized emergency vehicle shall be exempt from certain Vehicle Code sections only when the authorized emergency vehicle is being operated under the following circumstances:
  1. A solid red light is displayed and is visible to the front of the vehicle as a warning to other drivers and pedestrians; and
  2. A siren is being sounded as may be reasonably necessary; and
  3. The authorized emergency vehicle is being operated under one of the following circumstances:
    - (a) In responding to an emergency call, or
    - (b) While engaged in rescue operations, or
    - (c) In the immediate pursuit of an actual or suspected violator of the law, or
    - (d) In responding to, but not returning from a fire alarm.

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- (b) The exemption granted to emergency vehicles by the Vehicle Code does not relieve the driver of a vehicle from the duty to drive with due regard for the safety of all persons using the highway, nor protect him/her from the consequences of an arbitrary exercise of the privilege granted.
- (c) The exemption granted to emergency vehicles by the Vehicle Code does not authorize responding to an emergency call for an animal or a rescue operation for an animal.
- (d) An emergency vehicle operated code 3 shall be operated at a reasonable speed for conditions:
  - (a) Except when in immediate pursuit or when affecting a traffic stop, the speed at which police vehicles should be operated in an emergency response should normally not exceed 20 miles per hour over the posted speed limit.
  - (b) Police vehicles on code 3 assignments may proceed through traffic control devices only after the driver has assured himself/herself that he/she can do so safely.
  - (c) Except for pursuits, officers should not enter blind intersections at a speed greater than 15 miles per hour.
- (e) A safe distance shall be maintained between emergency vehicles operating code 3 on the same road.
- (f) The first unit arriving at the scene of an emergency shall evaluate the situation and advise by radio as soon as possible, the number of additional units required.

### 307.1.2 VEHICLE PURSUIT DEFINED

A vehicle pursuit is an event involving one or more law enforcement officers attempting to apprehend a suspect who is attempting to avoid arrest while operating a motor vehicle by using high speed driving or other evasive tactics such as driving off a highway, turning suddenly, or driving in a legal manner but willfully failing to yield to an officer's signal to stop.

### 307.2 OFFICER RESPONSIBILITIES

It shall be the policy of this department that a vehicle pursuit shall be conducted only with red light and siren as required by Vehicle Code § 21055 for exemption from compliance with the rules of the road. The following policy is established to provide officers with guidelines for driving with due regard and caution for the safety of all persons using the highway as required by Vehicle Code § 21056.

#### 307.2.1 WHEN TO INITIATE A PURSUIT

Officers are authorized to initiate a pursuit when it is reasonable to believe that a suspect is attempting to evade arrest or detention by fleeing in a vehicle.

The following factors individually and collectively shall be considered in deciding whether to initiate a pursuit:

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- (a) Seriousness of the known or reasonably suspected crime and its relationship to community safety.
- (b) The importance of protecting the public and balancing the known or reasonably suspected offense and the apparent need for immediate capture against the risks to officers, innocent motorists and others.
- (c) Apparent nature of the fleeing suspects (e.g., whether the suspects represent a serious threat to public safety).
- (d) The identity of the suspects has been verified and there is comparatively minimal risk in allowing the suspects to be apprehended at a later time.
- (e) Safety of the public in the area of the pursuit, including the type of area, time of day, the amount of vehicular and pedestrian traffic and the speed of the pursuit relative to these factors.
- (f) Pursuing officers familiarity with the area of the pursuit, the quality of radio communications between the pursuing units and the dispatcher/supervisor and the driving capabilities of the pursuing officers under the conditions of the pursuit.
- (g) Weather, traffic and road conditions that substantially increase the danger of the pursuit beyond the worth of apprehending the suspect.
- (h) Performance capabilities of the vehicles used in the pursuit in relation to the speeds and other conditions of the pursuit.
- (i) Vehicle speeds.
- (j) Other persons in or on the pursued vehicle (e.g., passengers, co-offenders and hostages).
- (k) Availability of other resources such as helicopter assistance.
- (l) The police unit is carrying passengers other than police officers. Pursuits should not be undertaken with a prisoner in the police vehicle.

### 307.2.2 WHEN TO TERMINATE A PURSUIT

Pursuits should be discontinued whenever the totality of objective circumstances known or which reasonably ought to be known to the officer or supervisor during the pursuit indicates that the present risks of continuing the pursuit reasonably appear to outweigh the risks resulting from the suspect's escape.

The factors listed in When to Initiate a Pursuit of this policy are expressly included herein and will apply equally to the decision to discontinue as well as the decision to initiate a pursuit. Officers and supervisors must objectively and continuously weigh the seriousness of the offense against the potential danger to innocent motorists and themselves when electing to continue a pursuit. In the context of this policy, the term "terminate" shall be construed to mean discontinue or to stop chasing the fleeing vehicle.

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In addition to the factors listed in When to Initiate a Pursuit of this policy, the following factors should also be considered in deciding whether to terminate a pursuit:

- (a) Distance between the pursuing officers and the fleeing vehicle is so great that further pursuit would be futile or require the pursuit to continue for an unreasonable time and/or distance.
- (b) Pursued vehicle's location is no longer definitely known.
- (c) Officer's pursuit vehicle sustains any type of damage that renders it unsafe to drive.
- (d) Extended pursuits of violators for misdemeanors not involving violence or risk of serious harm (independent of the pursuit) are discouraged.
- (e) There are hazards to uninvolved bystanders or motorists.
- (f) If the identity of the offender is known and it does not reasonably appear that the need for immediate capture outweighs the risks associated with continuing the pursuit, officers should strongly consider discontinuing the pursuit and apprehending the offender at a later time.
- (g) Pursuit is terminated by a supervisor.

### **307.2.3 SPEED LIMITS**

The speed of a pursuit is a factor that should be evaluated on a continuing basis by the officer and supervisor. Evaluation of vehicle speeds shall take into consideration public safety, officer safety and the safety of the occupants of the fleeing vehicle.

Should high vehicle speeds be reached during a pursuit, officers and supervisors shall also consider these factors when determining the reasonableness of the speed of the pursuit:

- (a) Pursuit speeds have become unreasonably unsafe for the surrounding conditions.
- (b) Pursuit speeds have exceeded the driving ability of the officer.
- (c) Pursuit speeds are beyond the capabilities of the pursuit vehicle thus making its operation unsafe.

### **307.3 PURSUIT UNITS**

Pursuit units should be limited to three vehicles (two units and a supervisor); however, the number of units involved will vary with the circumstances. An officer or supervisor may request additional units to join a pursuit if, after assessing the factors outlined above, it appears that the number of officers involved would be insufficient to safely arrest the suspects. All other officers should stay out of the pursuit, but should remain alert to its progress and location. Any officer who drops out of a pursuit may then, if necessary, proceed to the termination point at legal speeds, following the appropriate rules of the road.

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### 307.3.1 MOTORCYCLE OFFICERS

A distinctively marked patrol vehicle equipped with emergency overhead lighting should replace a police motorcycle as primary and/or secondary pursuit unit as soon as practical.

### 307.3.2 UNMARKED VEHICLES WITH EMERGENCY EQUIPMENT

A distinctively marked patrol vehicle equipped with emergency overhead lighting should replace a police an unmarked vehicle as primary and/or secondary pursuit unit as soon as practical. Those officers in an unmarked vehicle should terminate their involvement in any pursuit immediately upon arrival of a sufficient number of marked emergency police vehicles or any police helicopter.

### 307.3.3 VEHICLES WITHOUT EMERGENCY EQUIPMENT

Vehicles not equipped with red light and siren are generally prohibited from initiating or joining in any pursuit. Officers in such vehicles, however, may become involved in emergency activities involving serious crimes or life threatening situations. Those officers should terminate their involvement in any pursuit immediately upon arrival of a sufficient number of emergency police vehicles or any police helicopter. The exemptions provided by Vehicle Code § 21055 do not apply to officers using vehicles without emergency equipment.

### 307.3.4 PRIMARY UNIT RESPONSIBILITIES

The initial pursuing unit will be designated as the primary pursuit unit and will be responsible for the conduct of the pursuit unless it is unable to remain reasonably close enough to the violator's vehicle. The primary responsibility of the officer initiating the pursuit is the apprehension of the suspects without unreasonable danger to him/herself or other persons.

Notify Dispatch that a vehicle pursuit has been initiated and as soon as practicable provide information including, but not limited to:

- (a) Reason for the pursuit.
- (b) Location and direction of travel.
- (c) Speed of the fleeing vehicle.
- (d) Description of the fleeing vehicle and license number, if known.
- (e) Number of known occupants.
- (f) The identity or description of the known occupants.
- (g) Information concerning the use of firearms, threat of force, injuries, hostages or other unusual hazards.

Unless relieved by a supervisor or secondary unit, the officer in the primary unit shall be responsible for the broadcasting of the progress of the pursuit. Unless practical circumstances indicate otherwise, and in order to concentrate on pursuit driving, the primary officer should



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relinquish the responsibility of broadcasting the progress of the pursuit to a secondary unit or aircraft joining the pursuit.

### 307.3.5 SECONDARY UNITS RESPONSIBILITIES

The second officer in the pursuit is responsible for the following:

- (a) The officer in the secondary unit should immediately notify the dispatcher of entry into the pursuit.
- (b) Remain a safe distance behind the primary unit unless directed to assume the role of primary officer, or if the primary unit is unable to continue the pursuit.
- (c) The secondary officer should be responsible for broadcasting the progress of the pursuit unless the situation indicates otherwise.

### 307.3.6 PURSUIT DRIVING TACTICS

The decision to use specific driving tactics requires the same assessment of considerations outlined in the factors to be considered concerning pursuit initiation and termination. The following are tactics for units involved in the pursuit:

- (a) Officers, considering their driving skills and vehicle performance capabilities, will space themselves from other involved vehicles such that they are able to see and avoid hazards or react safely to maneuvers by the fleeing vehicle.
- (b) Because intersections can present increased risks, the following tactics should be considered:
  - 1. Available units not directly involved in the pursuit may proceed safely to controlled intersections ahead of the pursuit in an effort to warn cross traffic.
  - 2. Pursuing units should exercise due caution when proceeding through controlled intersections.
- (c) As a general rule, officers should not pursue a vehicle driving left of center (wrong way) on a freeway. In the event that the pursued vehicle does so, the following tactics should be considered:
  - 1. Requesting assistance from an air unit.
  - 2. Maintaining visual contact with the pursued vehicle by paralleling it on the correct side of the roadway.
  - 3. Requesting other units to observe exits available to the suspects.
- (d) Notifying the California Highway Patrol (CHP) and/or other jurisdictional agency if it appears that the pursuit may enter their jurisdiction.
- (e) Officers involved in a pursuit should not attempt to pass other units unless the situation indicates otherwise or they are requested to do so by the primary unit.

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### 307.3.7 TACTICS/PROCEDURES FOR UNITS NOT INVOLVED IN THE PURSUIT

There should be no paralleling of the pursuit route. Officers are authorized to use emergency equipment at intersections along the pursuit path to clear intersections of vehicular and pedestrian traffic to protect the public. Officers should remain in their assigned area and should not become involved with the pursuit unless directed otherwise by a supervisor.

Non-pursuing personnel needed at the termination of the pursuit should respond in a non-emergency manner, observing the rules of the road.

The primary and secondary units should be the only units operating under emergency conditions (red light and siren) unless other units are assigned to the pursuit.

### 307.3.8 PURSUIT TRAILING

In the event the initiating unit from this agency either relinquishes control of the pursuit to another unit or jurisdiction, that initiating unit may, with permission of a supervisor, trail the pursuit to the termination point in order to provide necessary information and assistance for the arrest of the suspects.

The term trail means to follow the path of the pursuit at a safe speed while obeying all traffic laws and without activating emergency equipment. If the pursuit is at a slow rate of speed, the trailing unit will maintain sufficient distance from the pursuit units so as to clearly indicate an absence of participation in the pursuit.

### 307.3.9 AIRCRAFT ASSISTANCE

When available, aircraft assistance should be requested. Once the air unit has established visual contact with the pursued vehicle, it should assume control over the pursuit. The primary and secondary ground units should consider the participation of aircraft assistance when determining whether to continue the pursuit.

The air unit should coordinate the activities of resources on the ground, report progress of the pursuit and provide officers and supervisors with details of upcoming traffic congestion, road hazards, or other pertinent information to evaluate whether or not to continue the pursuit. If ground units are not within visual contact and the air unit determines that it is unsafe to continue the pursuit, the air unit has the authority to terminate the pursuit.

### 307.3.10 POLICE RESERVE OFFICERS

A Reserve Officer who has been properly trained in pursuit driving is authorized to drive a police vehicle in a pursuit, only if there is a regular officer in the vehicle with him/her.

A Reserve Officer driving in a pursuit has full authority to terminate it at any time. In addition, the accompanying regular officer has the authority to order the pursuit terminated.

## **307.4 SUPERVISORY CONTROL AND RESPONSIBILITY**

It is the policy of this department that available supervisory and management control will be exercised over all vehicle pursuits involving officers from this department.

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The field supervisor of the officer initiating the pursuit, or if unavailable, the nearest field supervisor will be responsible for the following:

- (a) Upon becoming aware of a pursuit, immediately ascertaining all reasonably available information to continuously assess the situation and risk factors associated with the pursuit in order to ensure that the pursuit is conducted within established department guidelines.
- (b) Engaging in the pursuit, when appropriate, to provide on-scene supervision.
- (c) Exercising management and control of the pursuit even if not engaged in it.
- (d) Ensuring that no more than the number of required police units needed are involved in the pursuit under the guidelines set forth in this policy.
- (e) Directing that the pursuit be terminated if, in his/her judgment, it is unjustified to continue the pursuit under the guidelines of this policy.
- (f) Ensuring that aircraft are requested if available.
- (g) Ensuring that the proper radio channel is being used.
- (h) Ensuring the notification and/or coordination of outside agencies if the pursuit either leaves or is likely to leave the jurisdiction of this agency.
- (i) Controlling and managing WCPD units when a pursuit enters another jurisdiction.
- (j) Preparing post-pursuit critique and analysis of the pursuit for training purposes.

#### **307.4.1 WATCH COMMANDER RESPONSIBILITY**

Upon becoming aware that a pursuit has been initiated, the Watch Commander should monitor and continually assess the situation and ensure the pursuit is conducted within the guidelines and requirements of this policy. The Watch Commander has the final responsibility for the coordination, control and termination of a vehicle pursuit and shall be in overall command.

The Watch Commander shall review all pertinent reports for content and forward to the Bureau Commander.

#### **307.5 COMMUNICATIONS**

If the pursuit is confined within the City limits, radio communications will be conducted on the primary channel unless instructed otherwise by a supervisor or communications dispatcher.

##### **307.5.1 COMMUNICATION CENTER RESPONSIBILITIES**

Upon notification that a pursuit has been initiated, Dispatch will:

- (a) Coordinate pursuit communications of the involved units and personnel.
- (b) Notify and coordinate with other involved or affected agencies as practicable.
- (c) Ensure that a field supervisor is notified of the pursuit.

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- (d) Assign an incident number and log all pursuit activities.
- (e) Broadcast pursuit updates as well as other pertinent information as necessary.
- (f) Notify the Watch Commander as soon as practicable.

### 307.5.2 LOSS OF PURSUED VEHICLE

When the pursued vehicle is lost, the primary unit should broadcast pertinent information to assist other units in locating suspects. The primary unit will be responsible for coordinating any further search for either the pursued vehicle or suspects fleeing on foot.

### **307.6 INTER-JURISDICTIONAL CONSIDERATIONS**

When a pursuit enters another agency's jurisdiction, the primary officer or supervisor, taking into consideration distance traveled, unfamiliarity with the area and other pertinent facts, should determine whether to request the other agency to assume the pursuit. Unless entry into another jurisdiction is expected to be brief, it is generally recommended that the primary officer or supervisor ensure that notification is provided to each outside jurisdiction into which the pursuit is reasonably expected to enter, regardless of whether such jurisdiction is expected to assist.

#### 307.6.1 ASSUMPTION OF PURSUIT BY ANOTHER AGENCY

Units originally involved will discontinue the pursuit when advised that another agency has assumed the pursuit and assistance of the Walnut Creek Police Department is no longer needed. Upon discontinuing the pursuit, the primary unit may proceed upon request, with or at the direction of a supervisor, to the termination point to assist in the investigation.

The role and responsibilities of officers at the termination of a pursuit initiated by this department shall be coordinated with appropriate consideration of the units from the agency assuming the pursuit.

Notification of a pursuit in progress should not be construed as a request to join the pursuit. Requests to or from another agency to assume a pursuit should be specific. Because of communication limitations between local agencies and CHP units, a request for CHP assistance will mean that they will assume responsibilities for the pursuit. For the same reasons, when a pursuit leaves the freeway and a request for assistance is made to this department, the CHP should relinquish control.

#### 307.6.2 PURSUITS EXTENDING INTO THIS JURISDICTION

The agency that initiates a pursuit shall be responsible for conducting the pursuit. Units from this department should not join a pursuit unless specifically requested to do so by the agency whose officers are in pursuit. The exception to this is when a single unit from the initiating agency is in pursuit. Under this circumstance, a unit from this department may join the pursuit until sufficient units from the initiating agency join the pursuit.

When a request is made for this department to assist or take over a pursuit from another agency that has entered this jurisdiction, the supervisor should consider these additional following factors:

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- (a) Ability to maintain the pursuit
- (b) Circumstances serious enough to continue the pursuit
- (c) Adequate staffing to continue the pursuit
- (d) The public's safety within this jurisdiction
- (e) Safety of the pursuing officers

As soon as practicable, a supervisor or the Watch Commander should review a request for assistance from another agency. The Watch Commander or supervisor, after consideration of the above factors, may decline to assist in, or assume the other agency's pursuit.

Assistance to a pursuing allied agency by officers of this department will terminate at the City limits provided that the pursuing officers have sufficient assistance from other sources. Ongoing participation from this department may continue only until sufficient assistance is present.

In the event that a pursuit from another agency terminates within this jurisdiction, officers shall provide appropriate assistance to officers from the allied agency including, but not limited to, scene control, coordination and completion of supplemental reports and any other assistance requested or needed.

### **307.7 PURSUIT INTERVENTION**

Pursuit intervention is an attempt to terminate the ability of a suspect to continue to flee in a motor vehicle through tactical application of technology, road spikes, blocking, boxing, ramming or roadblock procedures. In this context, ramming shall be construed to mean maneuvering the police unit into contact with the pursued vehicle to mechanically disable or forcibly position it such that further flight is not possible or practical.

#### **307.7.1 WHEN USE IS AUTHORIZED**

Use of pursuit intervention tactics should be employed only after approval of a supervisor. In deciding whether to use intervention tactics, officers/supervisors should balance the risks of allowing the pursuit to continue with the potential hazards arising from the use of each tactic to the public, the officers and persons in or on the pursued vehicle. With these risks in mind, the decision to use any intervention tactic should be reasonable in light of the circumstances confronting the officer at the time of the decision.

It is imperative that officers act within the bounds of legality, good judgment and accepted practices.

#### **307.7.2 DEFINITIONS**

**Blocking or Vehicle Intercept** - A slow speed coordinated maneuver where two or more patrol vehicles simultaneously intercept and block the movement of a suspect vehicle, the driver of which may be unaware of the impending enforcement stop, with the goal of containment and preventing a pursuit. Blocking is not a moving or stationary road block.

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**Boxing-in** - A tactic designed to stop a violator's vehicle by surrounding it with law enforcement vehicles and then slowing all vehicles to a stop.

**Ramming** - The deliberate act of impacting a violator's vehicle with another vehicle to functionally damage or otherwise force the violator's vehicle to stop.

**Roadblocks** - A tactic designed to stop a violator's vehicle by intentionally placing an emergency vehicle or other immovable object in the path of the violator's vehicle.

**Stop Stick/Spike Strip** - A rigid column or a strip of belting containing specially designed hollow spikes which when deployed across a lane of roadway, penetrates tires, slowing the pursued vehicle usually to a complete stop.

**StarChase System** - A pursuit reduction technology containing a miniature GPS module encased in a tracking projectile/tag that is deployed from a fixed launcher mounted on a law enforcement vehicle.

### 307.7.3 USE OF FIREARMS

The use of firearms to disable a pursued vehicle is not generally an effective tactic and involves all the dangers associated with discharging firearms. Officers should not utilize firearms during an ongoing pursuit unless the conditions and circumstances dictate that such use reasonably appears necessary to protect life. Nothing in this section shall be construed to prohibit any officer from using a firearm to stop a suspect from using a vehicle as a deadly weapon.

### 307.7.4 INTERVENTION STANDARDS

Any pursuit intervention tactic, depending upon the conditions and circumstances under which it is used, may present dangers to the officers, the public or anyone in or on the vehicle being pursued. Certain applications of intervention tactics may be construed to be a use of deadly force and subject to the requirements for such use. Officers shall consider these facts and requirements prior to deciding how, when, where and if an intervention tactic should be employed.

- (a) Blocking or vehicle intercept should only be considered in cases involving felony suspects or impaired drivers who pose a threat to public safety when officers reasonably believe that attempting a conventional enforcement stop will likely result in the driver attempting to flee in the vehicle. Because of the potential risks involved this technique should only be employed by officers who have received training in such tactics after giving consideration to the following:
  - 1. The need to immediately stop the suspect vehicle or prevent it from leaving substantially outweighs the risks of injury or death to occupants of the suspect vehicle, officers, or other members of the public.
  - 2. All other reasonable intervention techniques have failed or reasonably appear ineffective.

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3. Employing the blocking maneuver does not unreasonably increase the risk to officer safety.
  4. The target vehicle is stopped or traveling at a low speed.
  5. At no time should civilian vehicles be used to deploy this technique.
- (b) Ramming a fleeing vehicle should be done only after other reasonable tactical means at the officer's disposal have been exhausted. This tactic should be reserved for situations where there does not appear to be another reasonable and alternative method. This policy is an administrative guide to direct officers in their decision-making process before the fact of ramming another vehicle. It is not a standard for civil or criminal litigation to judge the propriety of the act; that is a matter for the courts to determine by established law. When ramming is to be employed as a means with which to stop a fleeing vehicle, one or more of the following factors should be present:
1. The suspect is an actual or suspected felon who reasonably appears to represent a serious threat to society if not apprehended.
  2. The suspect is driving in willful or wanton disregard for the safety of persons; or, driving in a reckless and life-endangering manner.
  3. If there does not reasonably appear to be a present or immediately foreseeable serious threat to the public, the use of ramming is not authorized.
- (c) As with all intervention techniques, pursuing officers should obtain supervisor approval before attempting to box a suspect vehicle during a pursuit. The use of such a technique must be carefully coordinated with all involved units, taking into consideration the circumstances and conditions presented at the time as well as the potential risk of injury to officers, the public and occupants of the pursued vehicle. The use of Stop Sticks should be approved in advance by a supervisor and deployed only when it is reasonably certain that only the pursued vehicle will be affected by their use and the deploying officer has been trained in the use of the Stop Stick. The Stop Stick should not be deployed on a freeway.
- (d) Officers should carefully consider the limitations of such devices as well as the potential risks to officers, the public and occupants of the pursued vehicle. If the pursued vehicle is a motorcycle, a vehicle transporting hazardous materials, or a school bus transporting children officers and supervisors should weigh the potential consequences against the need to immediately stop the vehicle.
- (e) Because roadblocks involve a potential for serious injury or death to occupants of the pursued vehicle if the suspect does not stop, the intentional placement of roadblocks in the direct path of a pursued vehicle is generally discouraged and should not be deployed without prior approval of a supervisor and only then under extraordinary conditions when all other reasonable intervention techniques have failed or reasonably

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appear ineffective and the need to immediately stop the pursued vehicle substantially outweighs the risks of injury or death to occupants of the pursued vehicle, officers or other members of the public.

(f) StarChase Pursuit Management System

1. The StarChase Pursuit Management System (StarChase) allows an officer to remotely affix a GPS tracking device to a pursued vehicle. StarChase may also be deployed when the officer has reasonable cause to believe a vehicle will flee. StarChase uses an air pressure system to discharge a tracker from the front of the StarChase equipped police vehicle to the vehicle in front of it. Once the tracker is affixed, its location can be tracked using a computer with an internet connection.
2. For the purpose of clarity of communications, radio traffic should identify the device as "StarChase."
3. StarChase equipment in the police vehicle shall only be operated by officers (including reserve officers) who have been trained in its use. StarChase equipped vehicles shall not be assigned to officers who are not trained on its use unless required by exigent circumstances.
  - (a) Officers may deploy StarChase technology to affix a tracker to a vehicle they are pursuing or believe they are about to pursue. In deciding whether or not to deploy the StarChase system, the officer must consider the safety of the officers, the safety of the person driving the other vehicle, and the safety of other motorists and pedestrians. Safety considerations include:
    1. Whether the officer can safely maneuver close enough to the suspect vehicle to come within targeting range;
    2. Whether the officer can safely pass any other vehicle involved in the pursuit; and,
    3. Whether any circumstances would indicate the device would be effective (i.e., weather conditions, suspect vehicle weaving, etc.).
  - (b) The supervisor monitoring the pursuit shall also make the same safety considerations and should help direct, and guide StarChase deployments as appropriate.
4. Tactical considerations:
  - (a) The StarChase tag shall not normally be deployed in the following situations:
    1. During heavy rain
    2. While driving on exceptionally rough terrain;
    3. On a vehicle with less than four tires/wheels; and/or,



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4. When pedestrians are between or very near the suspect vehicle and the StarChase equipped vehicle.
5. StarChase equipped police units, with approval from a supervisor are authorized to respond to join a pursuit for potential use of the device.
  - (a) Unless directed otherwise, the StarChase equipped vehicle shall join the pursuit at the rear of the authorized pursuing vehicles until cleared to pass.
  - (b) Once a StarChase equipped vehicle joins a pursuit, it becomes an authorized unit as it relates to the number of authorized pursuing vehicles.
  - (c) StarChase equipped vehicles may pass other pursuing vehicle only when deemed safe and only with specific permission from the unit to be passed. The officer driving the StarChase equipped vehicle shall identify which side of the overtaking vehicle(s) they will pass.
6. StarChase tags shall be deployed in accordance with training.
  - (a) Once the StarChase tag has been successfully deployed, pursuing vehicles should normally drop back significantly from the suspect vehicle and deactivate all emergency equipment.
  - (b) Officers shall maintain constant communication with the Communications Center / StarChase Monitor for speed, direction of travel and location updates of the suspect vehicle.
  - (c) The officer deploying the StarChase device shall coordinate with the Communications Center / StarChase Monitor and other officers to respond to the appropriate location(s) to apprehend the suspect. This response shall be in non-emergency response mode unless authorized by the field supervisor.
7. All tag deployments will be reported to the Drive Team Supervisor.
  - (a) Only Drive Team members should load or unload StarChase projectiles.

### 307.7.5 ACCIDENTS DURING PURSUITS

If the pursuing units become involved in an accident, the accident should be investigated by the law enforcement agency having jurisdiction of the area in which the accident occurred.

If Walnut Creek Police Department personnel are involved in the accident, our involvement in the accident investigation will be guided by our directive on Police Employee Vehicle Accidents.

### 307.7.6 CAPTURE OF SUSPECTS

Proper self-discipline and sound professional judgment are the keys to a successful conclusion of a pursuit and apprehension of evading suspects. Officers shall use only that amount of force, which reasonably appears necessary under the circumstances, to properly perform their lawful duties.

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Unless relieved by a supervisor the primary officer should coordinate efforts to apprehend the suspect(s) following the pursuit. Officers should consider safety of the public and the involved officers when formulating plans to contain and capture the suspect.

In the event force is used during the arrest and apprehension of the suspect(s) the officer(s) shall abide by WCPD Policy #300 regarding the Use of Lethal and Non-Lethal Force.

### **307.8 REPORTING REQUIREMENTS**

The following reports should be completed upon conclusion of all pursuits:

- (a) The primary officer should complete appropriate crime/arrest reports.
- (b) The Watch Commander shall ensure that an Allied Agency Vehicle Pursuit Report (form CHP 187A) is filed with the CHP not later than 30 days following the pursuit (Vehicle Code § 14602.1). The primary officer should complete as much of the required information on the form as is known and forward the report to the Watch Commander for review and distribution.
- (c) After first obtaining the available information, the on-duty supervisor or watch commander shall promptly complete an After Action Report. The only exception is a pursuit involving a suspect driving in a legal manner but failing to yield to the officer's signal to stop. The After Action Report should contain the following information:
  1. Date and time of pursuit
  2. Length of pursuit
  3. Involved units and officers
  4. Initial reason for pursuit
  5. Starting and termination points
  6. Disposition (arrest, citation), including arrestee information if applicable
  7. Injuries and/or property damage
  8. Medical treatment
  9. Name of supervisor at scene
  10. A preliminary determination whether the pursuit appears to be in compliance with this policy and whether additional review or follow-up is warranted

#### **307.8.1 REGULAR AND PERIODIC PURSUIT TRAINING**

In addition to initial and supplementary Police Officer Standard Training (POST) training on pursuits required by Penal Code § 13519.8, all sworn members of this department will participate no less than annually in regular and periodic department training addressing this policy and the

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importance of vehicle safety and protecting the public at all times, including a recognition of the need to balance the known offense and the need for immediate capture against the risks to officers and others (Vehicle Code § 17004.7(d)).

### **307.8.2 POLICY REVIEW**

Each sworn member of this department shall certify in writing that they have received, read and understand this policy initially and upon any amendments. The POST attestation form, or an equivalent form, may be used to document the compliance and should be retained in the member's training file.

### **307.9 APPLICATION OF VEHICLE PURSUIT POLICY**

This policy is expressly written and adopted pursuant to the provisions of Vehicle Code § 17004.7, with additional input from the POST Vehicle Pursuit Guidelines.

## Officer Response to Calls

### 308.1 PURPOSE AND SCOPE

This policy provides for the safe and appropriate response to emergency and non-emergency situations whether dispatched or self-initiated.

### 308.2 RESPONSE TO CALLS

Officers dispatched "Code-3" shall consider the call an emergency response and proceed immediately. Officers responding Code-3 shall continuously operate emergency lighting equipment, including at minimum a steady forward facing red light, and shall sound the siren as reasonably necessary pursuant to Vehicle Code § 21055.

Responding with emergency light(s) and siren does not relieve the officer of the duty to continue to drive with due regard for the safety of all persons. The use of any other warning equipment without a red light and siren does not provide any exemption from the Vehicle Code.

Officers should only respond Code-3 when so dispatched or when circumstances reasonably indicate an emergency response is required. Officers not authorized to respond Code-3 shall observe all traffic laws and proceed without the use of emergency lights and siren.

### 308.3 REQUESTING EMERGENCY ASSISTANCE

Requests for emergency assistance should be limited to those situations where the involved personnel reasonably believe that there is an immediate threat to the safety of officers, or assistance is needed to prevent imminent serious harm to a citizen. In any event, where a situation has stabilized and emergency response is not required, the requesting officer shall immediately notify Dispatch.

If circumstances permit, the requesting officer should give the following information:

- The unit number
- The location
- The reason for the request and type of emergency
- The number of units required

#### 308.3.1 NUMBER OF UNITS ASSIGNED

Normally, only one unit should respond to an emergency call Code-3 unless the Watch Commander or the field supervisor authorizes an additional unit(s).

### 308.4 INITIATING CODE 3 RESPONSE

If an officer believes a Code-3 response to any call is appropriate, the officer shall immediately notify Dispatch. Generally, only one unit should respond Code-3 to any situation. Should another officer believe a Code-3 response is appropriate, Dispatch shall be notified and the Watch

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Commander or field supervisor will make a determination as to whether one or more officers driving Code-3 is appropriate.

### **308.5 RESPONSIBILITIES OF RESPONDING OFFICERS**

Officers shall exercise sound judgment and care with due regard for life and property when responding to an emergency call. Officers shall reduce speed at all street intersections to such a degree that they shall have complete control of the vehicle.

The decision to continue a Code-3 response is at the discretion of the officer. If, in the officer's judgment, the roadway conditions or traffic congestion does not permit such a response without unreasonable risk, the officer may elect to respond to the call without the use of red lights and siren at the legal speed limit. In such an event, the officer should immediately notify Dispatch. An officer shall also discontinue the Code-3 response when directed by a supervisor.

Upon receiving authorization or determining a Code-3 response is appropriate, an officer shall immediately give the location from which he/she is responding.

### **308.6 COMMUNICATIONS RESPONSIBILITIES**

A dispatcher shall assign a Code-3 response when an officer requests emergency assistance or available information reasonably indicates that the public is threatened with serious injury or death and immediate police response is needed. In all other circumstances, the dispatcher shall obtain authorization from the Watch Commander or a field supervisor prior to assigning units Code-3 . The dispatcher shall:

- (a) Attempt to assign the closest available unit to the location requiring assistance
- (b) Immediately notify the Watch Commander
- (c) Confirm the location from which the unit is responding
- (d) Notify and coordinate allied emergency services (e.g., fire and ambulance)
- (e) Continue to obtain and broadcast information as necessary concerning the response and monitor the situation until it is stabilized or terminated
- (f) Control all radio communications during the emergency and coordinate assistance under the direction of the Watch Commander or field supervisor

### **308.7 SUPERVISORY RESPONSIBILITIES**

Upon being notified that a Code-3 response has been initiated, the Watch Commander or the field supervisor shall verify the following:

- (a) The proper response has been initiated
- (b) No more than those units reasonably necessary under the circumstances are involved in the response
- (c) Affected outside jurisdictions are being notified as practical

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## *Officer Response to Calls*

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The field supervisor shall monitor the response until it has been stabilized or terminated and assert control by directing units into or out of the response if necessary. If, in the supervisor's judgment, the circumstances require additional units to be assigned a Code-3 response, the supervisor may do so.

It is the supervisor's responsibility to terminate a Code-3 response that, in his/her judgment is inappropriate due to the circumstances.

When making the decision to authorize a Code-3 response, the Watch Commander or the field supervisor should consider the following:

- The type of call
- The necessity of a timely response
- Traffic and roadway conditions
- The location of the responding units

### **308.8 FAILURE OF EMERGENCY EQUIPMENT**

If the emergency equipment on the vehicle should fail to operate, the officer must terminate the Code-3 response and respond accordingly. In all cases, the officer shall notify the Watch Commander, field supervisor, or Dispatch of the equipment failure so that another unit may be assigned to the emergency response.

## Driver Training Program

### 309.1 PURPOSE AND SCOPE

The Walnut Creek Police Department periodically experiences employee-involved traffic accidents. It is important to have a positive and proactive training program to prevent these accidents from occurring.

### 309.2 PROGRAM

A comprehensive driver-training program has been implemented to prevent and address employee-involved traffic accidents. The different elements of the program are described as follows.

#### 309.2.1 NEW EMPLOYEES

Entry level officers are given four hours of training to prepare them for the 32 hours of driver training they will receive at the basic police academy. Entry level officers who have completed the local basic academy will receive two additional hours of driver training along with review of departmental policies regarding driving as part of the new officer training program at W.C.P.D.

Lateral officers who come from other police agencies or other academies will receive four hours of driver training and a review of relevant policies.

New civilian employees will receive two hours of training within the first year of employment. This training will be administered to Police Service Officers, volunteers (VIPS), and other civilian employees who utilize WCPD vehicles.

#### 309.2.2 IN-SERVICE TRAINING

When possible, two training blocks will be presented each year to refresh the defensive driving skills of all officers. The two training blocks are "Performance Driving" and "Driver Awareness." Civilian employees and volunteers who drive police department vehicles shall participate in the "Driver Awareness" training annually. Driver training sessions will utilize lectures, videotapes, practical scenarios, policy review, the skidpan, and the regional driving simulator on an "as needed" basis.

#### 309.2.3 EMPLOYEE-INVOLVED ACCIDENTS

Every employee involved accident that is identified as "avoidable" will be analyzed by a driver training instructor to determine its cause and to identify ways to prevent its reoccurrence. Based on that analysis, an individualized training session geared to the needs of the employee will be provided.

#### 309.2.4 REVIEW OF PURSUITS

An after-action report is required whenever an officer is involved in a vehicle pursuit. The manager in charge of the driver training team will review the after-action reports to determine if there are any driver training needs or a need to revise our driving policies.

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## *Driver Training Program*

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### 309.2.5 CONCLUSION

This comprehensive training approach should significantly reduce the number of vehicle accidents involving Walnut Creek Police Department personnel.



## Domestic Violence

### 310.1 PURPOSE AND SCOPE

The purpose of this policy is to provide the guidelines necessary to deter, prevent and reduce domestic violence through vigorous enforcement and to address domestic violence as a serious crime against society. The policy specifically addresses the commitment of this department to take enforcement action when appropriate, to provide assistance to victims and to guide officers in the investigation of domestic violence.

#### 310.1.1 DEFINITIONS

Definitions related to this policy include:

**Court order** - All forms of orders related to domestic violence that have been issued by a court of this state or another, whether civil or criminal, regardless of whether service has been made.

### 310.2 POLICY

The Walnut Creek Police Department's response to incidents of domestic violence and violations of related court orders shall stress enforcement of the law to protect the victim and shall communicate the philosophy that domestic violence is criminal behavior. It is also the policy of this department to facilitate victims' and offenders' access to appropriate civil remedies and community resources whenever feasible.

### 310.3 OFFICER SAFETY

The investigation of domestic violence cases often places officers in emotionally charged and sometimes highly dangerous environments. No provision of this policy is intended to supersede the responsibility of all officers to exercise due caution and reasonable care in providing for the safety of any officers and parties involved.

### 310.4 INVESTIGATIONS

The following guidelines should be followed by officers when investigating domestic violence cases:

- (a) Calls of reported, threatened, imminent or ongoing domestic violence and the violation of any court order are of extreme importance and should be considered among the highest response priorities. This includes incomplete 9-1-1 calls.
- (b) When practicable, officers should obtain and document statements from the victim, the suspect and any witnesses, including children, in or around the household or location of occurrence.
- (c) Officers should list the full name and date of birth (and school if available) of each child who was present in the household at the time of the offense. The names of other children who may not have been in the house at that particular time should also be obtained for follow-up.

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- (d) When practicable and legally permitted, video or audio record all significant statements and observations.
- (e) All injuries should be photographed, regardless of severity, taking care to preserve the victim's personal privacy. Where practicable, photographs should be taken by a person of the same sex. Victims whose injuries are not visible at the time of the incident should be asked to contact the Detective Bureau in the event that the injuries later become visible.
- (f) Officers should request that the victim complete and sign an authorization for release of medical records related to the incident when applicable.
- (g) If the suspect is no longer at the scene, officers should make reasonable efforts to locate the suspect to further the investigation, provide the suspect with an opportunity to make a statement and make an arrest or seek an arrest warrant if appropriate.
- (h) Seize any firearms or other dangerous weapons in the home, if appropriate and legally permitted, for safekeeping or as evidence. If the domestic violence involved threats of bodily harm, any firearm discovered in plain view or pursuant to consent or other lawful search must be taken into temporary custody (Penal Code § 18250).
- (i) When completing an incident or arrest report for violation of a court order, officers should include specific information that establishes that the offender has been served, including the date the offender was served, the name of the agency that served the order and the provision of the order that the subject is alleged to have violated. When reasonably available, the arresting officer should attach a copy of the order to the incident or arrest report.
- (j) The Domestic Violence Lethality Assessment should be administered to all victims of domestic violence to assess the level of danger and/or severity of the situation. Refer to Lexipol Policy 358 (Lethal Assessment Program)
- (k) Officers should take appropriate enforcement action when there is probable cause to believe an offense has occurred. Factors that should not be used as sole justification for declining to take enforcement action include:
  - 1. Marital status of suspect and victim.
  - 2. Whether the suspect lives on the premises with the victim.
  - 3. Claims by the suspect that the victim provoked or perpetuated the violence.
  - 4. The potential financial or child custody consequences of arrest.
  - 5. The physical or emotional state of either party.
  - 6. Use of drugs or alcohol by either party.
  - 7. Denial that the abuse occurred where evidence indicates otherwise.
  - 8. A request by the victim not to arrest the suspect.
  - 9. Location of the incident (public/private).
  - 10. Speculation that the complainant may not follow through with the prosecution.

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11. The racial, cultural, social, professional position or sexual orientation of the victim or suspect.

### **310.4.1 IF A SUSPECT IS ARRESTED**

If a suspect is arrested, officers should:

- (a) Advise the victim that there is no guarantee the suspect will remain in custody.
- (b) Provide the victim's contact information to the jail staff to enable notification of the victim upon the suspect's release from jail.
- (c) Advise the victim whether any type of court order will be in effect when the suspect is released from jail.

### **310.4.2 IF NO ARREST IS MADE**

If no arrest is made, the officer should:

- (a) Advise the parties of any options, including but not limited to:
  1. Voluntary separation of the parties.
  2. Appropriate resource referrals (e.g., counselors, friends, relatives, shelter homes, victim witness unit).
- (b) Document the resolution in a report.

### **310.5 VICTIM ASSISTANCE**

Victims may be traumatized or confused. Officers should:

- (a) Recognize that a victim's behavior and actions may be affected.
- (b) Provide the victim with the department's domestic violence information handout, even if the incident may not rise to the level of a crime.
- (c) Alert the victim to any available victim advocates, shelters and community resources.
- (d) Stand by for a reasonable amount of time when an involved person requests law enforcement assistance while removing essential items of personal property.
- (e) Seek medical assistance as soon as practicable for the victim if he/she has sustained injury or complains of pain.
- (f) Ask the victim whether he/she has a safe place to stay. Assist in arranging to transport the victim to an alternate shelter if the victim expresses a concern for his/her safety or if the officer determines that a need exists.
- (g) Make reasonable efforts to ensure that children or dependent adults who are under the supervision of the suspect or victim are being properly cared for.
- (h) Seek or assist the victim in obtaining an emergency order if appropriate.

An officer shall advise an individual protected by a Canadian domestic violence protection order of available local victim services (Family Code § 6452).

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### **310.6 FOREIGN COURT ORDERS**

Various types of orders may be issued in domestic violence cases. Any foreign court order properly issued by a court of another state, Indian tribe, or territory shall be enforced by officers as if it were the order of a court in this state. An order should be considered properly issued when it reasonably appears that the issuing court has jurisdiction over the parties and reasonable notice and opportunity to respond was given to the party against whom the order was issued (18 USC § 2265). An otherwise valid out-of-state court or foreign order shall be enforced, regardless of whether the order has been properly registered with this state (Family Code § 6403).

Canadian domestic violence protection orders shall also be enforced in the same manner as if issued in this state (Family Code § 6452).

### **310.7 VERIFICATION OF COURT ORDERS**

Determining the validity of a court order, particularly an order from another jurisdiction, can be challenging. Therefore, in determining whether there is probable cause to make an arrest for a violation of any court order, officers should carefully review the actual order when available, and where appropriate and practicable:

- (a) Ask the subject of the order about his/her notice or receipt of the order, his/her knowledge of its terms and efforts to respond to the order.
  1. If a determination is made that a valid foreign order cannot be enforced because the subject has not been notified or served the order, the officer shall inform the subject of the order, make a reasonable effort to serve the order upon the subject, and allow the subject a reasonable opportunity to comply with the order before enforcing the order. Verbal notice of the terms of the order is sufficient notice (Family Code § 6403).
- (b) Check available records or databases that may show the status or conditions of the order.
  1. Registration or filing of an order in California is not required for the enforcement of a valid foreign order (Family Code § 6403).
- (c) Contact the issuing court to verify the validity of the order.
- (d) Contact a law enforcement official from the jurisdiction where the order was issued to verify information.

Officers should document in an appropriate report their efforts to verify the validity of an order, regardless of whether an arrest is made. Officers should contact a supervisor for clarification when needed.

### **310.8 WHEN ORDERS ARE NOT VERIFIABLE**

If the victim is not in possession of the restraining order and/or for any reason the officer cannot verify the validity of the order the following action shall be taken:

- (a) Write a report, give the police report number to the victim.

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- (b) Inform the victim of how to can contact the appropriate detective or investigation unit for further action (Penal Code § 13730(c)).
- (c) Inform the victim of the right to make a private person's arrest for the appropriate violation.

In domestic violence cases where the suspect has left the scene, an investigation should be conducted to determine if a crime has been committed. In such circumstances a written report shall be completed and the victim shall be informed of the case number and the follow-up criminal procedure (Penal Code §§ 13730(c) and 13701(c)).

### **310.9 PROOF OF SERVICE NOT VERIFIED**

When the officer verifies that a restraining order exists but cannot verify proof of service or prior knowledge of the order by the suspect, the officer shall perform the following:

- (a) At the request of the complainant and upon presentation of an endorsed copy of the restraining order and a proof of service form, serve a copy of the order on the suspect. Submit the completed proof of service form to the court, regardless of whether or not the suspect is taken into custody (Code of Civil Procedure § 527.8(i)(2)).
- (b) Immediately inform the suspect of the terms of the order and place the suspect on notice that violation of the order will result in arrest.
- (c) Obtain the suspect's address.
- (d) Enforce the order but do not make an arrest for any violation of the order occurring prior to verified proof of service or before an officer's admonition of the terms of the order. If the suspect continues to violate the order after being advised of the terms, an arrest should be made (Code of Civil Procedure § 527.8(i)(4)).

If the suspect complies with the order the officer shall complete a report detailing the specific terms of the order and advisement, the name of the advising officer, and the date and time of the advisement (Penal Code § 13730(c)). The Department copy of the restraining order shall be updated to reflect the information listed above.

### **310.10 EMERGENCY PROTECTIVE ORDERS**

- (a) Family Code § 6241 mandates the Superior Court to provide a judge, commissioner, or referee to hear applications and issue Emergency Protective Orders based on criteria outlined in Family Code § 6250(c). A judicial officer may issue an Emergency Protective Order whenever a law enforcement officer asserts reasonable grounds that:
  - 1. A person is in immediate and present danger of domestic violence based upon the person's allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought.
  - 2. A child is in immediate and present danger of abuse by a family or household member, based on an allegation of a recent incident of abuse or threat of abuse by the family or household member.

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3. A child is in immediate and present danger of being abducted by a parent or relative, based on a reasonable belief that a person has intent to abduct a child or flee with the child from the jurisdiction or based on an allegation of a reasonable threat to abduct the child or flee with the child from the jurisdiction.
  4. An elder or dependent adult is in immediate and present danger of abuse as defined in Welfare and Institutions Code § 15610.07 based on an allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought, except that no emergency protective order shall be issued based solely on an allegation of financial abuse.
- (b) Under Penal Code § 646.91, a peace officer may also obtain an Emergency Protective Order when the officer has reasonable grounds to believe that a person or the person's immediate family is in immediate and present danger of being stalked.
1. Any such Emergency Protective Order shall be reduced to writing, signed by the officer and include all of the information required by Penal Code § 646.91(c).
  2. Any officer seeking such an order shall serve the order on the restrained person if such person can be reasonably located and shall provide the person protected with a copy of the order. A copy of the order shall also be filed with the court as soon as practicable after issuance.
  3. Any officer requesting such an order shall carry copies of the order while on duty and shall use every reasonable means to enforce the order.
- (c) Emergency Protective Orders may be obtained by telephone to prohibit a suspect who resides with a complainant, regardless of their marital status or relationship from:
1. Physically or verbally contacting the victim or disturbing his/her peace.
  2. Remaining or returning to the victim's residence, regardless of who holds legal title to, or leases the residence.
  3. Continuing a specified behavior as described in the order.
- (d) Officers investigating the scene of current or recent situations of domestic violence should remain cognizant of the potential for continued and escalated violence. An Emergency Protective Order should be sought if there is reason to believe, based on factual evidence such as a recent history of violence that the victim may still be in danger.
- (e) Officers should consider requesting an EPO if any of the following conditions exist:
1. The victim requests an EPO.
  2. The investigating officer has grounds to believe that there is an immediate danger of continuing violence against the victim.
  3. The investigating officer or victim believes that the suspect may be able to make bail and the potential for further violence exists.

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### **310.11 LEGAL MANDATES AND RELEVANT LAWS**

California law provides for the following:

#### **310.11.1 STANDARDS FOR ARRESTS**

Officers investigating a domestic violence report should consider the following:

- (a) An arrest should be made when there is probable cause to believe that a felony or misdemeanor domestic violence offense has been committed (Penal Code § 13701). Any decision to not arrest an adult when there is probable cause to do so requires supervisor approval.
  - 1. Officers are only authorized to make an arrest without a warrant for a misdemeanor domestic violence offense if the officer makes the arrest as soon as probable cause arises (Penal Code § 836).
- (b) An officer responding to a domestic violence call who cannot make an arrest will advise the victim of his/her right to make a private person's arrest. The advisement should be made out of the presence of the suspect and shall include advising the victim how to safely execute the arrest. Officers shall not dissuade victims from making a lawful private person's arrest. Officers should refer to the provisions in the Private Persons Arrests Policy for options regarding the disposition of private person's arrests (Penal Code § 836(b)).
- (c) Officers shall not cite and release a person for the following offenses (Penal Code § 853.6(a)(3)):
  - 1. Penal Code § 243(e)(1) (battery against spouse, cohabitant)
  - 2. Penal Code § 273.5 (corporal injury on spouse, cohabitant, fiancé/fiancée, person of a previous dating or engagement relationship, mother/father of the offender's child)
  - 3. Penal Code § 273.6 (violation of protective order) if violence or threats of violence have occurred or the suspect has gone to the workplace or residence of the protected party
  - 4. Penal Code § 646.9 (stalking)
  - 5. Other serious or violent felonies specified in Penal Code § 1270.1
- (d) In responding to domestic violence incidents, including mutual protective order violations, officers should generally be reluctant to make dual arrests. Officers shall make reasonable efforts to identify the dominant aggressor in any incident. The dominant aggressor is the person who has been determined to be the most significant, rather than the first, aggressor (Penal Code § 13701). In identifying the dominant aggressor, an officer shall consider:
  - 1. The intent of the law to protect victims of domestic violence from continuing abuse.
  - 2. The threats creating fear of physical injury.
  - 3. The history of domestic violence between the persons involved.
  - 4. Whether either person acted in self-defense.

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- (e) An arrest shall be made when there is probable cause to believe that a violation of a domestic violence court order has been committed (Penal Code § 13701; Penal Code § 836), regardless of whether the offense was committed in the officer's presence. After arrest, the officer shall confirm that a copy of the order has been registered, unless the victim provides a copy (Penal Code § 836).

#### 310.11.2 COURT ORDERS

- (a) An officer who obtains an emergency protective order from the court shall serve it on the restrained person if the person can be reasonably located, and shall provide the person protected or the person's parent/guardian with a copy of the order. The officer shall file a copy with the court as soon as practicable and shall have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice (Family Code § 6271; Penal Code § 646.91).
- (b) At the request of the petitioner, an officer at the scene of a reported domestic violence incident shall serve a court order on a restrained person (Family Code § 6383; Penal Code § 13710).
- (c) Any officer serving a protective order that indicates that the respondent possesses weapons or ammunition shall request that the firearm/ammunition be immediately surrendered (Family Code § 6389(c)(2)).
- (d) During the service of a protective order any firearm discovered in plain view or pursuant to consent or other lawful search shall be taken into temporary custody (Penal Code § 18250).
- (e) If a valid Canadian order cannot be enforced because the person subject to the order has not been notified or served with the order, the officer shall notify the protected individual that reasonable efforts shall be made to contact the person subject to the order. The officer shall make a reasonable effort to inform the person subject to the order of the existence and terms of the order and provide him/her with a record of the order, if available, and shall allow the person a reasonable opportunity to comply with the order before taking enforcement action (Family Code § 6452).

#### 310.11.3 PUBLIC ACCESS TO POLICY

A copy of this domestic violence policy will be provided to members of the public upon request (Penal Code § 13701).

#### 310.11.4 REPORTS AND RECORDS

- (a) A written report shall be completed on all incidents of domestic violence. All such reports should be documented on the appropriate form, which includes information and notations specific to domestic violence incidents as required by Penal Code § 13730.
- (b) Reporting officers should provide the victim with the case number of the report. The case number may be placed in the space provided on the domestic violence victim information handout provided to the victim. If the case number is not immediately available, an explanation should be given regarding how the victim can obtain the information at a later time.



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- (c) Officers who seize any firearm or other deadly weapon in a domestic violence incident shall issue the individual possessing such weapon a receipt that includes the name and residential mailing address of the owner or person who possessed the weapon and notice of where the weapon may be recovered, along with the applicable time limit for recovery (Penal Code § 18250; Penal Code § 18255; Penal Code § 33800; Family Code § 6389(c)(2)).

### 310.11.5 RECORD-KEEPING AND DATA COLLECTION

This department shall maintain records of court orders related to domestic violence and the service status of each (Penal Code § 13710), as well as records on the number of domestic violence related calls reported to the Department, including whether weapons were used in the incident or whether the incident involved strangulation or suffocation (Penal Code § 13730). This information is to be reported to the Attorney General monthly. It shall be the responsibility of the Records Manager to maintain and report this information as required.

### 310.12 CROSS REPORTING

Children and Family Services (CFS) Referral Guidelines " Duty to Report: Law enforcement officers should refer cases to the Contra Costa County Children and Family Services (CCCCFS) when it is apparent that the welfare of children within a household is being placed at risk due to the violent behavior of adults within a household.

- When law enforcement recognizes exigent circumstances, CCCCFS **shall** be notified immediately and a request will be made for emergency response by on-call responders.
- When risk factors are apparent, but an emergency response has been determined not to be necessary, a written report **shall** be sent to the CCCCFS within 36 hours of receiving the information concerning the incident.

Officers responding to domestic violence incidents should consider risk factors, such as, but not limited to, the following criteria when determining whether a referral to CCCCFS is warranted:

Severity of the incident is not limited to felony offenses; Previous domestic violence incidents in the household; Potential for future occurrences; Child's involvement in the dispute; Child's exposure to potential danger during the incident; Child's emotional state; Parent or guardian's use of alcohol or drugs; Parent or guardian's ability to provide immediate care.

### 310.13 DISPATCHER'S RESPONSIBILITIES

This department considers calls of reported, threatened, imminent, or ongoing domestic violence, and the violation of any protection order, including orders issued pursuant to Penal Code § 136.2, and restraining orders of extreme importance and shall be ranked among the highest priorities. Dispatchers are not required to verify the validity of the protective order before responding to the request for assistance. All calls of domestic violence should be dispatched as soon as practical.

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### **310.14 DECLARATION IN SUPPORT OF BAIL INCREASE**

Any officer who makes a warrantless arrest for a felony or misdemeanor violation of a domestic violence restraining order shall evaluate the totality of the circumstances to determine whether reasonable cause exists to seek an increased bail amount. If there is reasonable cause to believe that the scheduled bail amount is insufficient to assure the arrestee's appearance or to protect the victim or family member of a victim, the officer shall prepare a declaration in support of increased bail (Penal Code § 1269c).

## Firearms

### 311.1 PURPOSE AND SCOPE

This policy provides guidelines for issuing firearms, the safe and legal carrying of firearms, firearms maintenance and firearms training.

This policy does not apply to issues related to the use of firearms that are addressed in the Use of Force or Officer-Involved Shootings and Deaths policies.

This policy only applies to those members who are authorized to carry firearms.

### 311.2 POLICY

The Walnut Creek Police Department will equip its members with firearms to address the risks posed to the public and department members by violent and sometimes well-armed persons. The Department will ensure firearms are appropriate, in good working order and that relevant training is provided as resources allow.

### 311.3 AUTHORIZED FIREARMS, AMMUNITION AND OTHER WEAPONS

All handguns carried on or off duty shall be registered with the police department. Any loss, theft, or change of ownership shall be reported to a firearms instructor. Thefts or Lost Firearms shall also be reported to the appropriate law enforcement agency.

Officers shall carry a fully loaded handgun while on duty and/or while in uniform. A fully loaded handgun means a loaded magazine inserted in to the handgun's magazine well and a round chambered. Exceptions may include some plain clothes details that are authorized by a supervisor or a light duty assignment supported by a doctor's note.

Officers shall not sell, lend or furnish any firearms to any person in an unlawful manner, or to any person who does not have a legal right to possess such firearms.

Officers working in a plain clothes assignment shall carry a duty handgun. Exceptions must be authorized by the Chief of Police.

Command Staff Members, Officers assigned to the Investigations Bureau, and Officers assigned to work in a plain clothes capacity may carry a Department Approved subcompact handgun while in a plain clothes capacity and must adhere to Department Qualification guidelines.

Members shall only use firearms that are issued or approved by the Department and have been thoroughly inspected by the Firearms Team. Except in an emergency or as directed by a supervisor, no firearm shall be carried by a member who has not qualified with that firearm at an authorized department range.

All other weapons not provided by the Department, including but not limited to edged weapons, chemical or electronic weapons, impact weapons or any weapon prohibited or restricted by law or that is not covered elsewhere by department policy, may not be carried by members in the performance of their official duties without the express written authorization of the

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member's Bureau Commander. This exclusion does not apply to the carrying of a single folding pocketknife that is not otherwise prohibited by law.

### 311.3.1 HANDGUNS

The authorized departmental issued handguns are:

- Glock Model 17, 9mm
- Glock Model 21, .45 caliber
- Glock Model 22, .40 caliber
- Glock Models 26, 27, and 30
- Glock Models 36 and 43

Approved handguns for Investigations and Admin Personnel:

- Glock 19, 9mm, compact
- Glock 23, .40 cal, compact
- Glock 45, 9mm hybrid (Full size frame/compact slide)
- Glock 43x, 9mm, subcompact
- Glock 48, 9mm, compact slim line

### 311.3.2 PATROL RIFLES

The authorized department-issued patrol rifle is the Colt AR-15.

Members may deploy the patrol rifle in any circumstance where the member can articulate a reasonable expectation that the rifle may be needed. Examples of some general guidelines for deploying the patrol rifle may include but are not limited to:

- (a) Situations where the member reasonably anticipates an armed encounter.
- (b) When a member is faced with a situation that may require accurate and effective fire at long range.
- (c) Situations where a member reasonably expects the need to meet or exceed a suspect's firepower.
- (d) When a member reasonably believes that there may be a need to fire on a barricaded person or a person with a hostage.
- (e) When a member reasonably believes that a suspect may be wearing body armor.
- (f) When authorized or requested by a supervisor.
- (g) When needed to euthanize an animal.

When not deployed, the patrol rifle shall be properly secured consistent with department training in a locking weapons rack in the patrol vehicle.

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### 311.3.3 PERSONALLY OWNED DUTY FIREARMS

Members desiring to carry an authorized but personally owned duty firearm must receive written approval from the Chief of Police or the authorized designee. Once approved, personally owned duty firearms are subject to the following restrictions:

(a) The firearm shall be in good working order and on the department list of approved firearms. The following models are authorized:

- GLOCK 19 or 23
- Sig Sauer P320
- Heckler & Koch VP9, VP40
- Smith & Wesson M&P9, M&P40, M&P45
- Fabrique Nationale FN509 or FNS
- Springfield Armory XD

Firearms shall adhere to the following requirements:

- Black in Color
- Striker-fired systems
- Double-action only or double single action
- Chambered in 9mm, .40 S&W, .45 ACP
- Barrel length min 4"
- Equipped with night sights
- Min capacity 10 rounds
- Internal safety, no external safety

(b) The firearm shall be inspected by the Firearms Team prior to being carried and thereafter shall be subject to inspection whenever it is deemed necessary.

(c) Prior to carrying the firearm, members shall qualify under range supervision and thereafter shall qualify in accordance with the department qualification schedule. Members must demonstrate proficiency and safe handling, and that the firearm functions properly.

(d) Members shall provide written notice of the make, model, color, serial number and caliber of the firearm to the Firearms Team, who will maintain a list of the information.

### 311.3.4 AUTHORIZED SECONDARY HANDGUN

Members desiring to carry department or personally owned secondary handguns are subject to the following restrictions:

(a) The handgun shall be in good working order and on the department list of approved firearms.

(b) Only one secondary handgun may be carried at a time.

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- (c) The purchase of the handgun and ammunition shall be the responsibility of the member unless the handgun and ammunition are provided by the Department.
- (d) The handgun shall be carried concealed at all times and in such a manner as to prevent unintentional cocking, discharge or loss of physical control.
- (e) The handgun shall be inspected by the Firearms Team prior to being carried and thereafter shall be subject to inspection whenever it is deemed necessary.
- (f) Ammunition shall be the same as department issue. If the caliber of the handgun is other than department issue, the Chief of Police or the authorized designee shall approve the ammunition.
- (g) Prior to carrying the secondary handgun, members shall qualify under range supervision and thereafter shall qualify in accordance with the department qualification schedule. Members must demonstrate proficiency and safe handling, and that the handgun functions properly.
- (h) Members shall provide written notice of the make, model, color, serial number and caliber of a secondary handgun to the Firearms Team, who will maintain a list of the information.

### 311.3.5 AUTHORIZED OFF-DUTY FIREARMS

The carrying of firearms by sworn officers while off duty is permitted by the Chief of Police, but may be rescinded should circumstances dictate (e.g., administrative leave). Sworn officers who choose to carry a firearm while off-duty, based on their authority as a peace officer, will be required to meet the following guidelines.

- (a) Shall be the authorized duty weapon, or the weapon shall be of good quality and workmanship and be .380 caliber or larger.
- (b) The purchase of the weapon and ammunition shall be the responsibility of the officer
- (c) The weapon shall be carried concealed at all times and in such a manner as to prevent accidental cocking, discharge, or loss of physical control.
- (d) It will be the responsibility of the officer to submit the weapon to the Firearms Team for inspection prior to being carried off-duty. The Firearms Team shall ensure that the officer is proficient in handling and firing the weapon and that it will be carried in a safe manner. The weapon shall be subject to periodic inspection by the Firearms Team. The officer will successfully qualify with the weapon prior to it being carried and thereafter annually. The range qualification dates will be specified by the Firearms Team.
- (e) A complete description of the weapon shall be contained on the qualification record approved by the Firearms Team.
- (f) If any member desires to use more than one weapon while off-duty, he/she may do so, as long as the officer meets all the requirements set forth in this policy for each weapon used.
- (g) Officers shall only carry department-authorized ammunition (minimum .380 cal/ maximum .45 cal)

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- (h) When armed, whether on- or off-duty, officers shall carry their badge and department identification.

### **311.4 EQUIPMENT**

Firearms carried on- or off-duty shall be maintained in a clean, serviceable condition. Maintenance and repair of authorized personally owned firearms are the responsibility of the individual member.

#### **311.4.1 REPAIRS OR MODIFICATIONS**

Each member shall be responsible for promptly reporting any damage or malfunction of an assigned firearm to a supervisor or a member of the Firearms Team.

Firearms that are the property of the Department or personally owned firearms that are approved for department use may be repaired or modified only by a person who is department-approved and certified as an armorer or gunsmith in the repair of the specific firearm. Such modification or repair must be authorized in advance by the Firearms Team.

Any repairs or modifications to the member's personally owned firearm shall be done at his/her expense and must be approved by the Firearms Team.

#### **311.4.2 HOLSTERS**

Only department-approved holsters shall be used and worn by members. Members shall periodically inspect their holsters to make sure they are serviceable and provide the proper security and retention of the handgun.

#### **311.4.3 TACTICAL LIGHTS**

Tactical lights may only be installed on a firearm carried on- or off-duty after they have been examined and approved by the Firearms Team. Once the approved tactical lights have been properly installed on any firearm, the member shall qualify with the firearm to ensure proper functionality and sighting of the firearm prior to carrying it.

#### **311.4.4 OPTICS OR LASER SIGHTS**

Optics may only be installed on a firearm carried on- or off-duty after they have been examined and approved by the Firearms Team. Any approved sight shall only be installed in strict accordance with manufacturer specifications. Once approved sights have been properly installed on any firearm, the member shall qualify with the firearm to ensure proper functionality and sighting of the firearm prior to carrying it.

Except in an approved training situation, a member may only sight in on a target when the member would otherwise be justified in pointing a firearm at the target.

### **311.5 SAFE HANDLING, INSPECTION AND STORAGE**

- (a) Officers shall not unnecessarily display or handle any firearm.
- (b) Officers shall be governed by all rules and regulations pertaining to the use of the range and shall obey all orders issued by the Firearms Team. Officers shall not dry

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fire or practice quick draws unless the firearm has been confirmed unloaded, or under Firearms Team supervision.

- (c) Any member who discharges his/her weapon accidentally or intentionally, on or off-duty, except during training, shall make a verbal report to his/her supervisor as soon as circumstances permit and, if the occurrence was on-duty, shall file a written report with their Bureau Commander prior to the end of shift. If off-duty, as directed by the supervisor.
- (d) Officers shall not clean, repair, load or unload a firearm anywhere in the Department, except where clearing barrels are present.
- (e) Shotguns or rifles removed from vehicles or equipment storage room shall be loaded and unloaded in the parking lot and outside of the vehicle.
- (f) Officers shall not place or store any firearm or other weapon on Department premises except where the place of storage is locked. No one shall carry firearms into the jail section or any part thereof when securing or processing a prisoner, but shall place all firearms in a secured location. It shall be the responsibility of the releasing officer to make sure that persons from outside agencies do not enter the jail section with any firearm.
- (g) Officers who are not assigned to SWAT shall not use any automatic weapon, heavy caliber rifles, gas or other types of chemical weapon, except with approval of a supervisor.
- (h) Any weapon authorized by the department to be carried on or off duty that is found by the officer to be malfunctioning or needing service shall not be carried and shall be promptly presented to the department or Firearms Team for inspection. Any weapon determined to be in need of service or repair during an inspection by the department Firearms Team, will be immediately removed from service. If the weapon is the officer's primary duty weapon, a replacement weapon will be issued to the officer until the duty weapon is again rendered serviceable.
- (i) Duty firearms shall not be used for off duty, recreational purposes.

### 311.5.1 STORAGE OF FIREARMS AT HOME

Members shall ensure that all firearms and ammunition are locked and secured while in their homes, vehicles or any other area under their control, and in a manner that will keep them inaccessible to children and others who should not have access. Members shall not permit department-issued firearms to be handled by anyone not authorized by the Department to do so. Members should be aware that negligent storage of a firearm could result in civil and criminal liability (Penal Code § 25100).

### 311.5.2 STORAGE IN VEHICLES

When leaving a handgun in an unattended vehicle, members shall ensure that it is locked in the trunk, or in a locked container that is placed out of view, or in a locked container that is permanently affixed to the vehicle's interior and not in plain view, or in a locked toolbox or utility box permanently affixed to the vehicle (Penal Code § 16850; Penal Code § 25140; Penal Code § 25452).



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If the vehicle does not have a trunk or a locked container, then the firearm should be locked within the center utility console that can be locked with a padlock, keylock, combination lock, or other similar locking device (Penal Code § 25140).

Officers are exempt from these requirements during circumstances requiring immediate aid or action in the course of official duties (Penal Code § 25140).

#### **311.5.3 ALCOHOL AND DRUGS**

Firearms shall not be carried by any member, either on- or off-duty, who has consumed an amount of an alcoholic beverage, taken any drugs or medication, or has taken any combination thereof that would tend to adversely affect the member's senses or judgment.

#### **311.6 FIREARMS TRAINING AND QUALIFICATIONS**

All sworn personnel are required to qualify twice annually with their duty weapon and annually with their off-duty weapon and secondary weapon on an approved range course. The Firearms Team shall keep accurate records of semi-annual qualifications, repairs, maintenance, training or as directed by the Training Manager. A police officer who has taken an extended leave or suffered an illness or injury or traumatic on-duty event that could affect his/her ability to use firearms will be required to re-qualify before returning to enforcement duties.

In addition to regular qualification schedules, the Firearms Team shall be responsible for providing all sworn personnel with annual practical training designed to simulate field situations. At least annually, all personnel carrying a firearm will receive training on the department Use of Force policy and demonstrate their knowledge and understanding. Firearms carried on or off duty shall be maintained in a clean, serviceable condition. Maintenance and repair of authorized personally owned firearms are the responsibility of the individual owner.

##### **311.6.1 NON-QUALIFICATION**

If any officer is unable to qualify for any reason, including injury, illness, duty status, or scheduling conflict, that officer shall notify his or her immediate supervisor prior to the end of the required shooting period.

Members who repeatedly fail to qualify will be relieved from field assignment and appropriate disciplinary action may follow.

Sworn members who fail to qualify on their first two shooting attempts shall be provided remedial training until proficiency is demonstrated and will be subject to the following requirements:

- (a) Additional range assignments may be required until consistent weapon proficiency is demonstrated
- (b) Members shall be given credit for a range qualification after remedial training and a qualifying score is obtained
- (c) No qualification credit will be given for the following
  1. Unauthorized range make-up

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### 2. Failure to qualify after remedial training

#### **311.7 FIREARM DISCHARGE**

Except during training or recreational use, any member who discharges a firearm intentionally or unintentionally, on- or off-duty, shall make a verbal report to his/her supervisor as soon as circumstances permit. If the discharge results in injury or death to another person, additional statements and reports shall be made in accordance with the Officer-Involved Shootings and Deaths Policy. If a firearm was discharged as a use of force, the involved member shall adhere to the additional reporting requirements set forth in the Use of Force Policy.

In all other cases, written reports shall be made as follows:

- (a) If on-duty at the time of the incident, the member shall file a written report with his/her Division Commander or provide a recorded statement to investigators prior to the end of shift, unless otherwise directed.
- (b) If off-duty at the time of the incident, the member shall file a written report or provide a recorded statement no later than the end of the next regularly scheduled shift, unless otherwise directed by a supervisor.

#### **311.7.1 DESTRUCTION OF ANIMALS**

Members are authorized to use firearms to stop an animal in circumstances where the animal reasonably appears to pose an imminent threat to human safety and alternative methods are not reasonably available or would likely be ineffective.

In circumstances where there is sufficient advance notice that a potentially dangerous animal may be encountered, department members should develop reasonable contingency plans for dealing with the animal (e.g., fire extinguisher, TASER® device, oleoresin capsicum (OC) spray, animal control officer). Nothing in this policy shall prohibit any member from shooting a dangerous animal if circumstances reasonably dictate that a contingency plan has failed or becomes impractical.

#### **311.7.2 INJURED ANIMALS**

With the approval of a supervisor, a member may euthanize an animal that is so badly injured that human compassion requires its removal from further suffering and where other dispositions are impractical (Penal Code § 597.1(e)).

Injured animals (with the exception of dogs and cats) may only be euthanized after a reasonable search to locate the owner has been made (Penal Code § 597.1(b)). Injured dogs and cats found without their owners shall be taken to an appropriate veterinarian for determination of whether they should be treated or humanely destroyed.

#### **311.7.3 WARNING AND OTHER SHOTS**

Generally, warning shots or shots fired for the purpose of summoning aid are discouraged and may not be discharged unless the member reasonably believes that they appear necessary, effective and reasonably safe.

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### **311.8 MAINTENANCE AND REPAIR**

Firearms carried on duty shall be maintained in a clean, serviceable condition. Since the use of personally owned weapons is at the option of the individual officer, that officer will be responsible for the furnishing, maintenance and repair of such weapon.

All handguns or rifles being serviced will be checked to ensure they are unloaded. If tags are placed on any firearm, the tag will be affixed through the magazine port with the slide locked in the open position. No tags will be placed through the trigger guard. When removing the tags after the firearm has been serviced, only scissors will be used for cutting. The firearm must be unloaded prior to removing tags or any other item affixed. When loading or unloading any Firearm, Officers will use available clearing barrels located in the PD garage or PD Range.

### **311.9 RANGE FACILITY**

The Walnut Creek Police Department provides a Firearms Training Facility that is available for departmental sponsored training and meetings. The Firearms Training Facility is also available for firearms range use by off-duty members of the Walnut Creek Police Department.

The firearms training facility is owned by the City of Walnut Creek Police Department and administered by the Police Department. The city has, by license, granted use of the Firearms Training Facility to the United States Postal Inspection Service.

The facility consists of a training building, the City of Walnut Creek Police Department 's backup EOC, and a 20 lane firearms range. Both the Police Department and the Postal Service regularly use the facility for agency-sponsored training and meetings; off-duty personnel from both agencies may also use the facility as a firearms range.

The Walnut Creek Police Department Training Manager maintains the master schedule and accepts reservations for the use of the training facility. To use the facility for department-sponsored training/meetings the facilitator/organizer must check with the Training Manager to ensure the facility is available. Use of the facility is subject to approval by the Chief of Police.

The range cannot be reserved for off-duty use, and any department-approved training/meetings take precedence, even if not on the master schedule.

Firearms instructors have the primary responsibility to provide departmental firearms training and to ensure the safe operation of range activities. When using the range, the firearm's instructors will be responsible to see that all personnel adhere to the range rules.

WCPD officers shall wear ballistic vests while involved in any on-duty shooting or training activities that involve loaded firearms at the training facility. This does not include lectures, discussions, and/or other training that may occur in the classroom.

#### **311.9.1 RANGE USE DURING OFF-DUTY HOURS**

To use the range during off duty hours, users SHALL:

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- (a) Inform WCPD dispatch and the watch commander that the employee will be using the range. This can be done from the telephone that is inside the range building or by checking in at the Police Department.
- (b) Have immediate access to the telephone inside the range building (the door must be unlocked) or have a department police band radio with them; while using the range, the radio must be turned on.
- (c) The department employee who is using the range must have at least one other person with him/her; that person must be at least 16 years old. The person(s) accompanying the employee does not have to be a member of the police department.
- (d) Notify the WCPD dispatch and the watch commander when finished with the range.

Any use of the Firearms Training Facility by outside agencies or individuals (not accompanied by a member of the department) must be approved by the Chief of Police through the Training Manager.

The use of the Firearms Training Facility is available to honorably retired WCPD officers subject to the conditions and restrictions outlined in WCPD Training Notice 17-2. This privilege can be revoked at any time by the Chief of Police.

#### 311.9.2 GENERAL RULES

- (a) Firearms other than handguns, shotguns, SWAT weapons, and .22 LR rifles, may not be used unless prior approval is granted by a firearms instructor, or in the case of SWAT training, a SWAT supervisor.
- (b) When not on the firing line, all firearms shall be loaded/unloaded at the safety barrels located on the south side of the building. Firearms SHALL NOT be loaded/unloaded inside the training building.
- (c) Cleaning equipment is kept in the storage locker on the south side of the building. Firearms may be cleaned at the range, but only at the outside cleaning tables. Firearms shall not be cleaned inside the range building. Caution must be taken to ensure all firearms are safe and unloaded prior to cleaning. While cleaning firearms, live ammunition should not be on the cleaning table.
- (d) Practice ammunition may be obtained from any of the firearms instructors. For inventory control reasons, only firearms instructors will issue practice ammunition. All issued ammunition will be signed out in the Ammo Sign-Out logbook located in the ammo storage room on the south end of the building.
- (e) When the firing range is in use, all persons on the firing line and in the immediate area must wear hearing protection. When on the firing line, all persons must wear some type of eyewear protection; e.g. sunglasses, safety or prescription glasses, etc.
- (f) Paper and cardboard targets are stored at the training facility and during off duty use are the only targets that may be used. Special-purpose targets may be used only after

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permission is obtained from a firearms instructor. Cans, bottles or rocks SHALL NOT be used as target; they can cause ricochets that may result in injuries.

- (g) Always point the muzzle of a firearm in a safe direction and assume it is loaded until checked and cleared. Only shoot in the approved target direction.
- (h) There are tables and chairs in the classroom that are set up in rows; extra chairs are stacked against the back wall. If they are rearranged, the tables and chairs must be returned to the row configuration.
- (i) Because it is important to keep the range facility clean and free of debris, all trash will be put into the trashcans located around the facility.
- (j) Any defective conditions must be reported to a firearms instructor as soon as possible.
- (k) All brass shall be picked up after shooting and put in the proper bins that are in the storage room.
- (l) Any equipment used shall be returned to its proper location.
- (m) Vehicles may be driven on the range only at the direction of the instructor who is in charge of the training.
- (n) The range building alarm will be turned on before leaving the range. All doors shall be locked.
- (o) Possession or consumption of alcoholic beverages at the firearms facility is prohibited unless authorized by the Chief of Police.

#### 311.9.3 LEAD HAZARDS

The U.S. Environmental Protection Agency (EPA) has classified lead as a highly toxic metal and very dangerous to the human body. Since shooting includes exposure to lead and lead particles, special procedures are necessary whenever the range facility is used.

- (a) There shall be no eating on the range except inside the training building or areas away from the shooting and gun cleaning area. After shooting or otherwise handling ammunition, officers shall thoroughly wash their hands and face with cold water and soap before eating or drinking.
- (b) There shall be NO SMOKING in or around the Range Facility, in the gun cleaning area (while firearms are being cleaned) or on the shooting range. Smoking is only permitted outside the fenced area of the range.
- (c) Latex gloves will be provided and should be used by all persons cleaning weapons. After shooting and cleaning up brass, officers should wash their hands and face with soap and cold water, then wear the latex gloves while cleaning weapons.
- (d) All areas of exposed skin, hair and clothing may also be contaminated. Officers should be sure to wash thoroughly and change clothes as soon as possible. Range clothes should also be washed separately from any other family clothing. It is best to change prior to leaving the firearms facility and to shower prior to going on duty.

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- (e) Any person with a breathing disorder may upon request, be provided a respirator for use on the range.

### **311.10 FIREARMS/AMMUNITION SURRENDERED BY CITIZENS**

All firearms and ammunition surrendered by citizens shall be accepted and accounted for in accordance with procedures outlined in this policy.

This policy is designed to insure that the receipt of all firearms is documented and appropriate disposition determined. It also insures ammunition received is disposed of at least annually to avoid storage of old or dangerous munitions.

All firearms surrendered shall be documented in a case report and classified as a "Service to Citizen." The report will include an evidence form and a completed "field Property Receipt." The firearm(s) will be checked for stolen status prior to submitting it to the property unit and its status as "not stolen" will be written in the body of the report and on the property form.

"Ammunition only" may be received by completing an incident "Service to Citizen" report. The ammunition and a copy of the incident CAD screen are then forwarded directly to the property unit and do not require a property form.

Firearms or ammunition submitted are always forwarded to the department evidence unit for disposition under the direction of the Administrative Division Commander. Dispositions include department inventories or destruction.

### **311.11 SPECIAL FIREARMS - SWAT**

The individual sidearm will be the department authorized Glock 17 (9mm) pistol. Special sights and lighting devices may be attached to the firearm.

The primary rifles deployed by WCPD SWAT team members are the LWRC M6IC-A5 5.56 rifle. Qualified Team members are also authorized to deploy breaching shotguns, and 40mm launchers.

Sniper team members are authorized to carry special long-range sniper rifles. Sniper team rifles may be .308, 7.62, or .223/5.56 in caliber. Sniper team members are also authorized to carry LWRC M6IC-A5 rifles and department authorized Glock 17 pistol.

#### **311.11.1 SWAT FIREARMS AUTHORIZED FOR ON-DUTY OPTIONAL USE**

While on duty in a non-SWAT capacity, officers assigned to the SWAT team may carry special weapons (LWRC M6IC-A5) in addition to the required duty firearm. The officer shall be currently qualified with the special weapon he/she carries.

The firearms will be taken from the SWAT vault at the start of a shift (patrol or investigations) and returned to the SWAT van at the end of the shift. The SWAT firearms be taken home or carried in personal vehicles by SWAT members to and from Training and must follow the safety guidelines listed in this policy..

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- (a) The firearm shall be kept in its assigned carrying case at all times unless the officer needs to deploy the firearm. SWAT Members may also carry their assigned SWAT Rifles in the Patrol Car Electro Lock device.
- (b) Except in an emergency situation or otherwise directed by a Supervisor, only the SWAT team member authorized by the department to carry the firearm shall store, handle, carry, or deploy the firearm.
- (c) SWAT team members shall be responsible for the firearm including making sure it is secured in the vehicle, deployed correctly and used correctly.

### **311.12 FLYING WHILE ARMED**

The Transportation Security Administration (TSA) has imposed rules governing law enforcement officers flying armed on commercial aircraft. The following requirements apply to personnel who intend to be armed while flying on a commercial air carrier or flights where screening is conducted (49 CFR 1544.219):

- (a) Officers wishing to fly while armed must be flying in an official capacity, not for vacation or pleasure purposes, and must have a need to have the firearm accessible, as determined by the Department based on the law and published TSA rules.
- (b) Officers must carry their Walnut Creek Police Department identification card, bearing the officer's name, a full-face photograph, identification number, the officer's signature and the signature of the Chief of Police or the official seal of the Department and must present this identification to airline officials when requested. The officer should also carry the standard photo identification needed for passenger screening by airline and TSA officials (e.g., driver license, passport).
- (c) The Walnut Creek Police Department must submit a National Law Enforcement Telecommunications System (NLETS) message prior to the officer's travel. If approved, TSA will send the Walnut Creek Police Department an NLETS message containing a unique alphanumeric identifier. The officer must present the message on the day of travel to airport personnel as authorization to travel while armed.
- (d) An official letter signed by the Chief of Police authorizing armed travel must accompany the officer(s). The letter must outline the officer's necessity to fly armed, must detail his/her itinerary, and should include that the officer(s) has completed the mandatory TSA training for law enforcement officer(s) flying while armed.
- (e) Officers must have completed the mandated TSA security training covering officers flying while armed. The training shall be given by the department appointed instructor.
- (f) It is the officer's responsibility to notify the air carrier in advance of the intended armed travel. This notification can be accomplished by early check-in at the carrier's check-in counter.
- (g) Discretion must be used to avoid alarming passengers or crew by displaying a firearm. Officers must keep the firearm concealed on his/her person at all times. Firearms are not permitted in carry-on luggage and may not be stored in an overhead compartment.

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- (h) Any officer flying while armed should discreetly contact the flight crew prior to take-off and notify them of his/her assigned seat.
- (i) Officers shall not consume alcoholic beverages while aboard an aircraft, or within eight hours prior to boarding an aircraft.
- (j) Officers should try to resolve any problems associated with flying armed through the flight captain, ground security manager, TSA representative or other management representative of the air carrier.

### **311.13 CARRYING FIREARMS OUT OF STATE**

Qualified, active, full-time officers of this department are authorized to carry a concealed firearm in all other states subject to the following conditions (18 USC § 926B):

- (a) The officer shall carry his/her California State Master Police Department identification card whenever carrying such firearm.
- (b) The officer is not the subject of any current disciplinary action.
- (c) The officer may not be under the influence of alcohol or any other intoxicating or hallucinatory drug.
- (d) The officer will remain subject to this and all other department policies (including qualifying and training).

Officers are cautioned that individual states may enact local regulations that permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property, or that prohibit or restrict the possession of firearms on any state or local government property, installation, building, base or park. Federal authority may not shield an officer from arrest and prosecution in such locally restricted areas. Active law enforcement officers from other states are subject to all requirements set forth in 18 USC § 926B.



## Temporary Custody of Juveniles

### 312.1 PURPOSE AND SCOPE

This policy provides guidelines consistent with the Juvenile Justice and Delinquency Prevention Act for juveniles taken into temporary custody by members of the Walnut Creek Police Department (34 USC § 11133).

Guidance regarding contacting juveniles at schools or who may be victims is provided in the Child Abuse Policy.

#### 312.1.1 DEFINITIONS

Definitions related to this policy include:

**Juvenile non-offender** - An abused, neglected, dependent, or alien juvenile who may be legally held for his/her own safety or welfare. This also includes any juvenile who may have initially been contacted for an offense that would not subject an adult to arrest (e.g., fine-only offense) but was taken into custody for his/her protection or for purposes of reuniting the juvenile with a parent, guardian, or other responsible person. Juveniles 11 years of age or younger are considered juvenile non-offenders even if they have committed an offense that would subject an adult to arrest.

**Juvenile offender** - A juvenile 12 to 17 years of age who is alleged to have committed an offense that would subject an adult to arrest (a non-status offense) (Penal Code § 602). It also includes an offense under Penal Code § 29610 for underage possession of a handgun or concealable firearm (28 CFR 31.303).

**Non-secure custody** - When a juvenile is held in the presence of an officer or other custody employee at all times and is not placed in a locked room, cell, or behind any locked doors. Juveniles in non-secure custody may be handcuffed but not to a stationary or secure object. Personal supervision, through direct visual monitoring and audio two-way communication is maintained. Monitoring through electronic devices, such as video, does not replace direct visual observation (Welfare and Institutions Code § 207.1(d); 15 CCR 1150).

**Safety checks** - Direct, visual observation personally by a member of this department performed at random intervals within time frames prescribed in this policy to provide for the health and welfare of juveniles in temporary custody.

**Secure custody** - When a juvenile offender is held in a locked room, a set of rooms, or a cell. Secure custody also includes being physically secured to a stationary object (15 CCR 1146).

Examples of secure custody include:

- (a) A juvenile left alone in an unlocked room within the secure perimeter of the adult temporary holding area.
- (b) A juvenile handcuffed to a rail.
- (c) A juvenile placed in a room that contains doors with delayed egress devices that have a delay of more than 30 seconds.

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(d) A juvenile being processed in a secure booking area when a non-secure booking area is available.

(e) A juvenile left alone in a secure booking area after being photographed and fingerprinted.

(f) A juvenile placed in a cell within the adult temporary holding area, whether or not the cell door is locked.

(g) A juvenile placed in a room that is capable of being locked or contains a fixed object designed for cuffing or restricting movement.

**Sight and sound separation** - Located or arranged to prevent physical, visual, or auditory contact.

**Status offender** - A juvenile suspected of committing a criminal violation of the law that would not be a criminal violation but for the age of the offender. Examples may include running away, underage possession of tobacco, curfew violation, and truancy. A juvenile in custody on a court order or warrant based upon a status offense is also a status offender. This includes the habitually disobedient or truant juvenile under Welfare and Institutions Code § 601 and any juvenile suspected of an offense that would not subject an adult to arrest (e.g., fine-only offense).

### **312.2 POLICY**

The Walnut Creek Police Department is committed to releasing juveniles from temporary custody as soon as reasonably practicable and keeping juveniles safe while they are in temporary custody at the Walnut Creek Police Department. Juveniles should be held in temporary custody only for as long as reasonably necessary for processing, transfer, or release.

### **312.3 JUVENILES WHO SHOULD NOT BE HELD**

Juveniles who exhibit any of the following conditions should not be held at the Walnut Creek Police Department:

- (a) Unconscious
- (b) Seriously injured
- (c) A known suicide risk or obviously severely emotionally disturbed
- (d) Significantly intoxicated except when approved by the Watch Commander. A medical clearance shall be obtained for minors who are under the influence of drugs, alcohol, or any other intoxicating substance to the extent that they are unable to care for themselves (15 CCR 1151).
- (e) Extremely violent or continuously violent

Officers taking custody of a juvenile who exhibits any of the above conditions should take reasonable steps to provide medical attention or mental health assistance and notify a supervisor of the situation (15 CCR 1142; 15 CCR 1151).

These juveniles should not be held at the Walnut Creek Police Department unless they have been evaluated by a qualified medical and/or mental health professional (15 CCR 1142).

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If the officer taking custody of the juvenile believes the juvenile may be a suicide risk, the juvenile shall be under continuous direct supervision until evaluation, release, or a transfer is completed (15 CCR 1142).

### **312.3.1 EMERGENCY MEDICAL CARE OF JUVENILES IN CUSTODY**

When emergency medical attention is required for a juvenile, medical assistance will be called immediately. The Watch Commander shall be notified of the need for medical attention for the juvenile. Department members should administer first aid as applicable (15 CCR 1142).

### **312.3.2 SUICIDE PREVENTION OF JUVENILES IN CUSTODY**

Department members should be alert to potential symptoms based upon exhibited behavior that may indicate the juvenile is a suicide risk. These symptoms may include depression, refusal to communicate, verbally threatening to kill him/herself, or any unusual behavior which may indicate the juvenile may harm him/herself while in either secure or non-secure custody (15 CCR 1142).

### **312.4 CUSTODY OF JUVENILES**

Officers should take custody of a juvenile and temporarily hold the juvenile at the Walnut Creek Police Department when there is no other lawful and practicable alternative to temporary custody. Refer to the Child Abuse Policy for additional information regarding detaining a juvenile that is suspected of being a victim.

No juvenile should be held in temporary custody at the Walnut Creek Police Department without authorization of the arresting officer's supervisor or the Watch Commander. Juveniles taken into custody shall be held in non-secure custody unless otherwise authorized by this policy.

Any juvenile taken into custody shall be released to the care of the juvenile's parent or other responsible adult or transferred to a juvenile custody facility or to other authority as soon as practicable and in no event shall a juvenile be held beyond six hours from the time of his/her entry into the Walnut Creek Police Department (34 USC § 11133; Welfare and Institutions Code § 207.1(d)).

#### **312.4.1 CUSTODY OF JUVENILE NON-OFFENDERS**

Non-offenders taken into protective custody in compliance with the Child Abuse Policy should generally not be held at the Walnut Creek Police Department. Custodial arrangements should be made for non-offenders as soon as reasonably possible. Juvenile non-offenders shall not be held in secure custody (34 USC § 11133; Welfare and Institutions Code § 206).

Juveniles 11 years of age or younger who have committed an offense that would subject an adult to arrest may be held in non-secure custody for the offenses listed in Welfare and Institutions Code § 602(b) (murder and the sexual assault offenses) and should be referred to a probation officer for a placement determination.

#### **312.4.2 CUSTODY OF JUVENILE STATUS OFFENDERS**

Status offenders should generally be released by citation or with a warning rather than taken into temporary custody. However, officers may take custody of a status offender if requested to do

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so by a parent or legal guardian in order to facilitate reunification (e.g., transported home or to the station to await a parent). Juvenile status offenders shall not be held in secure custody (34 USC § 11133).

### 312.4.3 CUSTODY OF JUVENILE OFFENDERS

Juvenile offenders should be held in non-secure custody while at the Walnut Creek Police Department unless another form of custody is authorized by this policy or is necessary due to exigent circumstances.

Generally, a juvenile offender may be taken into custody when authorized by a court order or when there is probable cause to believe the juvenile has committed an offense that would subject an adult to arrest (Welfare and Institutions Code § 625).

A juvenile offender who is 14 years of age or older and suspected of using a firearm in violation of Welfare and Institutions Code § 625.3 shall be transported to a juvenile facility.

A juvenile offender suspected of committing murder or a sex offense that may subject a juvenile to criminal jurisdiction under Welfare and Institutions Code § 602(b), or a serious or violent felony should be referred to a probation officer for a decision on further detention.

In all other cases the juvenile offender may be:

- (a) Released upon warning or citation.
- (b) Released to a parent or other responsible adult after processing at the Department.
- (c) Referred to a probation officer for a decision regarding whether to transport the juvenile offender to a juvenile facility.
- (d) Transported to his/her home or to the place where the juvenile offender was taken into custody (Welfare and Institutions Code § 207.2).

In determining which disposition is appropriate, the investigating officer or supervisor shall prefer the alternative that least restricts the juvenile's freedom of movement, provided that alternative is compatible with the best interests of the juvenile and the community (Welfare and Institutions Code § 626).

Whenever a juvenile offender under the age of 14 is taken into custody, the officer should take reasonable steps to verify and document the child's ability to differentiate between right and wrong, particularly in relation to the alleged offense (Penal Code § 26).

### 312.4.4 FORMAL BOOKING

No juvenile offender shall be formally booked without the authorization of the arresting officer's supervisor, or in his/her absence, the Watch Commander.

Any juvenile 14 years of age or older who is taken into custody for a felony, or any juvenile whose acts amount to a sex crime, shall be booked, fingerprinted, and photographed.

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For all other acts defined as crimes, juveniles may be booked, fingerprinted or photographed upon the approval from the Watch Commander or Investigative Bureau supervisor, giving due consideration to the following:

- (a) The gravity of the offense
- (b) The past record of the offender
- (c) The age of the offender

### **312.5 ADVISEMENTS**

Officers shall take immediate steps to notify the juvenile's parent, guardian, or a responsible relative that the juvenile is in custody, the location where the juvenile is being held, and the intended disposition (Welfare and Institutions Code § 627).

Whenever a juvenile is taken into temporary custody, he/she shall be given the *Miranda* rights advisement regardless of whether questioning is intended (Welfare and Institutions Code § 625).

Anytime a juvenile offender is placed in secure custody, he/she shall be informed of the purpose of the secure custody, the length of time the secure custody is expected to last, and of the maximum six-hour limitation (Welfare and Institutions Code § 207.1(d)).

Juveniles taken into custody for an offense shall immediately be advised (or at least within one hour from being taken into custody, if possible) that they may make three telephone calls: one call completed to his/her parent or guardian; one to a responsible relative or his/her employer; and another call completed to an attorney. The calls shall be at no expense to the juvenile when completed to telephone numbers within the local calling area. Juveniles should be asked whether they are a caregiver and provided two more phone calls in the same manner as provided to adults in the Temporary Custody of Adults Policy (Welfare and Institutions Code § 627; Penal Code § 851.5).

### **312.6 JUVENILE CUSTODY LOGS**

Any time a juvenile is held in custody at the Department, the custody shall be promptly and properly documented in the juvenile custody log, including:

- (a) Identifying information about the juvenile.
- (b) Date and time of arrival and release from the Walnut Creek Police Department (15 CCR 1150).
- (c) Watch Commander notification and approval to temporarily hold the juvenile.
- (d) Any charges for which the juvenile is being held and classification of the juvenile as a juvenile offender, status offender, or non-offender.
- (e) Any changes in status (e.g., emergency situations, unusual incidents).
- (f) Time of all safety checks.
- (g) Any medical and other screening requested and completed (15 CCR 1142).

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- (h) Circumstances that justify any secure custody (Welfare and Institutions Code § 207.1(d); 15 CCR 1145).
- (i) Any other information that may be required by other authorities, such as compliance inspectors or a local juvenile court authority.

The Watch Commander shall initial the log to approve the custody, including any secure custody, and shall also initial the log when the juvenile is released.

### **312.6.1 RELEASE OF INFORMATION CONCERNING JUVENILES**

Court decisions and legislation have combined to carefully specify situations in which information may be given out or exchanged when a case involves a juvenile. Members of this department shall not divulge any information regarding juveniles unless they are certain of the legal authority to do so.

A copy of the current policy of the juvenile court concerning authorized release of information and appropriate acknowledgment forms shall be kept with copies of this procedure in the Walnut Creek Police Department Policy Manual. Such releases are authorized by Welfare and Institutions Code § 827.

Welfare and Institutions Code § 828 authorizes the release of certain information to other agencies. It shall be the responsibility of the Records Manager and the appropriate Investigative Bureau supervisors to ensure that personnel of those bureaus act within legal guidelines.

### **312.7 NO-CONTACT REQUIREMENTS**

Sight and sound separation shall be maintained between all juveniles and adults while in custody at the Department (34 USC § 11133; Welfare and Institutions Code § 207.1(d); Welfare and Institutions Code § 208; 15 CCR 1144). There should also be sight and sound separation between non-offenders and juvenile and status offenders.

In situations where brief or accidental contact may occur (e.g., during the brief time a juvenile is being fingerprinted and/or photographed in booking), a member of the Walnut Creek Police Department (trained in the supervision of persons in custody) shall maintain a constant, immediate, side-by-side presence with the juvenile or the adult to minimize any contact. If inadvertent or accidental contact does occur, reasonable efforts shall be taken to end the contact (15 CCR 1144).

#### **312.7.1 EMERGENCY MEDICAL CARE OF JUVENILES IN CUSTODY**

When emergency medical attention is required for a juvenile who is either in secure or non-secure custody, the paramedics will be called. The Watch Commander shall be notified of the need for medical attention for the juvenile.

In cases where injury or illness is life threatening and where lost minutes may be the deciding factor, the arresting officer or the discovering officer should administer first aid prior to the arrival of the paramedics. The juvenile will then be transported to a medical facility.

In the event of a serious illness, suicide attempt, injury or death of a juvenile, the following persons shall be notified as soon as possible:

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- (a) The Juvenile Court
- (b) The parent, guardian, or person standing in loco parentis, of the juvenile

### 312.7.2 CURFEW VIOLATIONS

Juveniles detained for curfew violations may be released in the field or brought to the station but should only be released to their parent, legal guardian, or responsible adult.

### 312.7.3 PROTECTIVE CUSTODY

Pursuant to Welfare and Institutions Code § 300 et seq., a child may be taken into protective custody if he/she is the victim of suspected child abuse. Before taking any minor into protective custody, the officer should make reasonable attempts to contact the appropriate child welfare authorities to ascertain any applicable history or current information concerning the minor.

Under certain circumstances, officers can be prohibited from taking a newborn who is the subject of a proposed adoption into protective custody, even when the newborn has tested positive for illegal drugs or the birth mother tested positive for illegal drugs. Officers shall instead follow the provisions of Welfare and Institutions Code § 305.6 to ensure that the newborn is placed with the adoptive parents when it is appropriate.

## **312.8 TEMPORARY CUSTODY REQUIREMENTS**

Members and supervisors assigned to monitor or process any juvenile at the Walnut Creek Police Department shall ensure the following:

- (a) The Watch Commander should be notified if it is anticipated that a juvenile may need to remain at the Walnut Creek Police Department more than four hours. This will enable the Watch Commander to ensure no juvenile is held at the Walnut Creek Police Department more than six hours.
- (b) A staff member of the same sex shall supervise personal hygiene activities and care, such as changing clothing or using the restroom, without direct observation to allow for privacy.
- (c) Personal safety checks and significant incidents/activities shall be noted on the log.
- (d) Juveniles in custody are informed that they will be monitored at all times, except when using the toilet.
  - 1. There shall be no viewing devices, such as peep holes or mirrors, of which the juvenile is not aware.
  - 2. This does not apply to surreptitious and legally obtained recorded interrogations.
- (e) Juveniles shall have reasonable access to toilets and wash basins (15 CCR 1143).
- (f) Food shall be provided if a juvenile has not eaten within the past four hours or is otherwise in need of nourishment, including any special diet required for the health of the juvenile (15 CCR 1143).
- (g) Juveniles shall have reasonable access to a drinking fountain or water (15 CCR 1143).

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- (h) Juveniles shall have reasonable opportunities to stand and stretch, particularly if handcuffed or restrained in any way.
- (i) Juveniles shall have privacy during family, guardian, and/or lawyer visits (15 CCR 1143).
- (j) Juveniles shall be permitted to remain in their personal clothing unless the clothing is taken as evidence or is otherwise unsuitable or inadequate for continued wear while in custody (15 CCR 1143).
- (k) Blankets shall be provided as reasonably necessary (15 CCR 1143).
  - 1. The supervisor should ensure that there is an adequate supply of clean blankets.
- (l) Adequate shelter, heat, light, and ventilation should be provided without compromising security or enabling escape.
- (m) Juveniles shall have adequate furnishings, including suitable chairs or benches.
- (n) Juveniles shall have the right to the same number of telephone calls as an adult in temporary custody.
- (o) No discipline may be administered to any juvenile, nor may juveniles be subjected to corporal or unusual punishment, humiliation, or mental abuse (15 CCR 1142).

### **312.9 USE OF RESTRAINT DEVICES**

Juvenile offenders may be handcuffed in accordance with the Handcuffing and Restraints Policy. A juvenile offender may be handcuffed at the Walnut Creek Police Department when the juvenile presents a heightened risk. However, non-offenders and status offenders should not be handcuffed unless they are combative or threatening (15 CCR 1142).

Other restraints shall only be used after less restrictive measures have failed and with the approval of the Watch Commander. Restraints shall only be used so long as it reasonably appears necessary for the juvenile's protection or the protection of others (15 CCR 1142).

Juveniles in restraints shall be kept away from other unrestrained juveniles or monitored in such a way as to protect the juvenile from abuse (15 CCR 1142).

### **312.10 PERSONAL PROPERTY**

The officer taking custody of a juvenile offender or status offender at the Walnut Creek Police Department shall ensure a thorough search of the juvenile's property is made and all property is removed from the juvenile, especially those items that could compromise safety, such as pens, pencils, and belts.

The personal property of a juvenile should be placed in a property bag. The property should be inventoried in the juvenile's presence and sealed into the bag. The property should be kept in a monitored or secure location until the juvenile is released from the custody of the Walnut Creek Police Department.



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### **312.11 SECURE CUSTODY**

Only juvenile offenders 14 years of age or older may be placed in secure custody (Welfare and Institutions Code § 207; 15 CCR 1145). Watch Commander approval is required before placing a juvenile offender in secure custody.

Secure custody should only be used for juvenile offenders when there is a reasonable belief that the juvenile is a serious risk of harm to him/herself or others. Factors to be considered when determining if the juvenile offender presents a serious security risk to him/herself or others include the following (15 CCR 1145):

- (a) Age, maturity, and delinquent history
- (b) Severity of offense for which the juvenile was taken into custody
- (c) The juvenile offender's behavior
- (d) Availability of staff to provide adequate supervision or protection of the juvenile offender
- (e) Age, type, and number of other individuals in custody at the facility

Members of this department shall not use secure custody for convenience when non-secure custody is, or later becomes, a reasonable option (15 CCR 1145).

When practicable and when no locked enclosure is available, handcuffing one hand of a juvenile offender to a fixed object while otherwise maintaining the juvenile in non-secure custody should be considered as the method of secure custody. An employee must be present at all times to ensure the juvenile's safety while secured to a stationary object (15 CCR 1148).

Juveniles shall not be secured to a stationary object for more than 60 minutes. Supervisor approval is required to secure a juvenile to a stationary object for longer than 60 minutes and every 30 minutes thereafter (15 CCR 1148). Supervisor approval should be documented.

The decision for securing a minor to a stationary object for longer than 60 minutes and every 30 minutes thereafter shall be based upon the best interests of the juvenile offender (15 CCR 1148).

#### **312.11.1 LOCKED ENCLOSURES**

A thorough inspection of the area shall be conducted before placing a juvenile into the enclosure. A second inspection shall be conducted after removing the juvenile. Any damage noted to the room should be photographed and documented in the crime report.

The following requirements shall apply to a juvenile offender who is held inside a locked enclosure:

- (a) The juvenile shall constantly be monitored by an audio/video system during the entire custody.
- (b) Juveniles shall have constant auditory access to department members (15 CCR 1147).
- (c) Initial placement into and removal from a locked enclosure shall be logged (Welfare and Institutions Code § 207.1(d)).

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(d) Unscheduled safety checks to provide for the health and welfare of the juvenile by a staff member, no less than once every 15 minutes, shall occur (15 CCR 1147; 15 CCR 1151).

1. All safety checks shall be logged.
2. The safety check should involve questioning the juvenile as to his/her well-being (sleeping juveniles or apparently sleeping juveniles should be awakened).
3. Requests or concerns of the juvenile should be logged.

(e) Males and females shall not be placed in the same locked room (15 CCR 1147).

(f) Juvenile offenders should be separated according to severity of the crime (e.g., felony or misdemeanor).

(g) Restrained juveniles shall not be mixed in a cell or room with unrestrained juveniles.

### **312.12 SUICIDE ATTEMPT, DEATH, OR SERIOUS INJURY OF A JUVENILE**

The Watch Commander will ensure procedures are in place to address the suicide attempt, death, or serious injury of any juvenile held at the Walnut Creek Police Department (15 CCR 1142; 15 CCR 1047). The procedures will address:

- (a) Immediate notification of the on-duty supervisor, Chief of Police, and Investigation Bureau Supervisor.
- (b) Notification of the parent, guardian, or person standing in loco parentis of the juvenile.
- (c) Notification of the appropriate prosecutor.
- (d) Notification of the City attorney.
- (e) Notification to the coroner.
- (f) Notification of the juvenile court.
- (g) In the case of a death, providing a report to the Attorney General under Government Code § 12525 within 10 calendar days of the death, and forwarding the same report to the Board of State and Community Corrections within the same time frame (15 CCR 1046).
- (h) A medical and operational review of deaths and suicide attempts pursuant to 15 CCR 1046.
- (i) Evidence preservation.

### **312.13 INTERVIEWING OR INTERROGATING JUVENILE SUSPECTS**

No interview or interrogation of a juvenile should occur unless the juvenile has the apparent capacity to consent, and does consent to an interview or interrogation.

Prior to conducting a custodial interrogation, including the waiver of Miranda rights, an officer shall permit a juvenile 15 years of age or younger to consult with legal counsel in person, by telephone, or by video conference. The consultation may not be waived by the juvenile. The requirement to consult with legal counsel does not apply when (Welfare and Institutions Code § 625.6):

- (a) Information is necessary to protect life or property from an imminent threat.

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(b) The questions are limited to what is reasonably necessary to obtain the information relating to the threat.

### 312.13.1 MANDATORY RECORDINGS OF JUVENILES

Any interrogation of an individual under 18 years of age who is in custody and suspected of committing murder shall be audio and video recorded when the interview takes place at a department facility, jail, detention facility, or other fixed place of detention. The recording shall include the entire interview and a Miranda advisement preceding the interrogation (Penal Code § 859.5).

This recording is not mandatory when (Penal Code § 859.5):

(a) Recording is not feasible because of exigent circumstances that are later documented in a report.

(b) The individual refuses to have the interrogation recorded, including a refusal any time during the interrogation, and the refusal is documented in a report. If feasible, the refusal shall be electronically recorded.

(c) The custodial interrogation occurred in another state by law enforcement officers of that state, unless the interrogation was conducted with the intent to avoid the requirements of Penal Code § 859.5.

(d) The interrogation occurs when no member conducting the interrogation has a reason to believe that the individual may have committed murder. Continued custodial interrogation concerning that offense shall be electronically recorded if the interrogating member develops a reason to believe the individual committed murder.

(e) The interrogation would disclose the identity of a confidential informant or would jeopardize the safety of an officer, the individual being interrogated, or another individual. Such circumstances shall be documented in a report.

(f) A recording device fails despite reasonable maintenance and the timely repair or replacement is not feasible.

(g) The questions are part of a routine processing or booking, and are not an interrogation.

(h) The suspect is in custody for murder and the interrogation is unrelated to a murder. However, if any information concerning a murder is mentioned during the interrogation, the remainder of the interrogation shall be recorded.

These recordings shall be retained until a conviction is final and all direct and habeas corpus appeals are exhausted, a court no longer has any jurisdiction over the individual, or the prosecution for that offense is barred (Penal Code § 859.5; Welfare and Institutions Code § 626.8).

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### **312.14 BOARD OF STATE AND COMMUNITY CORRECTIONS CERTIFICATION**

The Patrol Division Commander shall coordinate the procedures related to the custody of juveniles held at the Walnut Creek Police Department and ensure any required certification is maintained (Welfare and Institution Code § 210.2).

### **312.15 RELIGIOUS ACCOMMODATION**

Juveniles have the right to the same religious accommodation as adults in temporary custody (see the Temporary Custody of Adults Policy).

## Execution of Search and Arrest Warrants

### 313.1 POLICY

It shall be the policy of the Walnut Creek Police Department to adhere to specific guidelines when involved in the service of search and arrest warrants (these guidelines are listed below and are specific to working with other law enforcement agencies as well as within our own agency).

#### 313.1.1 PURPOSE

The purpose of this policy is to provide guidelines for the service of search and arrest warrants.

#### 313.1.2 BACKGROUND

- (a) This policy shall be in effect when members of the Walnut Creek Police Department conduct a planned operation within our own jurisdiction or within the jurisdiction of another agency.
- (b) This policy, which is neither a statute, ordinance, nor regulation, is not intended to increase civil or criminal liability of the Walnut Creek Police Department or their employees and shall not be construed as creating any mandatory obligations to, or on behalf of, third parties.
- (c) The service of search and felony arrest warrants frequently involves multiple jurisdictions and/or is accomplished in geographical areas where the agency serving the warrant does not have the primary responsibility for the delivery of general police services.

### 313.2 PROCEDURES

#### 313.2.1 DEFINITION OF TERMS

**Venue Agency** - The agency or agencies within whose geographical jurisdiction the warrant is to be served.

**Service Agency** - The law enforcement agency, which has accepted the responsibility for service of the arrest or search warrant.

**Hazardous Materials** - Any substance or material in any form or quantity, which poses a physical or health hazard to life, property, or the environment.

**Briefing** - A structured meeting involving verbal and written communication of information, written instructions, and written guidelines.

#### 313.2.2 WARRANT SERVICE PROCEDURE

The service of a warrant may be a relatively routine task or, in varying degrees, one which requires a great deal of planning and coordination to reduce the associated risks.

- (a) Command Structure
  1. The service agency is responsible for the execution of a warrant.

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2. The service of a warrant shall include the designation of one of the involved officers as the officer in charge. Such an officer may or may not be a supervisor, but he or she shall be responsible for the proper execution of a warrant.

(b) Responsibility for Service of Warrants

1. The service of felony arrest and/or search warrants will normally be the responsibility of the agency, which has prepared the affidavit or is investigating the crime. An agency may defer the service of a warrant to another agency as they agree.
2. The countywide protocol does not require the venue agency to participate in all warrants served in its jurisdiction as individual priorities, needs, and circumstances may dictate otherwise. However if staffing permits, each agency should make every effort to provide reasonable levels of assistance and shall not obstruct, impair, or delay the execution of a warrant lawfully held by another agency.
3. This policy is not intended to address the service of non-felony arrest warrants, which will be handled on a case-by-case basis as the involved agencies agree.

### 313.2.3 NOTIFICATION

- (a) Prior to the service of a warrant, the service agency shall notify, in a timely manner, the venue agency of the proposed execution. Such notification shall include, but not necessarily be limited to:
1. The location where the warrant(s) will be served and the name of the involved persons.
  2. The general circumstances surrounding the obtaining of the warrant(s) and the charge(s) upon which the warrant is based.
  3. Any potentially dangerous circumstances which are known to exist.
  4. What assistance, if any, is required of the venue agency.
  5. The name of the officer in charge.
  6. The proposed time of the execution.
  7. Location of the briefing and availability of the briefing sheet.
  8. The name and telephone of the service agency's contact person regarding the warrant (before and after service of the warrant).
- (b) Once notified, the venue agency is responsible for:
1. Maintaining the confidentiality of the information.
  2. Any intra-department communications which, are appropriate given the nature of the warrant service.

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## *Execution of Search and Arrest Warrants*

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### 313.2.4 OPERATIONAL PLAN / RISK ANALYSIS

The officer in charge shall evaluate the risk(s) to the public and/or to the officers involved in the service of the warrant and shall incorporate tactical planning steps to reduce the associated dangers. A WCPD Risk Analysis Form and Operational Plan **shall** be completed and reviewed by a supervisor prior to any service of any search and/or high risk arrest warrant (exception being search warrants for business records). The Risk Analysis Form **shall** be attached to the Operational Plan.

- (a) The service of warrants which offer a high degree of potential danger should include, where feasible, the following:
  1. Involvement of a representative from the venue agency in the development of a tactical plan.
  2. A briefing which includes:
    - (a) Attendance by all of the officers involved in the service of the warrant. In instances where patrol officers cannot attend because of other duties, they should be briefed in the field.
    - (b) A review of the Operational Plan and Risk Analysis Form (including individual assignments, emergency contingency plans etc.).
      - Copies of the Operational Plan and Risk Analysis Form **shall** be given to each of the following personnel **prior** to service:
        - Chief of Police
        - Operations and Administration Commanders
        - On-Duty Watch Commander and Sergeant
        - Investigations Bureau Commander
        - On-Duty Police Dispatch Supervisor and Dispatcher
    - (c) The identification and description of the suspect(s), premises, and all of the officers involved in the warrant service.
  3. Except where circumstances dictate otherwise, non uniformed participants should wear raid jackets (or similar tactical-type vests) which clearly identify them as law enforcement personnel.
  4. Standard issue safety equipment shall be carried by all personnel serving warrants.
  5. The following optional equipment may be carried by sworn officers authorized to carry such items:
    - Department approved long-gun if authorized to carry that firearm (Refer to Firearms Policy for further information on carrying specialized firearms while on-duty.)
    - Sound diversionary devices may also be carried by trained and authorized personnel (SWAT personnel only) if those personnel are assigned to participate in the warrant service.

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(b) Concurrence

- (a) Where possible, the officer in charge shall strive to obtain concurrence from the venue agency as to the manner and means by which a warrant will be served.
- (b) In the event the venue agency does not concur with the tactics and/or the manner in which a warrant is to be served, the officer in charge shall provide a representative of the venue agency the opportunity to discuss his/her concerns with a superior officer from the service agency prior to the execution of the warrant.

### 313.2.5 PERSONNEL AND RESOURCES

The venue agency will normally provide, given adequate notice and when personnel are available, one uniformed officer to assist in the service of a warrant. Personnel commitments beyond one officer must be arranged well in advance of the execution of the warrant. Unless otherwise agreed, the service agency shall be responsible for providing any equipment and/or other resources necessary to accomplish the warrant service.

### 313.2.6 INVESTIGATIVE RESPONSIBILITY

- (a) Unless otherwise agreed, officers from the service agency shall be responsible for the writing of any reports and/or the identification, collection, and storing of evidence associated with the execution of the warrant.
  - 1. The service agency should include in its reports the names of all of the personnel involved in the execution of the warrant.
  - 2. Venue agency personnel, who have witnessed events essential to the prosecution of the case, shall provide, upon request, a written report to the service agency.
- (b) Officers from the venue agency may be responsible for investigation of criminal events, which are unrelated to the service of the warrant, which occur during the service of the warrant. This shall include writing reports of the incident and collection of evidence pertaining to the new criminal event. This will be an option for other agencies to be involved in the investigation depending on the individual circumstances.

### 313.2.7 HAZARDOUS MATERIALS

The venue agency shall, as provided for in Contra Costa County's Hazardous Material Incident Contingency Plan (or other appropriate county hazardous materials response plan) be responsible for the disposal of any hazardous materials discovered in the service of a warrant.

### 313.2.8 CLANDESTINE LABORATORIES

- (a) Where the service of a warrant directly relates to the investigation of a clandestine laboratory, the collection of evidence shall, unless otherwise provided for, be the responsibility of the service agency.



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1. The Contra Costa County Criminalistics Laboratory will collect, upon request, exemplars for analysis.
    - If the CCC County Lab is not available, then contact D.O.J. or the D.E.A for assistance.
  2. The disposal of by products, precursor materials, and/or other associated substances, which constitute a threat to the public and/or the natural environment, may be the responsibility of the venue agency. Other outside agency assistance may be needed depending on the circumstances.
  3. The venue agency may, at its option, seek civil recovery as provided for in Section 11470.1 of the Uniform Controlled Substance Act.
- (b) In instances where there appears to be a strong likelihood that the service of a warrant will result in the discovery of a clandestine laboratory, the service agency may elect to defer the service of the warrant to D.O.J. agents. or the D.E.A. which may assume responsibility for the collection of the evidence and subsequent disposal of the associated hazardous materials.

#### 313.2.9 TRANSPORTATION OF PRISONERS

- (a) Unless otherwise agreed, the transportation of prisoners will be the responsibility of the service agency.
- (b) When the service agency is comprised of a multi-agency task force, the venue agency will provide, when possible, for the transportation of prisoners.
- (c) Where the venue agency accepts responsibility for the transportation of prisoners, the officer who made the arrest shall provide a completed booking sheet to the transporting officer.
- (d) During transportation of prisoners, a properly equipped patrol unit, transportation van, or bus will be the preferred means of transportation.

#### 313.2.10 BOOKING/HOUSING OF PRISONERS

- (a) Unless otherwise agreed, the service agency shall be responsible for the booking and housing of prisoners.
- (b) In instances where the venue agency agrees to book and house the arrestee(s), it shall be the responsibility of the arresting officer to convey any special and/or procedural instructions to the transporting officer. Once received, the transporting officer should make a reasonable effort to ensure that the requests of the arresting officer, where proper, are complied with.
- (c) When the service agency is comprised of a multi-agency task force, the venue agency will provide, given prior notification and sufficient resources, for the booking and housing of the prisoners.

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### 313.2.11 AFTER SERVICE OF THE WARRANT

When the service agency clears from the scene where the warrant was served, the service agency should notify the venue agency and also advise if any arrests were made.

### 313.2.12 PRESS RELEASES

All press releases, which directly relate to the service of the warrant, will be handled by the service agency. Exceptions will be handled on a case by case basis as the involved agencies agree. A copy of the press release should be electronically transmitted to the venue agency as soon as possible after the service agency has cleared from the scene.

## Adult Abuse

### 314.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the investigation and reporting of suspected abuse of certain adults who may be more vulnerable than others. This policy also addresses mandatory notification for Walnut Creek Police Department members as required by law.

#### 314.1.1 DEFINITIONS

Definitions related to this policy include:

**Adult abuse** - Any offense or attempted offense involving violence or neglect of an adult victim when committed by a person responsible for the adult's care, or any other act that would mandate reporting or notification to a social service agency or law enforcement (Penal Code § 368).

**Abuse of an elder (age 65 or older) or dependent adult** - Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering; or the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering. Neglect includes self-neglect (Welfare and Institutions Code § 15610.07; Penal Code § 368.5).

### 314.2 ADULT ABUSE REPORTING

Every allegation of adult abuse shall be documented in a report. When documenting elder/dependent abuse cases the following information should also be included in the report:

- Current location of the victim
- Victim's condition/nature and extent of injuries, neglect or loss
- Names of agencies and personnel requested and on scene

Reporting cases of adult abuse is confidential and will only be released in accordance with the Release of Records and Information Policy.

Officers investigating adult abuse shall complete a State of California form SOC 341 (Report of Suspected Dependent Adult/Elder Abuse).

### 314.3 POLICY

The Walnut Creek Police Department will investigate all reported incidents of alleged adult abuse and ensure proper reporting and notification as required by law.

### 314.4 INVESTIGATIONS AND REPORTING

All reported or suspected cases of adult abuse require investigation and a report, even if the allegations appear unfounded or unsubstantiated.

Investigations and reports related to suspected cases of adult abuse should address, as applicable:

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- (a) The overall basis for the contact. This should be done by the investigating officer in all circumstances where a suspected adult abuse victim is contacted.
- (b) Any relevant statements the victim may have made and to whom he/she made the statements.
- (c) If a person is taken into protective custody, the reasons, the name and title of the person making the decision, and why other alternatives were not appropriate.
- (d) Documentation of any visible injuries or any injuries identified by the victim. This should include photographs of such injuries, if practicable.
- (e) Whether the victim was transported for medical treatment or a medical examination.
- (f) Whether the victim identified a household member as the alleged perpetrator, and a list of the names of any other potential victims or witnesses who may reside in the residence.
- (g) Identification of any prior related reports or allegations of abuse, including other jurisdictions, as reasonably known.
- (h) Previous addresses of the victim and suspect.
- (i) Other potential witnesses who have not yet been interviewed, such as relatives or others close to the victim's environment.
- (j) Results of investigations shall be provided to those agencies (Adult Protective Services (APS), long-term ombudsman) that referred or reported the adult abuse (Welfare and Institutions Code § 15640(f)).
- (k) Whether a death involved the End of Life Option Act:
  - 1. Whether or not assistance was provided to the person beyond that allowed by law (Health and Safety Code § 443.14)
  - 2. Whether an individual knowingly altered or forged a request for an aid-in-dying drug to end a person's life without his/her authorization, or concealed or destroyed a withdrawal or rescission of a request for an aid-in-dying drug (Health and Safety Code § 443.17)
  - 3. Whether coercion or undue influence was exerted on the person to request or ingest an aid-in-dying drug or to destroy a withdrawal or rescission of a request for such medication (Health and Safety Code § 443.17)
  - 4. Whether an aid-in-dying drug was administered to a person without his/her knowledge or consent (Health and Safety Code § 443.17).

Any unexplained death of an adult who was in the care of a guardian or caretaker should be considered as potential adult abuse and investigated similarly.

### **314.5 QUALIFIED INVESTIGATORS**

Qualified investigators should be available to investigate cases of adult abuse. These investigators should:

- (a) Conduct interviews in appropriate interview facilities.

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- (b) Be familiar with forensic interview techniques specific to adult abuse investigations.
- (c) Present all cases of alleged adult abuse to the prosecutor for review.
- (d) Coordinate with other enforcement agencies, social service agencies and facility administrators as needed.
- (e) Provide referrals to therapy services, victim advocates, guardians and support for the victim and family as appropriate.
- (f) Participate in or coordinate with multidisciplinary investigative teams as applicable (Welfare and Institutions Code § 15610.55).

### **314.6 MANDATORY NOTIFICATION**

Members of the Walnut Creek Police Department shall notify the local office of the California Department of Social Services (CDSS) APS agency when they reasonably suspect, have observed, or have knowledge of an incident that reasonably appears to be abuse of an elder (age 65 or older) or dependent adult, or are told by an elder or dependent adult that he/she has experienced abuse (Welfare and Institutions Code § 15630(b)).

Notification shall be made by telephone as soon as practicable and a written report shall be provided within two working days as provided in Welfare and Institutions Code § 15630(b)(c)).

A dependent adult is an individual, regardless of whether the individual lives independently, between 18 and 64 years of age who has physical or mental limitations that restrict his/her ability to carry out normal activities or to protect his/her rights, including but not limited to persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. This also includes those admitted as inpatients to a 24-hour health facility, as defined in state law (Welfare and Institutions Code § 15610.23).

Notification shall also be made to the following agencies as soon as practicable or as provided below (Welfare and Institutions Code § 15630):

- (a) If the abuse is physical abuse and occurred in a long-term care facility (not a state mental health hospital or a state developmental center) notification shall be made as follows (Welfare and Institutions Code § 15630(b)(1)):
  - 1. If there is serious bodily injury, notification shall be made by telephone and, within two hours, a written report shall be made to the local ombudsman and the corresponding licensing agency.
  - 2. If there is physical abuse and no serious bodily injury, notification shall be made by telephone and, within 24 hours, a written report shall be made to the local ombudsman and the corresponding licensing agency.
  - 3. If the abuse is allegedly caused by a resident with dementia and there is no serious bodily injury, notification shall be made by telephone and a written report to the local ombudsman within 24 hours.

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4. When a report of abuse is received by the Department, the local ombudsman shall be called to coordinate efforts to provide the most immediate and appropriate response (Welfare and Institutions Code § 15630(b)).
  - (b) If the abuse is in a long-term care facility (not a state mental health or a state developmental center) and is other than physical abuse, a telephone report and a written report shall be made to the local ombudsman as soon as practicable (Welfare and Institutions Code § 15630(b)).
  - (c) The California Department of Public Health (DPH) shall be notified of all known or suspected abuse in a long-term care facility.
  - (d) The SDSS shall be notified of all known or suspected abuse occurring in a residential care facility for the elderly or in an adult day program.
  - (e) If the abuse occurred in an adult day health care center, DPH and the California Department of Aging shall be notified.
  - (f) The Bureau of Medi-Cal Fraud and Elder Abuse shall be notified of all abuse that constitutes criminal activity in a long-term care facility.
  - (g) The District Attorney's office shall be notified of all cases of physical abuse and financial abuse in a long-term care facility.
  - (h) If the abuse occurred at a state mental hospital or a state developmental center, notification shall be made to the designated investigators of the California Department of State Hospitals or the California Department of Developmental Services as soon as practicable but no later than two hours after law enforcement becomes aware of the abuse (Welfare and Institutions Code § 15630(b)).
1. When a report of abuse is received by the Department, investigation efforts shall be coordinated with the designated investigators of the California Department of State Hospitals or the California Department of Developmental Services (Welfare and Institutions Code § 15630(b)).
  - (i) If during an investigation it is determined that the adult abuse is being committed by a licensed health practitioner as identified in Welfare and Institutions Code § 15640(b), the appropriate licensing agency shall be immediately notified (Welfare and Institutions Code 15640(b)).
  - (j) When the Department receives a report of abuse, neglect or abandonment of an elder or dependent adult alleged to have occurred in a long-term care facility, the licensing agency shall be notified by telephone as soon as practicable (Welfare and Institutions Code § 15640(e)).

The Detective Bureau supervisor is responsible for ensuring that proper notifications have occurred to the District Attorney's Office and any other regulatory agency that may be applicable based upon where the abuse took place (e.g., care facility, hospital) per Welfare and Institutions Code § 15630(b).

Notification is not required for a person who was merely present when a person self-administered a prescribed aid-in-dying drug or a person prepared an aid-in-dying drug so long as the person

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did not assist the individual in ingesting the aid-in-dying drug (Health and Safety Code § 443.14; Health and Safety Code § 443.18).

#### **314.6.1 NOTIFICATION PROCEDURE**

Notification should include the following information, if known (Welfare and Institutions Code § 15630(e)):

- (a) The name of the person making the report.
- (b) The name and age of the elder or dependent adult.
- (c) The present location of the elder or dependent adult.
- (d) The names and addresses of family members or any other adult responsible for the care of the elder or dependent adult.
- (e) The nature and extent of the condition of the elder or dependent adult.
- (f) The date of incident.
- (g) Any other information, including information that led the person to suspect elder or dependent adult abuse.

#### **314.7 PROTECTIVE CUSTODY**

Before taking an adult abuse victim into protective custody when facts indicate the adult may not be able to care for him/herself, the officer should make reasonable attempts to contact APS. Generally, removal of an adult abuse victim from his/her family, guardian or other responsible adult should be left to the welfare authorities when they are present or have become involved in an investigation.

Generally, members of this department should remove an adult abuse victim from his/her family or guardian without a court order only when no other effective alternative is reasonably available and immediate action reasonably appears necessary to protect the victim. Prior to taking an adult abuse victim into protective custody, the officer should take reasonable steps to deliver the adult to another qualified legal guardian, unless it reasonably appears that the release would endanger the victim or result in abduction. If this is not a reasonable option, the officer shall ensure that the adult is delivered to APS.

Whenever practicable, the officer should inform a supervisor of the circumstances prior to taking an adult abuse victim into protective custody. If prior notification is not practicable, officers should contact a supervisor promptly after taking the adult into protective custody.

When adult abuse victims are under state control, have a state-appointed guardian or there are other legal holdings for guardianship, it may be necessary or reasonable to seek a court order on behalf of the adult victim to either remove the adult from a dangerous environment (protective custody) or restrain a person from contact with the adult.

#### **314.7.1 EMERGENCY PROTECTIVE ORDERS**

In any situation which an officer reasonably believes that an elder or dependent adult is in immediate and present danger of abuse based on an allegation of a recent incident of abuse or

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threat of abuse (other than financial abuse alone), the officer may seek an emergency protective order against the person alleged to have committed or threatened such abuse (Family Code § 6250(d)).

#### **314.8 INTERVIEWS**

##### **314.8.1 PRELIMINARY INTERVIEWS**

Absent extenuating circumstances or impracticality, officers should audio record the preliminary interview with a suspected adult abuse victim. Officers should avoid multiple interviews with the victim and should attempt to gather only the information necessary to begin an investigation. When practicable, investigating officers should defer interviews until a person who is specially trained in such interviews is available.

##### **314.8.2 DETAINING VICTIMS FOR INTERVIEWS**

An officer should not detain an adult involuntarily who is suspected of being a victim of abuse solely for the purpose of an interview or physical exam without his/her consent or the consent of a guardian unless one of the following applies:

- (a) Exigent circumstances exist, such as:
  - 1. A reasonable belief that medical issues of the adult need to be addressed immediately.
  - 2. A reasonable belief that the adult is or will be in danger of harm if the interview or physical exam is not immediately completed.
  - 3. The alleged offender is a family member or guardian and there is reason to believe the adult may be in continued danger.
- (b) A court order or warrant has been issued.

#### **314.9 MEDICAL EXAMINATIONS**

When an adult abuse investigation requires a medical examination, the investigating officer should obtain consent for such examination from the victim, guardian, agency or entity having legal custody of the adult. The officer should also arrange for the adult's transportation to the appropriate medical facility.

In cases where the alleged offender is a family member, guardian, agency or entity having legal custody and is refusing to give consent for the medical examination, officers should notify a supervisor before proceeding. If exigent circumstances do not exist or if state law does not provide for officers to take the adult for a medical examination, the supervisor should consider other government agencies or services that may obtain a court order for such an examination.

#### **314.10 DRUG-ENDANGERED VICTIMS**

A coordinated response by law enforcement and social services agencies is appropriate to meet the immediate and longer-term medical and safety needs of an adult abuse victim who has been exposed to the manufacturing, trafficking or use of narcotics.



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### **314.10.1 OFFICER RESPONSIBILITIES**

Officers responding to a drug lab or other narcotics crime scene where an adult abuse victim is present or where there is evidence that an adult abuse victim lives should:

- (a) Document the environmental, medical, social and other conditions of the adult, using photography as appropriate and the checklist or form developed for this purpose.
- (b) Notify the Detective Bureau supervisor so an interagency response can begin.

### **314.10.2 SUPERVISOR RESPONSIBILITIES**

The Detective Bureau supervisor should:

- (a) Work with professionals from the appropriate agencies, including APS, other law enforcement agencies, medical service providers and local prosecutors, to develop community specific procedures for responding to situations where there are adult abuse victims endangered by exposure to methamphetamine labs or the manufacture and trafficking of other drugs.
- (b) Activate any available interagency response when an officer notifies the Detective Bureau supervisor that he/she has responded to a drug lab or other narcotics crime scene where an adult abuse victim is present or where evidence indicates that an adult abuse victim lives.
- (c) Develop a report format or checklist for use when officers respond to drug labs or other narcotics crime scenes. The checklist will help officers document the environmental, medical, social and other conditions that may affect the adult.

### **314.11 RECORDS BUREAU RESPONSIBILITIES**

The Records Bureau is responsible for:

- (a) Providing a copy of the adult abuse report to the APS, ombudsman or other agency as applicable within two working days or as required by law (Welfare and Institutions Code § 15630; Welfare and Institutions Code § 15640(c)).
- (b) Retaining the original adult abuse report with the initial case file.

### **314.12 JURISDICTION**

The Walnut Creek Police Department has concurrent jurisdiction with state law enforcement agencies when investigating elder and dependent adult abuse and all other crimes against elder victims and victims with disabilities (Penal Code § 368.5).

Adult protective services agencies and local long-term care ombudsman programs also have jurisdiction within their statutory authority to investigate elder and dependent adult abuse and criminal neglect and may assist in criminal investigations upon request in such cases. However, this department will retain responsibility for the criminal investigations (Penal Code § 368.5).

### **314.13 RELEVANT STATUTES**

#### **Penal Code § 368 (c)**

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Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, is guilty of a misdemeanor.

### **Penal Code § 368 (f)**

(f) A person who commits the false imprisonment of an elder or a dependent adult by the use of violence, menace, fraud, or deceit is punishable by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.

### **Welfare and Institutions Code § 15610.05**

“Abandonment” means the desertion or willful forsaking of an elder or a dependent adult by anyone having care or custody of that person under circumstances in which a reasonable person would continue to provide care and custody.

### **Welfare and Institutions Code § 15610.06**

“Abduction” means the removal from this state and the restraint from returning to this state, or the restraint from returning to this state, of any elder or dependent adult who does not have the capacity to consent to the removal from this state and the restraint from returning to this state, or the restraint from returning to this state, as well as the removal from this state or the restraint from returning to this state, of any conservatee without the consent of the conservator or the court.

### **Welfare and Institutions Code § 15610.30**

(a) “Financial abuse” of an elder or dependent adult occurs when a person or entity does any of the following:

- (1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.
- (2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.
- (3) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as defined in Section 15610.70.

(b) A person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult.

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(c) For purposes of this section, a person or entity takes, secretes, appropriates, obtains, or retains real or personal property when an elder or dependent adult is deprived of any property right, including by means of an agreement, donative transfer, or testamentary bequest, regardless of whether the property is held directly or by a representative of an elder or dependent adult.

(d) For purposes of this section, “representative” means a person or entity that is either of the following:

- (1) A conservator, trustee, or other representative of the estate of an elder or dependent adult.
- (2) An attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney.

### **Welfare and Institutions Code § 15610.43**

(a) “Isolation” means any of the following:

- (1) Acts intentionally committed for the purpose of preventing, and that do serve to prevent, an elder or dependent adult from receiving his or her mail or telephone calls.
- (2) Telling a caller or prospective visitor that an elder or dependent adult is not present, or does not wish to talk with the caller, or does not wish to meet with the visitor where the statement is false, is contrary to the express wishes of the elder or the dependent adult, whether he or she is competent or not, and is made for the purpose of preventing the elder or dependent adult from having contact with family, friends, or concerned persons.
- (3) False imprisonment, as defined in Section 236 of the Penal Code.
- (4) Physical restraint of an elder or dependent adult, for the purpose of preventing the elder or dependent adult from meeting with visitors.

(b) The acts set forth in subdivision (a) shall be subject to a rebuttable presumption that they do not constitute isolation if they are performed pursuant to the instructions of a physician and surgeon licensed to practice medicine in the state, who is caring for the elder or dependent adult at the time the instructions are given, and who gives the instructions as part of his or her medical care.

(c) The acts set forth in subdivision (a) shall not constitute isolation if they are performed in response to a reasonably perceived threat of danger to property or physical safe

### **Welfare and Institutions Code § 15610.57**

(a) “Neglect” means either of the following:

- (1) The negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise.
- (2) The negligent failure of an elder or dependent adult to exercise that degree of self care that a reasonable person in a like position would exercise.

(b) Neglect includes, but is not limited to, all of the following:

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- (1) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter.
- (2) Failure to provide medical care for physical and mental health needs. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment.
- (3) Failure to protect from health and safety hazards.
- (4) Failure to prevent malnutrition or dehydration.
- (5) Failure of an elder or dependent adult to satisfy the needs specified in paragraphs (1) to (4), inclusive, for himself or herself as a result of poor cognitive functioning, mental limitation, substance abuse, or chronic poor health.

### **Welfare and Institutions Code § 15610.63**

15610.63. "Physical abuse" means any of the following:

- (a) Assault, as defined in Section 240 of the Penal Code.
- (b) Battery, as defined in Section 242 of the Penal Code.
- (c) Assault with a deadly weapon or force likely to produce great bodily injury, as defined in Section 245 of the Penal Code.
- (d) Unreasonable physical constraint, or prolonged or continual deprivation of food or water.
- (e) Sexual assault, that means any of the following:
  - (1) Sexual battery, as defined in Section 243.4 of the Penal Code.
  - (2) Rape, as defined in Section 261 of the Penal Code.
  - (3) Rape in concert, as described in Section 264.1 of the Penal Code.
  - (4) Spousal rape, as defined in Section 262 of the Penal Code.
  - (5) Incest, as defined in Section 285 of the Penal Code.
  - (6) Sodomy, as defined in Section 286 of the Penal Code.
  - (7) Oral copulation, as defined in Section 287 or former Section 288a of the Penal Code.
  - (8) Sexual penetration, as defined in Section 289 of the Penal Code.
  - (9) Lewd or lascivious acts as defined in paragraph (2) of subdivision (b) of Section 288 of the Penal Code.
- (f) Use of a physical or chemical restraint or psychotropic medication under any of the following conditions:
  - (1) For punishment.

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(2) For a period beyond that for which the medication was ordered pursuant to the instructions of a physician and surgeon licensed in the State of California, who is providing medical care to the elder or dependent adult at the time the instructions are given.

(3) For any purpose not authorized by the physician and surgeon.

### **314.14 TRAINING**

The Department should provide training on best practices in adult abuse investigations to members tasked with investigating these cases. The training should include:

- (a) Participating in multidisciplinary investigations, as appropriate.
- (b) Conducting interviews.
- (c) Availability of therapy services for adults and families.
- (d) Availability of specialized forensic medical exams.
- (e) Cultural competence (including interpretive services) related to adult abuse investigations.
- (f) Availability of victim advocates or other support.

## **Discriminatory Harassment**

### **315.1 PURPOSE AND SCOPE**

The purpose of this policy is to prevent department members from being subjected to discriminatory harassment, including sexual harassment and retaliation. Nothing in this policy is intended to create a legal or employment right or duty that is not created by law.

### **315.2 POLICY**

The Walnut Creek Police Department is an equal opportunity employer and is committed to creating and maintaining a work environment that is free of all forms of discriminatory harassment, including sexual harassment and retaliation (Government Code § 12940(k); 2 CCR 11023). The Department will not tolerate discrimination against a member in hiring, promotion, discharge, compensation, fringe benefits and other privileges of employment. The Department will take preventive and corrective action to address any behavior that violates this policy or the rights it is designed to protect.

The nondiscrimination policies of the Department may be more comprehensive than state or federal law. Conduct that violates this policy may not violate state or federal law but still could subject a member to discipline.

### **315.3 DEFINITIONS**

#### **315.3.1 DISCRIMINATION**

The Department prohibits all forms of discrimination, including any employment-related action by a member that adversely affects an applicant or member and is based on the actual or perceived race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, age, disability, pregnancy, genetic information, veteran status, marital status and other classifications protected by law.

Discriminatory harassment, including sexual harassment, is verbal or physical conduct that demeans or shows hostility or aversion toward an individual based upon that individual's protected class. It has the effect of interfering with an individual's work performance or creating a hostile or abusive work environment.

Conduct that may, under certain circumstances, constitute discriminatory harassment, can include making derogatory comments, crude and offensive statements or remarks; making slurs or off-color jokes, stereotyping; engaging in threatening acts; making indecent gestures, pictures, cartoons, posters or material; making inappropriate physical contact; or using written material or department equipment and/or systems to transmit or receive offensive material, statements or pictures. Such conduct is contrary to department policy and to a work environment that is free of discrimination.

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### 315.3.2 SEXUAL HARASSMENT

The Department prohibits all forms of discrimination and discriminatory harassment, including sexual harassment. It is unlawful to harass an applicant or a member because of that person's sex.

Sexual harassment includes, but is not limited to, unwelcome sexual advances, requests for sexual favors or other verbal, visual or physical conduct of a sexual nature when:

- (a) Submission to such conduct is made either explicitly or implicitly a term or condition of employment, position or compensation.
- (b) Submission to, or rejection of, such conduct is used as the basis for any employment decisions affecting the member.
- (c) Such conduct has the purpose or effect of substantially interfering with a member's work performance or creating an intimidating, hostile, or offensive work environment.

### 315.3.3 ADDITIONAL CONSIDERATIONS

Discrimination and discriminatory harassment do not include actions that are in accordance with established rules, principles or standards, including:

- (a) Acts or omission of acts based solely upon bona fide occupational qualifications under the Equal Employment Opportunity Commission (EEOC) and the California Fair Employment and Housing Council guidelines.
- (b) Bona fide requests or demands by a supervisor that a member improve his/her work quality or output, that the member report to the job site on time, that the member comply with City or department rules or regulations, or any other appropriate work-related communication between supervisor and member.

### 315.3.4 RETALIATION

Retaliation is treating a person differently or engaging in acts of reprisal or intimidation against the person because he/she has engaged in protected activity, filed a charge of discrimination, participated in an investigation or opposed a discriminatory practice. Retaliation will not be tolerated.

## **315.4 RESPONSIBILITIES**

This policy applies to all department personnel. All members shall follow the intent of these guidelines in a manner that reflects department policy, professional law enforcement standards and the best interest of the Department and its mission.

Members are encouraged to promptly report any discriminatory, retaliatory or harassing conduct or known violations of this policy to a supervisor. Any member who is not comfortable with reporting violations of this policy to his/her immediate supervisor may bypass the chain of command and make the report to a higher-ranking supervisor or manager. Complaints may also be filed with the Chief of Police, the Personnel Manager or the City Manager.

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Any member who believes, in good faith, that he/she has been discriminated against, harassed or subjected to retaliation, or who has observed harassment or discrimination, is encouraged to promptly report such conduct in accordance with the procedures set forth in this policy.

Supervisors and managers receiving information regarding alleged violations of this policy shall determine if there is any basis for the allegation and shall proceed with resolution as stated below.

### 315.4.1 SUPERVISOR RESPONSIBILITIES

The responsibilities of each supervisor and manager shall include, but are not limited to:

- (a) Continually monitoring the work environment and striving to ensure that it is free from all types of unlawful discrimination, including harassment or retaliation.
- (b) Taking prompt, appropriate action within their work units to avoid and minimize the incidence of any form of discrimination, harassment or retaliation.
- (c) Ensuring that his/her subordinates understand their responsibilities under this policy.
- (d) Ensuring that members who make complaints or who oppose any unlawful employment practices are protected from retaliation and that such matters are kept confidential to the extent possible.
- (e) Making a timely determination regarding the substance of any allegation based upon all available facts.
- (f) Notifying the Chief of Police or Personnel Manager in writing of the circumstances surrounding any reported allegations or observed acts of discrimination, harassment or retaliation no later than the next business day.

### 315.4.2 SUPERVISOR'S ROLE

Because of differences in individual values, supervisors and managers may find it difficult to recognize that their behavior or the behavior of others is discriminatory, harassing or retaliatory. Supervisors and managers shall be aware of the following considerations:

- (a) Behavior of supervisors and managers should represent the values of our Department and professional law enforcement standards.
- (b) False or mistaken accusations of discrimination, harassment or retaliation can have negative effects on the careers of innocent members.
- (c) Supervisors and managers must act promptly and responsibly in the resolution of such situations.
- (d) Supervisors and managers shall make a timely determination regarding the substance of any allegation based upon all available facts.
- (e) Supervisors and managers must inform the Human Resources Manager as soon as such a situation has come to his/her attention.

Nothing in this section shall be construed to prevent supervisors or managers from discharging supervisory or management responsibilities, such as determining duty assignments, evaluating or counseling employees or issuing discipline, in a manner that is consistent with established procedures.



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### 315.4.3 QUESTIONS OR CLARIFICATION

Members with questions regarding what constitutes discrimination, sexual harassment or retaliation are encouraged to contact a supervisor, a manager, the Chief of Police, the Personnel Manager, the City Manager or the California Department of Fair Employment and Housing for further information, direction or clarification.

### **315.5 INVESTIGATION OF COMPLAINTS**

Various methods of resolution exist. During the pendency of any such investigation, the supervisor of the involved member should take prompt and reasonable steps to mitigate or eliminate any continuing abusive or hostile work environment. It is the policy of the Department that all complaints of discrimination or harassment shall be fully documented and promptly and thoroughly investigated. The participating or opposing member should be protected against retaliation, and the complaint and related investigation should be kept confidential to the extent possible. Sexual harassment complaints will be investigated according to the City Administrative Policy No. 89-2.

#### 315.5.1 SUPERVISORY RESOLUTION

Members who believe they are experiencing discrimination, harassment or retaliation should be encouraged to inform the individual that his/her behavior is unwelcome, offensive, unprofessional or inappropriate. However, if the member feels uncomfortable or threatened or has difficulty expressing his/her concern, or if this does not resolve the concern, assistance should be sought from a supervisor or manager who is a rank higher than the alleged transgressor.

#### 315.5.2 FORMAL INVESTIGATION

If the complaint cannot be satisfactorily resolved through the process described above, a formal investigation will be conducted.

The person assigned to investigate the complaint will have full authority to investigate all aspects of the complaint. Investigative authority includes access to records and the cooperation of any members involved. No influence will be used to suppress any complaint and no member will be subject to retaliation or reprisal for filing a complaint, encouraging others to file a complaint or for offering testimony or evidence in any investigation.

Formal investigation of the complaint will be confidential to the extent possible and will include, but is not limited to, details of the specific incident, frequency and dates of occurrences and names of any witnesses. Witnesses will be advised regarding the prohibition against retaliation, and that a disciplinary process, up to and including termination, may result if retaliation occurs.

Members who believe they have been discriminated against, harassed or retaliated against because of their protected status, are encouraged to follow the chain of command but may also file a complaint directly with the Chief of Police, Personnel Manager or the City Manager.

#### 315.5.3 ALTERNATIVE COMPLAINT PROCESS

No provision of this policy shall be construed to prevent any member from seeking legal redress outside the Department. Members who believe that they have been harassed, discriminated or retaliated against are entitled to bring complaints of employment discrimination to federal, state

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and/or local agencies responsible for investigating such allegations. Specific time limitations apply to the filing of such charges. Members are advised that proceeding with complaints under the provisions of this policy does not in any way affect those filing requirements.

### **315.6 DOCUMENTATION OF COMPLAINTS**

All complaints or allegations shall be thoroughly documented on forms and in a manner designated by the Chief of Police. The outcome of all reports shall be:

- Approved by the Chief of Police, the City Manager or the Director of Human Resources, depending on the ranks of the involved parties.
- Maintained in accordance with the department's established records retention schedule.

#### **315.6.1 NOTIFICATION OF DISPOSITION**

The complainant and/or victim will be notified in writing of the disposition of the investigation and the actions taken to remedy or address the circumstances giving rise to the complaint.

### **315.7 TRAINING**

All new members shall be provided with a copy of this policy as part of their orientation. The policy shall be reviewed with each new member. The member shall certify by signing the prescribed form that he/she has been advised of this policy, is aware of and understands its contents and agrees to abide by its provisions during his/her term with the Department.

All members shall receive annual training on the requirements of this policy and shall certify by signing the prescribed form that they have reviewed the policy, understand its contents and agree that they will continue to abide by its provisions.

#### **315.7.1 QUESTIONS REGARDING DISCRIMINATION OR SEXUAL HARASSMENT**

Employees having questions are encouraged to contact a supervisor, manager, the Chief of Police, Personnel Manager or the City Manager. The employee may make the complaint directly to the Equal Employment Opportunity Commission (EEOC) or to the California Department of Fair Employment and Housing (DFEH) at (800) 884-1684.

#### **315.7.2 SUPERVISOR TRAINING**

All supervisors shall receive specific training and education regarding sexual harassment, prevention of abusive conduct and harassment based on gender identity, gender expression and sexual orientation within six months of assuming a supervisory position. Refresher training shall be provided every two years thereafter (Government Code § 12950.1; 2 CCR 11024).

#### **315.7.3 TRAINING RECORDS**

The Training Manager shall be responsible for maintaining records of all discriminatory harassment training provided to members. Records shall be retained in accordance with established records retention schedules and for a minimum of two years (2 CCR 11024).

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### **315.8 WORKING CONDITIONS**

The Administration Bureau Commander or the authorized designee should be responsible for reviewing facility design and working conditions for discriminatory practices. This person should collaborate with other City employees who are similarly tasked (2 CCR 11034).

### **315.9 REQUIRED POSTERS**

The Department shall display the required posters regarding discrimination, harassment and transgender rights in a prominent and accessible location for members (Government Code § 12950).

## Canines

### 316.1 PURPOSE AND SCOPE

This policy establishes guidelines for the use of canines to augment police services in the community, including but not limited to locating individuals and contraband and apprehending criminal offenders.

### 316.2 POLICY

It is the policy of the Walnut Creek Police Department that teams of handlers and canines meet and maintain the appropriate proficiency to effectively and reasonably carry out legitimate law enforcement objectives.

### 316.3 ASSIGNMENT

Canine officers work modified hours on Team 2, 3, 4, 6, and 7 and count towards the team's minimum staffing levels. Canine officers cannot work on the same team and must work on opposing shifts that allow for the most canine coverage during the week.

### 316.4 CANINE COORDINATOR

The canine coordinator shall be appointed by and directly responsible to the Patrol Bureau or the authorized designee.

The responsibilities of the coordinator include but are not limited to:

- (a) Reviewing all canine use reports to ensure compliance with policy and to identify training issues and other needs of the program.
- (b) Maintaining a liaison with the vendor kennel.
- (c) Maintaining a liaison with command staff and functional supervisors.
- (d) Maintaining a liaison with other agency canine coordinators.
- (e) Maintaining accurate records to document canine activities.
- (f) Recommending and overseeing the procurement of equipment and services for the teams of handlers and canines.
- (g) Scheduling all canine-related activities.
- (h) Ensuring the canine teams are scheduled for regular training to maximize their capabilities.

### 316.5 REQUESTS FOR CANINE TEAMS

Patrol Bureau members are encouraged to request the use of a canine. Requests for a canine team from department units outside of the Patrol Bureau shall be reviewed by the Watch Commander.

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### 316.5.1 OUTSIDE AGENCY REQUEST

All requests for canine assistance from outside agencies must be approved by the Watch Commander and are subject to the following:

- (a) Canine teams shall not be used for any assignment that is not consistent with this policy.
- (b) The canine handler shall have the authority to decline a request for any specific assignment that he/she deems unsuitable.
- (c) Calling out off-duty canine teams is discouraged.
- (d) It shall be the responsibility of the canine handler to coordinate operations with agency personnel in order to minimize the risk of unintended injury.
- (e) It shall be the responsibility of the canine handler to complete all necessary reports or as directed.

### 316.5.2 PUBLIC DEMONSTRATION

All public requests for a canine team shall be reviewed and, if appropriate, approved by the canine coordinator prior to making any resource commitment. The canine coordinator is responsible for obtaining resources and coordinating involvement in the demonstration to include proper safety protocols. Canine handlers shall not demonstrate any apprehension work unless authorized to do so by the canine coordinator.

## 316.6 APPREHENSION GUIDELINES

A canine may be used to locate and apprehend a suspect if the canine handler reasonably believes that the individual has committed, is committing, or is threatening to commit any serious offense and if any of the following conditions exist:

- (a) There is a reasonable belief the suspect poses an imminent threat of violence or serious harm to the public, any officer, or the handler.
- (b) The suspect is physically resisting or threatening to resist arrest and the use of a canine reasonably appears to be necessary to overcome such resistance.
- (c) The suspect is believed to be concealed in an area where entry by other than the canine would pose a threat to the safety of officers or the public.

It is recognized that situations may arise that do not fall within the provisions set forth in this policy. Such events require consideration of the totality of the circumstances and the use of an objective reasonableness standard applied to the decision to use a canine.

Absent a reasonable belief that a suspect has committed, is committing, or is threatening to commit a serious offense, mere flight from a pursuing officer, without any of the above conditions, shall not serve as the basis for the use of a canine to apprehend a suspect.

Use of a canine to locate and apprehend a suspect wanted for a lesser criminal offense than those identified above requires approval from the Watch Commander. Absent a change in circumstances that presents an imminent threat to officers, the canine or the public, such canine use should

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be conducted on-leash or under conditions that minimize the likelihood the canine will bite or otherwise injure the individual.

In all applications, once the suspect has been located and no longer reasonably appears to present a threat or risk of escape, the handler should secure the canine as soon as it becomes reasonably practicable.

If the canine has apprehended the suspect with a secure bite, and the handler believes that the suspect no longer poses a threat, the handler should promptly command the canine to release the suspect.

#### 316.6.1 PREPARATION FOR DEPLOYMENT

Prior to the use of a canine to search for or apprehend any suspect, the canine handler and/or the supervisor on-scene should carefully consider all pertinent information reasonably available at the time. The information should include but is not limited to:

- (a) The nature and seriousness of the suspected offense.
- (b) Whether violence or weapons were used or are anticipated.
- (c) The degree of resistance or threatened resistance, if any, the suspect has shown.
- (d) The suspect's known or perceived age.
- (e) The potential for injury to officers or the public caused by the suspect if the canine is not utilized.
- (f) Any potential danger to the public and/or other officers at the scene if the canine is released.
- (g) The potential for the suspect to escape or flee if the canine is not utilized.

As circumstances permit, the canine handler should make every reasonable effort to communicate and coordinate with other involved members to minimize the risk of unintended injury.

It is the canine handler's responsibility to evaluate each situation and determine whether the use of a canine is appropriate and reasonable. The canine handler shall have the authority to decline the use of the canine whenever he/she deems deployment is unsuitable.

A supervisor who is sufficiently apprised of the situation may prohibit deploying the canine.

Unless otherwise directed by a supervisor, assisting members should take direction from the handler in order to minimize interference with the canine.

#### 316.6.2 WARNINGS AND ANNOUNCEMENTS

Unless it would increase the risk of injury or escape, a clearly audible warning announcing that a canine will be used if the suspect does not surrender should be made prior to releasing a canine. The handler should allow a reasonable time for a suspect to surrender and should quiet the canine momentarily to listen for any verbal response to the warning. If feasible, other members should be in a location opposite the warning to verify that the announcement could be heard. If available, warnings given in other languages should be used as necessary.

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If a warning is not to be given, the canine handler, when practicable, should first advise the supervisor of his/her decision before releasing the canine. In the event of an apprehension, the handler shall document in any related report how the warning was given and, if none was given, the reasons why.

#### 316.6.3 REPORTING DEPLOYMENTS, BITES, AND INJURIES

Handlers should document canine deployments in a canine use report. Whenever a canine deployment results in a bite or causes injury to an intended suspect, a supervisor should be promptly notified and the injuries documented in the canine use report. The injured person shall be promptly treated by Emergency Medical Services personnel and, if appropriate, transported to an appropriate medical facility for further treatment. The deployment and injuries should also be included in any related incident or arrest report.

Any unintended bite or injury caused by a canine, whether on- or off-duty, shall be promptly reported to the canine coordinator. Unintended bites or injuries caused by a canine should be documented in an administrative report, not in a canine use report.

If an individual alleges an injury, either visible or not visible, a supervisor shall be notified and both the individual's injured and uninjured areas shall be photographed as soon as practicable after first tending to the immediate needs of the injured party. Photographs shall be retained as evidence in accordance with current department evidence procedures. The photographs shall be retained until the criminal proceeding is completed and the time for any related civil proceeding has expired.

Canines used by law enforcement agencies are generally exempt from impoundment and reporting requirements. However, the canine shall be made available for examination at any reasonable time if requested by the local health department. The canine handler shall also notify the local health department if the canine exhibits any abnormal behavior after a bite (Health and Safety Code § 121685).

#### 316.7 NON-APPREHENSION GUIDELINES

Properly trained canines may be used to track or search for non-criminals (e.g., lost children, individuals who may be disoriented or in need of medical attention). The canine handler is responsible for determining the canine's suitability for such assignments based on the conditions and the particular abilities of the canine. When the canine is deployed in a search or other non-apprehension operation, the following guidelines apply:

- (a) Absent a change in circumstances that presents an imminent threat to officers, the canine, or the public, such applications should be conducted on-leash or under conditions that minimize the likelihood the canine will bite or otherwise injure the individual, if located.
- (b) Unless otherwise directed by a supervisor, assisting members should take direction from the handler in order to minimize interference with the canine.
- (c) Throughout the deployment, the handler should periodically give verbal assurances that the canine will not bite or hurt the individual and encourage the individual to make him/herself known.

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- (d) Once the individual has been located, the handler should place the canine in a down-stay or otherwise secure it as soon as reasonably practicable.

### 316.7.1 ARTICLE DETECTION

A canine trained to find objects or property related to a person or crime may be used to locate or identify articles. A canine search should be conducted in a manner that minimizes the likelihood of unintended bites or injuries.

### 316.7.2 NARCOTICS DETECTION

A canine trained in narcotics detection may be used in accordance with current law and under certain circumstances, including:

- (a) The search of vehicles, buildings, bags, and other articles.
- (b) Assisting in the search for narcotics during a search warrant service.
- (c) Obtaining a search warrant by using the narcotics-detection trained canine in support of probable cause.

A narcotics-detection trained canine will not be used to search a person for narcotics unless the canine is trained to passively indicate the presence of narcotics.

### 316.7.3 BOMB/EXPLOSIVE DETECTION

Because of the high risk of danger to the public and officers when a bomb or other explosive device is suspected, the use of a canine team trained in explosive detection may be considered. When available, an explosive-detection canine team may be used in accordance with current law and under certain circumstances, including:

- (a) Assisting in the search of a building, structure, area, vehicle, or article where an actual or suspected explosive device has been reported or located.
- (b) Assisting with searches at transportation facilities and vehicles (e.g., buses, airplanes, trains).
- (c) Preventive searches at special events, VIP visits, official buildings, and other restricted areas. Searches of individuals should remain minimally intrusive and shall be strictly limited to the purpose of detecting explosives.
- (d) Assisting in the search of scenes where an explosion has occurred and an explosive device or secondary explosive device is suspected.

At no time will an explosive-detection trained canine be used to render a suspected device safe or clear.

## 316.8 HANDLER SELECTION

The minimum qualifications for the assignment of canine handler include:

- (a) An officer who is currently off probation.
- (b) Residing in an adequately fenced single-family residence (minimum 5-foot-high fence with locking gates).



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- (c) A garage that can be secured and can accommodate a canine vehicle.
- (d) Living within 30 minutes travel time from the Walnut Creek City limits.
- (e) Agreeing to be assigned to the position for a minimum of three years.

### **316.9 HANDLER RESPONSIBILITIES**

The canine handler shall ultimately be responsible for the health and welfare of the canine and shall ensure that the canine receives proper nutrition, grooming, training, medical care, affection, and living conditions.

The canine handler will be responsible for the following:

- (a) Except as required during appropriate deployment, the handler shall not expose the canine to any foreseeable and unreasonable risk of harm.
- (b) The handler shall maintain all department equipment under his/her control in a clean and serviceable condition.
- (c) When not in service, the handler shall maintain the canine vehicle in a locked garage, away from public view.
- (d) When a handler is off-duty for an extended number of days, the assigned canine vehicle should be stored at the Walnut Creek Police Department facility.
- (e) Handlers shall permit the canine coordinator to conduct spontaneous on-site inspections of affected areas of their homes as well as their canine vehicles to verify that conditions and equipment conform to this policy.
- (f) Any changes in the living status of the handler that may affect the lodging or environment of the canine shall be reported to the canine coordinator as soon as possible.
- (g) When off-duty, the canine shall be in a kennel provided by the City at the home of the handler. When a canine is kenneled at the handler's home, the gate shall be secured with a lock. When off-duty, the canine may be let out of the kennel while under the direct control of the handler.
- (h) The canine should be permitted to socialize in the home with the handler's family for short periods of time and under the direct supervision of the handler.
- (i) Under no circumstances will the canine be lodged at another location unless approved by the canine coordinator or Watch Commander.
- (j) When off-duty, the handler shall not involve the canine in any law enforcement activity or official conduct unless approved in advance by the canine coordinator or Watch Commander.
- (k) Whenever a canine handler is off-duty for an extended number of days, it may be necessary to temporarily relocate the canine. In those situations, the handler shall give reasonable notice to the canine coordinator so that appropriate arrangements can be made.

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### 316.9.1 CANINE IN PUBLIC AREAS

The canine should be kept on a leash when in areas that allow access to the public. Exceptions to this rule would include specific law enforcement operations for which the canine is trained.

- (a) A canine shall not be left unattended in any area to which the public may have access.
- (b) When the canine vehicle is left unattended, all windows and doors shall be secured in such a manner as to prevent unauthorized access to the canine. The handler shall also ensure that the unattended vehicle remains inhabitable for the canine.

### 316.9.2 IMMUNITY

All duly authorized peace officers acting in the performance of their official duties and any person working under their immediate direction, supervision or instruction are immune from prosecution under the Uniform Controlled Substance Act while providing substance abuse training or canine drug detection training (Health & Safety Code § 11367.5(b)).

### 316.10 CANINE INJURY AND MEDICAL CARE

In the event that a canine is injured, or there is an indication that the canine is not in good physical condition, the injury or condition will be reported to the canine coordinator or Watch Commander as soon as practicable and appropriately documented.

All medical attention shall be rendered by the designated canine veterinarian, except during an emergency where treatment should be obtained from the nearest available veterinarian. All records of medical treatment shall be maintained in the handler's personnel file.

### 316.11 TRAINING

Before assignment in the field, each canine team shall be trained and certified to meet current POST guidelines or other recognized and approved certification standards. Cross-trained canine teams or those canine teams trained exclusively for the detection of narcotics and/or explosives also shall be trained and certified by the California Narcotic Canine Association (CNCA) or other recognized and approved certification standards established for their particular skills.

The canine coordinator shall be responsible for scheduling periodic training for all department members in order to familiarize them with how to conduct themselves in the presence of department canines. Because canines may be exposed to dangerous substances such as opioids, as resources are available, the canine coordinator should also schedule periodic training for the canine handlers about the risks of exposure and treatment for it.

All canine training shall be conducted while on-duty unless otherwise approved by the canine coordinator or Watch Commander.

#### 316.11.1 CONTINUED TRAINING

Each canine team shall thereafter be recertified to a current POST, CNCA, or other recognized and approved certification standards on an annual basis. Additional training considerations are as follows:

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- (a) Canine teams should receive training as defined in the current contract with the Walnut Creek Police Department canine training provider.
- (b) Canine handlers are encouraged to engage in additional training with approval of the canine coordinator.
- (c) To ensure that all training is consistent, no handler, trainer, or outside vendor is authorized to train to a standard that is not reviewed and approved by the Department.

### 316.11.2 FAILURE TO SUCCESSFULLY COMPLETE TRAINING

Any canine team failing to graduate or obtain certification shall not be deployed in the field for tasks the team is not certified to perform until graduation or certification is achieved. When reasonably practicable, pending successful certification, the canine handler shall be temporarily reassigned to regular patrol duties.

### 316.11.3 TRAINING RECORDS

All canine training records shall be maintained in the canine handler's and the canine's training file.

### 316.11.4 TRAINING AIDS

Training aids are required to effectively train and maintain the skills of canines. Officers possessing, using or transporting controlled substances or explosives for canine training purposes must comply with federal and state requirements. Alternatively, the Walnut Creek Police Department may work with outside trainers with the applicable licenses or permits.

### 316.11.5 CONTROLLED SUBSTANCE TRAINING AIDS

Officers acting in the performance of their official duties may possess or transfer controlled substances for the purpose of narcotics-detection canine training in compliance with state and federal laws (Health & Safety Code § 11367.5; 21 USC § 823(f)).

The Chief of Police or the authorized designee may authorize a member to seek a court order to allow controlled substances seized by the Walnut Creek Police Department to be possessed by the member or a narcotics-detection canine trainer who is working under the direction of this department for training purposes, provided the controlled substances are no longer needed as criminal evidence.

As an alternative, the Chief of Police or the authorized designee may request narcotics training aids from the Drug Enforcement Administration (DEA).

These procedures are not required if the canine handler uses commercially available synthetic substances that are not controlled narcotics.

### 316.11.6 CONTROLLED SUBSTANCE PROCEDURES

Due to the responsibilities and liabilities involved with possessing readily usable amounts of controlled substances and the ever-present danger of the canine's accidental ingestion of these controlled substances, the following procedures shall be strictly followed:

- (a) All controlled substance training samples shall be weighed and tested prior to dispensing to the individual canine handler or trainer.

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- (b) The weight and test results shall be recorded and maintained by this department.
- (c) Any person possessing controlled substance training samples pursuant to court order or DEA registration shall maintain custody and control of the controlled substances and shall keep records regarding any loss of, or damage to, those controlled substances.
- (d) All controlled substance training samples will be inspected, weighed, and tested quarterly. The results of the quarterly testing shall be recorded and maintained by the canine coordinator with a copy forwarded to the dispensing agency.
- (e) All controlled substance training samples will be stored in locked, airtight, and watertight cases at all times, except during training. The locked cases shall be secured in the trunk of the canine handler's assigned patrol vehicle during transport and stored in an appropriate locked container. There are no exceptions to this procedure.
- (f) The canine coordinator shall periodically inspect every controlled substance training sample for damage or tampering and take any appropriate action.
- (g) Any unusable controlled substance training samples shall be returned to the Property and Evidence Section or to the dispensing agency.
- (h) All controlled substance training samples shall be returned to the dispensing agency upon the conclusion of the training or upon demand by the dispensing agency.

## Child Abuse

### 317.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the investigation of suspected child abuse. This policy also addresses when Walnut Creek Police Department members are required to notify the county Child Protective Services (CPS) of suspected child abuse.

#### 317.1.1 DEFINITIONS

Definitions related to this policy include:

**Child** - Unless otherwise specified by a cited statute, a child is any person under the age of 18 years.

**Child abuse** - Any offense or attempted offense involving violence or neglect with a child victim when committed by a person responsible for the child's care or any other act that would mandate notification to a social service agency or law enforcement (Penal Code § 11165.9; Penal Code § 11166).

### 317.2 POLICY

The Walnut Creek Police Department will investigate all reported incidents of alleged criminal child abuse and ensure CPS is notified as required by law.

### 317.3 MANDATORY NOTIFICATION

The child protection agency shall be notified when (Penal Code § 11166):

- (a) There is a known or suspected instance of child abuse or neglect reported, which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or
- (b) A person responsible for the child's welfare fails to adequately protect the child from abuse when the person knew or reasonably should have known that the child was in danger of abuse.

The District Attorney's office shall be notified in all instances of known or suspected child abuse or neglect reported to this department. Reports only involving neglect by a person, who has the care or custody of a child, to provide adequate food, clothing, shelter, medical care or supervision where no physical injury to the child has occurred should not be reported to the District Attorney (Penal Code § 11166).

When the abuse or neglect occurs at a licensed facility or is alleged to have resulted from the actions of a person who is required to have a state license (e.g., foster homes, group homes, day care), notification shall also be made to the California Department of Social Services or other applicable licensing authority (Penal Code 11166.1; Penal Code 11166.2).

For purposes of notification, the abuse or neglect includes physical injury or death inflicted by other than accidental means upon a child by another person; sexual abuse (Penal Code § 11165.1);

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neglect (Penal Code § 11165.2); the willful harming or injuring of a child or the endangering of the person or health of a child (Penal Code § 11165.3); and unlawful corporal punishment or injury (Penal Code § 11165.4). Child abuse or neglect does not include a mutual affray between minors, nor does it include an injury caused by the reasonable and necessary force used by a peace officer acting within the course and scope of his/her employment as a peace officer.

### 317.3.1 NOTIFICATION PROCEDURE

Notification should occur as follows (Penal Code § 11166):

- (a) Notification shall be made immediately, or as soon as practicable, by telephone, fax or electronic transmission.
- (b) A written follow-up report should be forwarded within 36 hours of receiving the information concerning the incident.

### 317.3.2 POLICE REPORTS

Employees responding to incidents of suspected child abuse where it cannot initially be shown that a crime occurred shall document the incident in a general report. No suspected child abuse report is required if the incident is documented in a general or miscellaneous report.

### 317.3.3 CONTACTING SUSPECTED CHILD ABUSE VICTIMS

An officer should not involuntarily detain a juvenile suspected of being a victim of abuse solely for the purpose of an interview or physical exam without the consent of a parent or guardian unless any of the following apply:

- (a) Exigent circumstances exist. For example:
  - 1. A reasonable belief that medical issues need to be addressed immediately.
  - 2. It is reasonably believed that the child is or will be in danger of harm if the interview or physical exam is not immediately completed.
- (b) A court order or warrant has been issued.

In all circumstances in which a suspected child abuse victim is contacted, it will be incumbent upon the investigating officer to articulate in the related reports the overall basis for the contact and what, if any, exigent circumstances exist.

Any juvenile student at school who is a suspected victim of child abuse shall be afforded the option of being interviewed in private or selecting any qualified available adult member of the school staff to be present. The purpose of the staff member's presence is to provide comfort and support. The staff member shall not participate in the interview. The selection of a staff member should be such that it does not burden the school with costs or hardship (Penal Code § 11174.3).

### 317.3.4 RELEASE OF REPORTS

Reports of child abuse or suspected child abuse shall be confidential and may only be disclosed pursuant to Penal Code § 11167.5 and Policy Manual § 810.

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### **317.4 QUALIFIED INVESTIGATORS**

Qualified investigators should be available for child abuse investigations. These investigators should:

- (a) Conduct interviews in child appropriate interview facilities.
- (b) Be familiar with forensic interview techniques specific to child abuse investigations.
- (c) Present all cases of alleged child abuse to the prosecutor for review.
- (d) Coordinate with other enforcement agencies, social service agencies and school administrators as needed.
- (e) Provide referrals to therapy services, victim advocates, guardians and support for the child and family as appropriate.
- (f) Participate in or coordinate with multidisciplinary investigative teams as applicable (Welfare and Institutions Code § 18961.7).

### **317.5 INVESTIGATIONS AND REPORTING**

In all reported or suspected cases of child abuse, a report will be written. Officers shall write a report even if the allegations appear unfounded or unsubstantiated.

Investigations and reports related to suspected cases of child abuse should address, as applicable:

- (a) The overall basis for the contact. This should be done by the investigating officer in all circumstances where a suspected child abuse victim was contacted.
- (b) The exigent circumstances that existed if officers interviewed the child victim without the presence of a parent or guardian.
- (c) Any relevant statements the child may have made and to whom he/she made the statements.
- (d) If a child was taken into protective custody, the reasons, the name and title of the person making the decision, and why other alternatives were not appropriate.
- (e) Documentation of any visible injuries or any injuries identified by the child. This should include photographs of such injuries, if practicable.
- (f) Whether the child victim was transported for medical treatment or a medical examination.
- (g) Whether the victim identified a household member as the alleged perpetrator, and a list of the names of any other children who may reside in the residence.
- (h) Identification of any prior related reports or allegations of child abuse, including other jurisdictions, as reasonably known.
- (i) Previous addresses of the victim and suspect.

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- (j) Other potential witnesses who have not yet been interviewed, such as relatives or others close to the victim's environment.

All cases of the unexplained death of a child should be investigated as thoroughly as if it had been a case of suspected child abuse (e.g., a sudden or unexplained death of an infant).

### **317.6 PROTECTIVE CUSTODY**

Before taking any child into protective custody, the officer should make reasonable attempts to contact CPS. Generally, removal of a child from his/her family, guardian or other responsible adult should be left to the child welfare authorities when they are present or have become involved in an investigation.

Generally, members of this department should remove a child from his/her parent or guardian without a court order only when no other effective alternative is reasonably available and immediate action reasonably appears necessary to protect the child. Prior to taking a child into protective custody, the officer should take reasonable steps to deliver the child to another qualified parent or legal guardian, unless it reasonably appears that the release would endanger the child or result in abduction. If this is not a reasonable option, the officer shall ensure that the child is delivered to CPS.

Whenever practicable, the officer should inform a supervisor of the circumstances prior to taking a child into protective custody. If prior notification is not practicable, officers should contact a supervisor promptly after taking a child into protective custody.

Children may only be removed from a parent or guardian in the following situations when a court order cannot reasonably be obtained in a timely manner (Welfare and Institutions Code § 305):

- (a) The officer reasonably believes the child is a person described in Welfare and Institutions Code § 300, or a commercially exploited child under Penal Code § 647 and Penal Code § 653.22, and further has good cause to believe that any of the following conditions exist:
  - 1. The child has an immediate need for medical care.
  - 2. The child is in immediate danger of physical or sexual abuse.
  - 3. The physical environment or the fact that the child is left unattended poses an immediate threat to the child's health or safety. In the case of a child left unattended, the officer shall first attempt to locate and determine if a responsible parent or guardian is available and capable of assuming custody before taking the child into protective custody.
- (b) The officer reasonably believes the child requires protective custody under the provisions of Penal Code § 279.6, in one of the following circumstances:



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1. It reasonably appears to the officer that a person is likely to conceal the child, flee the jurisdiction with the child or, by flight or concealment, evade the authority of the court.
  2. There is no lawful custodian available to take custody of the child.
  3. There are conflicting custody orders or conflicting claims to custody and the parties cannot agree which party should take custody of the child.
  4. The child is an abducted child.
- (c) The child is in the company of, or under the control of, a person arrested for Penal Code § 278 (Detainment or concealment of child from legal custodian) or Penal Code § 278.5 (Deprivation of custody of a child or right to visitation) (Penal Code § 279.6).

A child taken into protective custody shall be delivered to CPS unless otherwise directed by court order.

### 317.7 INTERVIEWS

#### 317.7.2 CACI HEARING OFFICER

The Investigation Supervisor will normally serve as the hearing officer but must not be actively connected with the case which resulted in the person's name being submitted to CACI. Upon receiving a qualified request for removal the hearing officer shall promptly schedule a hearing to occur during normal business hours and provide written notification of the time and place of the hearing to the requesting party.

#### 317.7.4 HEARING PROCEDURES

The hearing is an informal process where the person requesting removal from the CACI list will be permitted to present relevant evidence (e.g., Certified copy of an acquittal, factual finding of innocence) as to why his/her name should be removed. The person requesting the hearing may record the hearing at his/her own expense.

Formal rules of evidence will not apply and the hearing officer may consider, in addition to evidence submitted by the person requesting the hearing, any relevant information including, but not limited to the following:

- (a) Case reports including any supplemental reports.
- (b) Statements by investigators.
- (c) Statements from representatives of the District Attorney's Office.
- (d) Statements by representatives of a child protective agency who may be familiar with the case.

After considering all information presented the hearing officer shall make a determination as to whether to recommend the removal of the requesting party's name from the CACI list. Such

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determination shall be based on a finding that the allegations in the investigation are unfounded. Unsubstantiated or inconclusive findings are not sufficient reasons to proceed with a request for removal from CACI.

If, after considering the evidence, the hearing officer finds that the allegations are unfounded, he/she shall cause a request to be completed and forwarded to the Department of Justice that the person's name be removed from the CACI list. A copy of the hearing results and the request for removal will be attached to the case reports.

The findings of the hearing officer shall be considered final and binding.

### **317.11 TRAINING**

The Department should provide training on best practices in child abuse investigations to members tasked with investigating these cases. The training should include:

- (a) Participating in multidisciplinary investigations, as appropriate.
- (b) Conducting forensic interviews.
- (c) Availability of therapy services for children and families.
- (d) Availability of specialized forensic medical exams.
- (e) Cultural competence (including interpretive services) related to child abuse investigations.
- (f) Availability of victim advocate or guardian ad litem support.

## Missing Persons

### 318.1 PURPOSE AND SCOPE

This policy provides guidance for handling missing person investigations.

#### 318.1.1 DEFINITIONS

**At risk** - Includes, but is not limited to (Penal Code § 14215):

- A victim of a crime or foul play.
- A person missing and in need of medical attention.
- A missing person with no pattern of running away or disappearing.
- A missing person who may be the victim of parental abduction.
- A mentally impaired missing person, including cognitively impaired or developmentally disabled.

**Missing person** - Any person who is reported missing to law enforcement when the person's location is unknown. This includes a child who has been taken, detained, concealed, enticed away or kept by a parent in violation of the law (Penal Code § 277 et seq.). It also includes any child who is missing voluntarily, involuntarily or under circumstances that do not conform to his/her ordinary habits or behavior, and who may be in need of assistance (Penal Code § 14215).

**Missing person networks** - Databases or computer networks available to law enforcement and that are suitable for information related to missing persons investigations. These include the National Crime Information Center (NCIC), the California Law Enforcement Telecommunications System (CLETS), Missing Person System (MPS) and the Unidentified Persons System (UPS).

### 318.2 POLICY

The Walnut Creek Police Department does not consider any report of a missing person to be routine and assumes that the missing person is in need of immediate assistance until an investigation reveals otherwise. The Walnut Creek Police Department gives missing person cases priority over property-related cases and will not require any time frame to pass before beginning a missing person investigation (Penal Code § 14211).

### 318.3 REQUIRED FORMS AND BIOLOGICAL SAMPLE COLLECTION KITS

The Investigation supervisor should ensure the forms and kits are developed and available in accordance with this policy, state law, federal law and the California Peace Officer Standards and Training (POST) Missing Persons Investigations guidelines, including:

- Department report form for use in missing person cases
- Missing person investigation checklist that provides investigation guidelines and resources that could be helpful in the early hours of a missing person investigation (Penal Code § 13519.07)

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- Missing person school notification form
- Medical records release form from the California Department of Justice
- California DOJ missing person forms as appropriate
- Biological sample collection kits

### **318.3.1 TRANSMITTING REPORTS TO OTHER JURISDICTIONS**

When the Walnut Creek Police Department takes a missing person report on a person who lives outside of this jurisdiction, the Records Bureau shall promptly notify and forward a copy of the report to the agencies having jurisdiction over the missing person's residence and where the missing person was last seen. If the missing person is under 16 or there is evidence that the person may be at-risk, the reports must also be forwarded within no more than 24 hours to the jurisdiction of the agency where the missing person was last seen. (Penal Code § 14205(c))

### **318.4 ACCEPTANCE OF REPORTS**

Any member encountering a person who wishes to report a missing person or runaway shall render assistance without delay (Penal Code § 14211). This can be accomplished by accepting the report via telephone or in-person and initiating the investigation. Those members who do not take such reports or who are unable to render immediate assistance shall promptly dispatch or alert a member who can take the report.

A report shall be accepted in all cases and regardless of where the person was last seen, where the person resides or any other question of jurisdiction (Penal Code § 14211).

### **318.5 INITIAL INVESTIGATION**

Officers or other members conducting the initial investigation of a missing person should take the following investigative actions, as applicable:

- (a) Respond to a dispatched call for service as soon as practicable.
- (b) Interview the reporting party and any witnesses to determine whether the person qualifies as a missing person and, if so, whether the person may be at risk.
- (c) Notify a supervisor immediately if there is evidence that a missing person is either at risk or may qualify for a public alert, or both (see the Public Alerts Policy).
- (d) Broadcast a "Be on the Look-Out" (BOLO) bulletin if the person is under 21 years of age or there is evidence that the missing person is at risk. The BOLO should be broadcast as soon as practicable but in no event more than one hour after determining the missing person is under 21 years of age or may be at risk (Penal Code § 14211).
- (e) Ensure that entries are made into the appropriate missing person networks as follows:
  1. Immediately, when the missing person is at risk.
  2. In all other cases, as soon as practicable, but not later than two hours from the time of the initial report.

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- (f) Complete the appropriate report forms accurately and completely and initiate a search as applicable under the facts.
- (g) Collect and/or review:
  - 1. A photograph and a fingerprint card of the missing person, if available.
  - 2. A voluntarily provided biological sample of the missing person, if available (e.g., toothbrush, hairbrush).
  - 3. Any documents that may assist in the investigation, such as court orders regarding custody.
  - 4. Any other evidence that may assist in the investigation, including personal electronic devices (e.g., cell phones, computers).
- (h) When circumstances permit and if appropriate, attempt to determine the missing person's location through his/her telecommunications carrier.
- (i) Contact the appropriate agency if the report relates to a previously made missing person report and another agency is actively investigating that report. When this is not practical, the information should be documented in an appropriate report for transmission to the appropriate agency. If the information relates to an at-risk missing person, the member should notify a supervisor and proceed with reasonable steps to locate the missing person.

### **318.6 REPORT PROCEDURES AND ROUTING**

Employees should complete all missing person reports and forms promptly and advise the appropriate supervisor as soon as a missing person report is ready for review.

### **318.7 DETECTIVE BUREAU FOLLOW-UP**

In addition to completing or continuing any actions listed above, the investigator assigned to a missing person investigation:

- (a) Shall ensure that the missing person's school is notified within 10 days if the missing person is a juvenile.
  - 1. The notice shall be in writing and should also include a photograph (Education Code § 49068.6).
  - 2. The investigator should meet with school officials regarding the notice as appropriate to stress the importance of including the notice in the child's student file, along with contact information if the school receives a call requesting the transfer of the missing child's files to another school.
- (b) Should recontact the reporting person and/or other witnesses within 30 days of the initial report and within 30 days thereafter to determine if any additional information has become available via the reporting party.

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- (c) Should consider contacting other agencies involved in the case to determine if any additional information is available.
- (d) Shall verify and update CLETS, NCIC and any other applicable missing person networks within 30 days of the original entry into the networks and every 30 days thereafter until the missing person is located (34 USC § 41308).
- (e) Should continue to make reasonable efforts to locate the missing person and document these efforts at least every 30 days.
- (f) Shall maintain a close liaison with state and local child welfare systems and the National Center for Missing and Exploited Children® (NCMEC) if the missing person is under the age of 21 and shall promptly notify NCMEC when the person is missing from a foster care family home or childcare institution (34 USC § 41308).
- (g) Should make appropriate inquiry with the Coroner.
- (h) Should obtain and forward medical and dental records, photos, X-rays and biological samples pursuant to Penal Code § 14212 and Penal Code § 14250.
- (i) Shall attempt to obtain the most recent photograph for persons under 18 years of age if it has not previously been obtained and forward the photograph to California DOJ (Penal Code § 14210) and enter the photograph into applicable missing person networks (34 USC § 41308).
- (j) Should consider making appropriate entries and searches in the National Missing and Unidentified Persons System (NamUs).
- (k) In the case of an at-risk missing person or a person who has been missing for an extended time, should consult with a supervisor regarding seeking federal assistance from the FBI and the U.S. Marshals Service (28 USC § 586).

## Public Alerts

### 319.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for alerting the public to important information and soliciting public aid when appropriate.

### 319.2 POLICY

Public alerts may be employed using the Emergency Alert System (EAS), local radio, television and press organizations and other groups to notify the public of incidents, or enlist the aid of the public, when the exchange of information may enhance the safety of the community. Various types of alerts may be available based upon each situation and the alert system's individual criteria.

### 319.3 RESPONSIBILITIES

#### 319.3.1 EMPLOYEE RESPONSIBILITIES

Employees of the Walnut Creek Police Department should notify their supervisor, Watch Commander or Detective Bureau Supervisor as soon as practicable upon learning of a situation where public notification, a warning or enlisting the help of the media and public could assist in locating a missing person, apprehending a dangerous person or gathering information.

#### 319.3.2 SUPERVISOR RESPONSIBILITIES

A supervisor apprised of the need for a public alert is responsible to make the appropriate notifications based upon the circumstances of each situation. The supervisor shall promptly notify the Chief of Police, the appropriate Bureau Commander and the Press Information Officer when any public alert is generated.

The supervisor in charge of the investigation to which the alert relates is responsible for the following:

- (a) Updating alerts
- (b) Canceling alerts
- (c) Ensuring all appropriate reports are completed

### 319.4 AMBER ALERTS

The AMBER Alert™ Program is a voluntary partnership between law enforcement agencies, broadcasters, transportation agencies and the wireless industry, to activate urgent bulletins in child abduction cases.

#### 319.4.1 AMBER ALERT CRITERIA

The following conditions must be met before activating an AMBER Alert (Government Code 8594(a)):

- (a) Abduction has been determined to have occurred, or the child has been taken by anybody including, but not limited to, parents and/or guardians.

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- (b) The victim is 17 years of age or younger, or has a proven mental or physical disability.
- (c) There is reason to believe the victim is in imminent danger of serious injury or death.
- (d) There is information available that, if provided to the public, could assist in the child's safe recovery.

### 319.4.2 PROCEDURE FOR AMBER ALERT

The supervisor in charge will ensure the following:

- (a) An initial press release is prepared that includes all available information that might aid in locating the child:
  - 1. The child's identity, age and description
  - 2. Photograph if available
  - 3. The suspect's identity, age and description, if known
  - 4. Pertinent vehicle description
  - 5. Detail regarding location of incident, direction of travel, potential destinations, if known
  - 6. Name and telephone number of the Press Information Officer or other authorized individual to handle media liaison
  - 7. A telephone number for the public to call with leads or information
- (b) The local California Highway Patrol communications center should be contacted to initiate a multi-regional or statewide EAS broadcast, following any policies and procedures developed by CHP (Government Code § 8594).
- (c) The press release information is forwarded to the Sheriff's Department Emergency Communications Bureau so that general broadcasts can be made to local law enforcement agencies.
- (d) Information regarding the missing person should be entered into the California Law Enforcement Telecommunication System (CLETS).
- (e) Information regarding the missing person should be entered into the California Department of Justice Missing and Unidentified Persons System (MUPS)/National Crime Information Center (NCIC).
- (f) The following resources should be considered as circumstances dictate:
  - 1. The local FBI office
  - 2. National Center for Missing and Exploited Children (NCMEC)

### 319.5 BLUE ALERTS

Blue Alerts may be issued when an officer is killed, injured or assaulted and the suspect may pose a threat to the public or other law enforcement personnel.



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### 319.5.1 CRITERIA FOR BLUE ALERTS

All of the following conditions must be met before activating a Blue Alert (Government Code § 8594.5):

- (a) A law enforcement officer has been killed, suffered serious bodily injury or has been assaulted with a deadly weapon, and the suspect has fled the scene of the offense.
- (b) The investigating law enforcement agency has determined that the suspect poses an imminent threat to the public or other law enforcement personnel.
- (c) A detailed description of the suspect's vehicle or license plate is available for broadcast.
- (d) Public dissemination of available information may help avert further harm or accelerate apprehension of the suspect.

### 319.5.2 PROCEDURE FOR BLUE ALERT

The supervisor in charge should ensure the following:

- (a) An initial press release is prepared that includes all available information that might aid in locating the suspect:
  - 1. The license number and/or any other available description or photograph of the vehicle
  - 2. Photograph, description and/or identification of the suspect
  - 3. The suspect's identity, age and description, if known
  - 4. Detail regarding location of incident, direction of travel, potential destinations, if known
  - 5. Name and telephone number of the Press Information Officer or other authorized individual to handle media liaison
  - 6. A telephone number for the public to call with leads or information
- (b) The local California Highway Patrol communications center is contacted to initiate a multi-regional or statewide EAS broadcast.
- (c) The information in the press release is forwarded to the Sheriff's Department Emergency Communications Bureau so that general broadcasts can be made to local law enforcement agencies.
- (d) The following resources should be considered as circumstances dictate:
  - 1. Entry into the California Law Enforcement Telecommunication System (CLETS)
  - 2. The FBI local office

### 319.6 SILVER ALERTS

Silver Alerts® is an emergency notification system for people who are 65 years of age or older, developmentally disabled or cognitively impaired and have been reported missing (Government Code § 8594.10).

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### 319.6.1 CRITERIA FOR SILVER ALERTS

All of the following conditions must be met before activating a Silver Alert (Government Code § 8594.10):

- (a) The missing person is 65 years of age or older, developmentally disabled or cognitively impaired.
- (b) The department has utilized all available local resources.
- (c) The investigating officer or supervisor has determined that the person is missing under unexplained or suspicious circumstances.
- (d) The investigating officer or supervisor believes that the person is in danger because of age, health, mental or physical disability, environment or weather conditions, that the person is in the company of a potentially dangerous person, or that there are other factors indicating that the person may be in peril.
- (e) There is information available that, if disseminated to the public, could assist in the safe recovery of the missing person.

### 319.6.2 PROCEDURE FOR SILVER ALERT

Requests for a Silver Alert shall be made through the California Highway Patrol (Government Code § 8594.10).

### 319.7 ADDITIONAL INFORMATION

- **California Highway Patrol**
  - 1-800-TELL-CHP (1-800-835-5247)
  - [www.chp.ca.gov](http://www.chp.ca.gov)
- **California Department of Justice**
  - [www.ag.ca.gov](http://www.ag.ca.gov)
- **Missing and Unidentified Persons Unit**
  - [www.ag.ca.gov/missing](http://www.ag.ca.gov/missing)
- **Missing Children Hotline**
  - 1-800-222-FIND (1-800-222-3463)
- **Office of Victim Services**
  - (877) 433-9069
- **Crime and Violence Prevention Center**
  - [safestate.org](http://safestate.org)
- **National Center for Missing and Exploited Children (NCMEC)**
  - 1-800-THE-LOST (1-800-843-5678)
  - [www.missingkids.com](http://www.missingkids.com)

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## Victim and Witness Assistance

### 320.1 PURPOSE AND SCOPE

The purpose of this policy is to ensure that crime victims and witnesses receive appropriate assistance, that they are provided with information from government and private resources, and that the agency meets all related legal mandates.

### 320.2 POLICY

The Walnut Creek Police Department is committed to providing guidance and assistance to the victims and witnesses of crime. The members of the Walnut Creek Police Department will show compassion and understanding for victims and witnesses and will make reasonable efforts to provide the support and information identified in this policy.

### 320.3 CRIME VICTIM LIAISON

The Chief of Police shall appoint a member of the Department to serve as the crime victim liaison (2 CCR 649.36). The crime victim liaison will be the point of contact for individuals requiring further assistance or information from the Walnut Creek Police Department regarding benefits from crime victim resources. This person shall also be responsible for maintaining compliance with all legal mandates related to crime victims and/or witnesses.

#### 320.3.1 CRIME VICTIM LIAISON DUTIES

The crime victim liaison is specifically tasked with the following:

- (a) Developing and implementing written procedures for notifying and providing forms for filing with the California Victim Compensation Board (CalVCB) to crime victims, their dependents, or family. Access to information or an application for victim compensation shall not be denied based on the victim's or derivative victim's designation as a gang member, associate, or affiliate, or on the person's documentation or immigration status (Government Code § 13962; 2 CCR 649.35; 2 CCR 649.36).
- (b) Responding to inquiries concerning the procedures for filing a claim with CalVCB (2 CCR 649.36).
- (c) Providing copies of crime reports requested by CalVCB or victim witness assistance centers. Disclosure of reports must comply with the Records Maintenance and Release Policy.
- (d) Annually providing CalVCB with his/her contact information (Government Code § 13962).
- (e) Developing in consultation with sexual assault experts a sexual assault victim card explaining the rights of victims under California law (Penal Code § 680.2).
  1. Ensuring that sufficient copies of the rights of sexual assault victim card are provided to each provider of medical evidentiary examinations or physical examinations arising out of sexual assault in the Walnut Creek Police Department jurisdiction (Penal Code § 680.2).

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### *Victim and Witness Assistance*

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#### 320.3.2 VICTIM CONFIDENTIALITY

Officers investigating or receiving a report of an alleged sex offense shall inform the victim, or the victim's parent or guardian if the victim is a minor, that his/her name will become a matter of public record unless the victim requests that their name not be made public. The reporting officer shall document in his/her report that the victim was properly informed and shall include any related response made by the victim, or if a minor, any response made by the victim's parent or guardian (Penal Code § 293 (a) and (b)).

Except as authorized by law, members of this department shall not publicly disclose the name or address of any victim of a sex crime who has exercised his/her right to confidentiality (Penal Code § 293 (c) and (d)).

#### 320.3.3 FOLLOW-UP OFFICER'S RESPONSIBILITY

In the event the victim cannot be identified or due to the nature of the injury cannot be advised, the investigating officer who later contacts or identifies the victim and/or dependents shall make the necessary advisement. The investigating officer shall use discretion and tact in making such advisement.

#### 320.3.4 SUPERVISOR RESPONSIBILITY

It is the responsibility of any supervisor approving a written report where the victim of a crime has sustained injury to ensure that information is included to document the proper advisement being made or the fact that such advisement could not be accomplished. The Supervisor is then responsible to ensure that the proper advisement is accomplished and properly documented as the follow-up investigation is conducted.

#### 320.3.5 VICTIM INFORMATION AND NOTIFICATION

When appropriate, officers should advise the victim of the availability of the Victim Information and Notification Everyday (VINE) program. VINE is a free, computer-based telephone service that allows victims to check on an offender's custody status and register to receive automatic notification when an inmate is released from jail. The contact phone number for VINE is printed on the Walnut Creek Police Department Victim Information card.

### **320.4 CRIME VICTIMS**

Officers should provide all victims with the applicable victim information handouts. Officers should provide all victims of a persons crime a Marsy's Card. All other victims should be given a WCPD business card that has a link to Marsy's Rights. Officers should document in their police report that the victim was advised of their Marsy's Rights and that a card (WCPD business card or Marsy's card) was provided.

Officers should never guarantee a victim's safety from future harm but may make practical safety suggestions to victims who express fear of future harm or retaliation. Officers should never guarantee that a person qualifies as a victim for the purpose of compensation or restitution but may direct him/her to the proper written department material or available victim resources.

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### 320.4.1 VICTIMS OF HUMAN TRAFFICKING

Officers investigating or receiving a report involving a victim of human trafficking shall inform the victim, or the victim's parent or guardian if the victim is a minor, that upon the request of the victim the names and images of the victim and his/her immediate family members may be withheld from becoming a matter of public record until the conclusion of the investigation or prosecution (Penal Code § 293).

### 320.5 VICTIM INFORMATION

The Records Supervisor shall ensure that victim information handouts are available and current. These should include as appropriate:

- (a) Shelters and other community resources for victims of domestic violence.
- (b) Community resources for victims of sexual assault.
- (c) Assurance that sexual assault victims will not incur out-of-pocket expenses for forensic medical exams, and information about evidence collection, storage, and preservation in sexual assault cases (34 USC § 10449; 34 USC § 20109; Penal Code § 13823.95(a)).
- (d) An explanation that victims of sexual assault who seek a standardized medical evidentiary examination shall not be required to participate or agree to participate in the criminal justice system, either prior to the examination or at any other time (Penal Code § 13823.95(b)).
- (e) An advisement that a person who was arrested may be released on bond or some other form of release and that the victim should not rely upon an arrest as a guarantee of safety.
- (f) A clear explanation of relevant court orders and how they can be obtained.
- (g) Information regarding available compensation for qualifying victims of crime (Government Code § 13962).
- (h) VINE® information (Victim Information and Notification Everyday), including the telephone number and whether this free service is available to allow victims to check on an offender's custody status and to register for automatic notification when a person is released from jail.
- (i) Notice regarding U visa and T visa application processes.
- (j) Resources available for victims of identity theft.
- (k) A place for the officer's name, badge number, and any applicable case or incident number.
- (l) The "Victims of Domestic Violence" card containing the names, phone numbers, or local county hotlines of local shelters for battered women and rape victim counseling centers within the county and their 24-hour counseling service telephone numbers (Penal Code § 264.2).
- (m) The rights of sexual assault victims card with the required information as provided in Penal Code § 680.2.

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- (n) Any additional information required by state law (Penal Code § 13701; Penal Code § 679.02; Penal Code § 679.04; Penal Code § 679.05; Penal Code § 679.026).

### **320.7 WITNESSES**

Officers should never guarantee a witness' safety from future harm or that his/her identity will always remain confidential. Officers may make practical safety suggestions to witnesses who express fear of future harm or retaliation.

Officers should investigate allegations of witness intimidation and take enforcement action when lawful and reasonable.

## Search and Seizure

### 321.1 PURPOSE AND SCOPE

Both the federal and state Constitutions provide every individual with the right to be free from unreasonable searches and seizures. This policy provides general guidelines for Walnut Creek Police Department personnel to consider when dealing with search and seizure issues.

### 321.2 POLICY

It is the policy of the Walnut Creek Police Department to respect the fundamental privacy rights of individuals. Members of this department will conduct searches in strict observance of the constitutional rights of persons being searched. All seizures by this department will comply with relevant federal and state law governing the seizure of persons and property.

The Department will provide relevant and current training to officers as guidance for the application of current law, local community standards and prosecutorial considerations regarding specific search and seizure situations, as appropriate.

### 321.3 SEARCHES

The U.S. Constitution generally provides that a valid warrant is required in order for a search to be valid. There are, however, several exceptions that permit a warrantless search.

Examples of law enforcement activities that are exceptions to the general warrant requirement include, but are not limited to, searches pursuant to the following:

- Valid consent
- Incident to a lawful arrest
- Legitimate community caretaking interests
- Vehicle searches under certain circumstances
- Exigent circumstances

Certain other activities are recognized by federal and state courts and by certain statutes as legitimate law enforcement activities that also do not require a warrant. Such activities may include seizure and examination of abandoned property, and observations of activities and property located on open public areas.

Because case law regarding search and seizure is constantly changing and subject to interpretation by the courts, each member of this department is expected to act in each situation according to current training and his/her familiarity with clearly established rights as determined by case law.

Whenever practicable, officers are encouraged to contact a supervisor to resolve questions regarding search and seizure issues prior to electing a course of action.



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## *Search and Seizure*

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### **321.4 SEARCH PROTOCOL**

Although conditions will vary and officer safety and other exigencies must be considered in every search situation, the following guidelines should be followed whenever circumstances permit:

- (a) Members of this department will strive to conduct searches with dignity and courtesy.
- (b) Officers should explain to the person being searched the reason for the search and how the search will be conducted.
- (c) Searches should be carried out with due regard and respect for private property interests and in a manner that minimizes damage. Property should be left in a condition as close as reasonably possible to its pre-search condition.
- (d) In order to minimize the need for forcible entry, an attempt should be made to obtain keys, combinations or access codes when a search of locked property is anticipated.
- (e) When the person to be searched is of the opposite sex as the searching officer, a reasonable effort should be made to summon an officer of the same sex as the subject to conduct the search. When it is not practicable to summon an officer of the same sex as the subject, the following guidelines should be followed:
  1. Another officer or a supervisor should witness the search.
  2. The officer should not search areas of the body covered by tight-fitting clothing, sheer clothing or clothing that could not reasonably conceal a weapon or contraband.

### **321.5 DOCUMENTATION**

Officers are responsible to document in a police report any search of a residence, dwelling or business or any search resulting in a seizure, arrest, injury, or damaged property and to ensure that any required reports are sufficient including, at minimum, documentation of the following:

- Reason for the search
- Any efforts used to minimize the intrusiveness of any search (e.g., asking for consent or keys)
- What, if any, injuries or damage occurred
- All steps taken to secure property
- The results of the search, including a description of any property or contraband seized
- If the person searched is the opposite sex, any efforts to summon an officer of the same sex as the person being searched and the identification of any witness officer

Supervisors shall review reports to ensure the reports are accurate, that actions are properly documented and that current legal requirements and department policy have been met.

## Biological Samples

### 322.1 PURPOSE AND SCOPE

This policy provides guidelines for the collection of biological samples from those individuals required to provide samples upon conviction or arrest for certain offenses. This policy does not apply to biological samples collected at a crime scene or taken from a person in conjunction with a criminal investigation. Nor does it apply to biological samples from those required to register, for example, sex offenders.

### 322.2 POLICY

The Walnut Creek Police Department will assist in the expeditious collection of required biological samples from offenders in accordance with the laws of this state and with as little reliance on force as practicable.

#### 322.2.1 ARRESTEES

Any adult arrested or charged with any felony offense is required to provide DNA samples. DNA samples should be collected immediately following arrest, or during the booking process, or as soon as administratively practicable after arrest but in any case prior to release on bail or other physical release from custody (Penal Code § 296.1(a)(1)(A)).

#### 322.2.2 SEX AND ARSON REGISTRANTS

Any adult or juvenile who is required to register as a sex offender under Penal Code § 290 or arsonist under Penal Code § 457.1, including those whose registration resulted from a qualifying misdemeanor crime is required to submit a DNA sample. (Penal Code § 296(a)(3)).

At the time that any such registrant registers, updates registration, or is notified by the Department of Justice or other law enforcement officer, an appointment shall be made designating the time and place for the collection of DNA samples if no such sample has already been provided (Penal Code § 296.2(c)).

### 322.3 PERSONS SUBJECT TO DNA COLLECTION

Those who must submit a biological sample include (Penal Code § 296):

- (a) A person, including a juvenile, upon conviction or other adjudication of any felony offense.
- (b) A person, including a juvenile, upon conviction or other adjudication of any offense if the person has a prior felony on record.
- (c) An adult arrested or charged with any felony.

#### 322.3.1 BLOOD SAMPLES

The withdrawal of blood may only be performed in a medically approved manner by health care providers trained and qualified to draw blood. Blood samples obtained for submission to the Department of Justice DNA lab shall be placed in Department of Justice blood vials (Penal Code §

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298(a) and (b)(2)). A right thumbprint shall be placed on the sample vial along with other required identifying information.

### 322.3.2 BUCCAL SWABS

Buccal swab samples (taken from the inside of the mouth) may only be procured by employees who have successfully completed departmentally approved training in the collection of buccal swabs and with the use of Department of Justice buccal swab collectors. (Penal Code § 298(a) and (b)(3)). A right thumbprint shall be placed on the collector along with other required identifying information.

(Note: If an individual violently resists or presents other officer safety issues, employees may omit buccal swab samples upon approval of a supervisor.)

### 322.3.3 FULL PALM PRINTS

Full palm print impressions shall be obtained on Department of Justice prescribed forms along with all DNA samples. (Penal Code § 298(b)(4)).

## **322.4 PROCEDURE**

When an individual is required to provide a biological sample, a trained employee shall obtain the sample in accordance with this policy.

### 322.4.1 NOTICE OF A REJECTED SAMPLE

In the event the Department of Justice notifies the Department that a DNA sample or print impression is not usable, the individual whose original sample or impression was provided is required to submit to collection of additional samples. The Department shall thereafter take all reasonable steps to collect additional samples from any such individual and promptly transmit these to the Department of Justice (Penal Code § 296.2(a)).

### 322.4.2 FOLLOW UP NOTICE TO DOJ

Within two years of submitting any DNA specimen, sample or impression to the Department of Justice, this department shall notify DOJ whether the individual remains a suspect in a criminal investigation (Penal Code § 297(c)(2)). It shall be the responsibility of the Department of Justice to thereafter purge samples of any individual(s) who are no longer a suspect in any criminal investigation from the DNA database.

## **322.5 USE OF FORCE TO OBTAIN SAMPLES**

If a person refuses to cooperate with the sample collection process, officers should attempt to identify the reason for refusal and seek voluntary compliance without resorting to using force. Force will not be used in the collection of samples except as authorized by court order and only with the approval of a supervisor. Methods to consider when seeking voluntary compliance include contacting:

- (a) The person's parole or probation officer when applicable.

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- (b) The prosecuting attorney to seek additional charges against the person for failure to comply or to otherwise bring the refusal before a judge.
- (c) The judge at the person's next court appearance.
- (d) The person's attorney.
- (e) A chaplain.
- (f) Another custody facility with additional resources, where an arrestee can be transferred to better facilitate sample collection.
- (g) A supervisor who may be able to authorize custodial disciplinary actions to compel compliance, if any are available.

The supervisor shall review and approve any plan to use force and be present to document the process.

### 322.7 LITIGATION

The Chief of Police or authorized designee shall immediately notify the Department of Justice DNA Legal Unit at (415) 703-5892 in the event this department is named in a lawsuit involving the DNA Data Bank sample collection, sample use, or any aspect of the state's DNA Data Bank Program.

### 322.8 DNA COLLECTION FLAGS

The Automated Criminal History System (ACHS) can assist in identifying whether individuals qualify for collection or already have provided a DNA sample.

- DNA collection flags
  - CAL-DNA Data Bank Program flags found in the ACHS provide information regarding the individual's DNA collection status. The specific DNA flags that can be found on an individual's ACHS record are listed in the following chart.

DNA flag language used in ACHS	Action required
DO NOT COLLECT DNA. DNA SAMPLE HAS BEEN RECEIVED, TYPED, AND UPLOADED INTO THE CAL-DNA DATA BANK. FOR INFO (510) 620-3300 OR PC296.PC296@DOJ.CA.GOV.	No action required. Sample previously collected.
DO NOT COLLECT DNA. VERIFIED DNA SAMPLE IS ON FILE WITH THE CAL-DNA DATA BANK. FOR INFO (510) 620-3300 or PC296.PC296@DOJ.CA.GOV.	No action required. Sample previously collected.
DO NOT COLLECT DNA. SAMPLE NOT VERIFIED BY FINGERPRINT RECEIVED BY THE CAL-DNA DATA BANK. FOR INFO (510) 620-3300 OR PC296.PC296@DOJ.CA.GOV.	Collected, print not yet verified or not yet qualified-for those prior to Prop 69.

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DNA SAMPLE NOT VERIFIED BY FINGERPRINT HAS BEEN RECEIVED, TYPED, AND UPLOADED INTO THE CAL-DNA DATA BANK. FOR INFO (510) 620-3300 OR PC296.PC296@DOJ.CA.GOV.	Do not collect unless instructed by the Live Scan "DNS" Transaction. DNA Lab is not currently requesting new samples in these cases. If this changes agencies will be notified.
FOR CALIFORNIA AGENCIES ONLY-COLLECT DNA. THE DNA SAMPLE PREVIOUSLY SUPPLIED IS EITHER INADEQUATE OR NOT VERIFIABLE BY FINGERPRINTS. REQUEST KITS AND INFO AT (510) 620-3300 OR PC296.PC296@DOJ.CA.GOV.	Collect DNA sample if the subject is incarcerated or on probation or parole (as there is a previous felony conviction of record) or if the subject is otherwise qualified for collection based on arrest or sex/arson registration. New sample needed.
FOR CALIFORNIA AGENCIES ONLY-COLLECT DNA IF PC 290 SEX OR PC 457.1 ARSON REGISTRANT. REQUEST KITS AND INFO AT (510) 620-3300 OR PC296.PC296@DOJ.CA.GOV.	Collect DNA sample from sex/arson registrant.
FOR CALIFORNIA AGENCIES ONLY-HAS PREVIOUS QUALIFYING OFFENSE, COLLECT DNA IF INCARCERATED, CONFINED, OR ON PROBATION OR PAROLE FOLLOWING ANY MISDEMEANOR OR FELONY CONVICTION. REQUEST KITS AND INFO AT (510) 620-3300 OR PC296.PC296@DOJ.CA.GOV.	Collect DNA sample if the subject is incarcerated, or on probation or parole as there is a previous felony conviction on the record.

\*\*\* Due to the limited period of jurisdiction for DNA collection on arrest, there will not be a DNA flag set upon arrest where no previous felony conviction exists in the criminal history.

### 322.9 DOJ CONTACT INFORMATION

- DNA Buccal Collection Kits - To order kits, contact the Bureau of Forensic Services CAL-DNA Data Bank Program, preferably by e-mail to [PC296.PC296@doj.ca.gov](mailto:PC296.PC296@doj.ca.gov), or by phone at (510) 620-3300.
- DNA Buccal Collection Training or Collection of DNA Samples - For questions pertaining to DNA buccal training or the collection of DNA samples, please contact the Bureau of Forensic Services CAL-DNA Data Bank Outreach Program at (916) 227-3405 or email: [PC296.PC296@doj.ca.gov](mailto:PC296.PC296@doj.ca.gov).
- Live Scan DNA Data Automation Project - Please direct questions pertaining to the Live Scan DNA Data Automation project to the Bureau of Criminal Identification and Information Client Services Program at (916) 227-3332 or email: [LiveScan.DNA@doj.ca.gov](mailto:LiveScan.DNA@doj.ca.gov).
- Palm Print Cards - To order palm print cards or for palm print inquiries, please contact the Bureau of Criminal Identification and Information Fingerprint Expedite Unit at (916) 227-1206 or email at [palm.print@doj.ca.gov](mailto:palm.print@doj.ca.gov).

## Hate Crimes

### 323.1 POLICY

It is the policy of the Department to adopt the Commission on Peace Officer Standards and Training (POST) model policy.

See attachment: [Commission on Peace Officer Standards and Training Hate Crimes Model Policy 2019.pdf](#)

### 323.2 CRIMINAL STATUTES

Penal Code § 422 - Prohibits verbal, written or electronically transmitted threats to commit great bodily injury or death to another or his/her immediate family.

Penal Code § 422.6(a) - Prohibits the use of force or threats of force to willfully injure, intimidate, interfere with, oppress, or threaten any person in the free exercise or enjoyment of rights and privileges secured by the Constitution or law because of the person's real or perceived characteristics listed in Penal Code § 422.55(a). Speech alone does not constitute a violation of this section except when the speech itself threatened violence and the defendant had the apparent ability to carry out the threat.

Penal Code § 422.6(b) - Prohibits knowingly defacing, damaging or destroying the real or personal property of any person for any of the purposes set forth in Penal Code § 422.6(a).

Penal Code § 422.7 - Provides for other criminal offenses involving threats, violence or property damage in excess of \$950 to become felonies if committed for any of the purposes set forth in Penal Code 422.6.

Penal Code § 422.56 - Defines gender for purposes of various hate crime statutes to mean the victim's actual sex or a person's gender identity and gender related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.

Penal Code § 422.77 - Provides for the criminal enforcement of any order issued pursuant to Civil Code § 52.1.

Penal Code § 11411 - Prohibits terrorizing by placing or displaying any unauthorized sign, mark, symbol, emblem or other physical impression (including Nazi swastika, noose, or burning cross).

Penal Code § 11412 - Prohibits terrorizing threats of injury or property damage to interfere with the exercise of religious beliefs.

Penal Code § 594.3 - Prohibits vandalism to religious buildings or places of worship.

Penal Code § 11413 - Prohibits use of explosives or other destructive devices for terrorizing another at health facilities, places of religion, group facilities and other specified locations.

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### **323.3 CIVIL STATUTES**

Civil Code § 51.7 - Except for statements made during otherwise lawful labor picketing, all persons in this state have the right to be free from any violence or intimidation by threat of violence against their person or property because of actual or perceived race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, disability or position in a labor dispute.

Civil Code § 52 - Provides for civil suit by individual, Attorney General, District Attorney or City Attorney for violation of Civil Code § 51.7, including damages, Temporary Restraining Order and injunctive relief.

Civil Code § 52.1 - Provides for Temporary Restraining Order and injunctions for violations of individual and Constitutional rights enforceable as criminal conduct under Penal Code § 422.9.

### **323.4 DETECTIVE BUREAU RESPONSIBILITY**

If a case is assigned to the Detective Bureau, the assigned detective will be responsible for following up on the reported hate crime as follows:

- (a) Coordinate further investigation with the District Attorney and other appropriate law enforcement agencies, as appropriate
- (b) Maintain contact with the victim(s) and other involved individuals as needed
- (c) Maintain statistical data on suspected hate crimes and tracking as indicated and report such data to the Attorney General upon request pursuant to Penal Code § 13023

### **323.5 TRAINING**

All members of this department will receive POST approved training on hate crime recognition and investigation as provided by Penal Code § 13519.6.

### **323.6 REVIEWING**

- (a) At the end of each calendar year, the Investigations Bureau Commander will conduct a review of RERC incidents and prepare a report for the Chief of Police.
- (b) A copy of the report of RERC incidents will be given to all supervisors. Necessary plans will be made to better prevent and manage such incidents, dependent upon the annual report.
- (c) The review may be more frequent, depending on the number and nature of RERC incidents.
- (d) More frequent review may necessitate additional investigative and prevention efforts. This type of review would include strategic plans to combat such incidents, using all appropriate, available resources.

## Standards of Conduct

### 324.1 PURPOSE AND SCOPE

This policy establishes standards of conduct that are consistent with the values and mission of the Walnut Creek Police Department and are expected of all department members. The standards contained in this policy are not intended to be an exhaustive list of requirements and prohibitions but they do identify many of the important matters concerning conduct. In addition to the provisions of this policy, members are subject to all other provisions contained in this manual, as well as any additional guidance on conduct that may be disseminated by this department or a member's supervisors.

### 324.2 POLICY

The continued employment or appointment of every member of the Walnut Creek Police Department shall be based on conduct that reasonably conforms to the guidelines set forth herein. Failure to meet the guidelines set forth in this policy, whether on- or off-duty, may be cause for disciplinary action.

### 324.3 DIRECTIVES AND ORDERS

Members shall comply with lawful directives and orders from any department supervisor or person in a position of authority, absent a reasonable and bona fide justification.

#### 324.3.1 UNLAWFUL OR CONFLICTING ORDERS

Supervisors shall not knowingly issue orders or directives that, if carried out, would result in a violation of any law or department policy. Supervisors should not issue orders that conflict with any previous order without making reasonable clarification that the new order is intended to countermand the earlier order.

No member is required to obey any order that appears to be in direct conflict with any federal law, state law or local ordinance. Following a known unlawful order is not a defense and does not relieve the member from criminal or civil prosecution or administrative discipline. If the legality of an order is in doubt, the affected member shall ask the issuing supervisor to clarify the order or shall confer with a higher authority. The responsibility for refusal to obey rests with the member, who shall subsequently be required to justify the refusal.

Unless it would jeopardize the safety of any individual, members who are presented with a lawful order that is in conflict with a previous lawful order, department policy or other directive shall respectfully inform the issuing supervisor of the conflict. The issuing supervisor is responsible for either resolving the conflict or clarifying that the lawful order is intended to countermand the previous lawful order or directive, in which case the member is obliged to comply. Members who are compelled to follow a conflicting lawful order after having given the issuing supervisor the opportunity to correct the conflict, will not be held accountable for disobedience of the lawful order or directive that was initially issued.



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The person countermanning the original order shall notify, in writing, the person issuing the original order, indicating the action taken and the reason.

### **324.3.2 SUPERVISOR RESPONSIBILITIES**

Supervisors and managers are required to follow all policies and procedures and may be subject to discipline for:

- (a) Failure to be reasonably aware of the performance of their subordinates or to provide appropriate guidance and control.
- (b) Failure to promptly and fully report any known misconduct of a member to his/her immediate supervisor or to document such misconduct appropriately or as required by policy.
- (c) Directing a subordinate to violate a policy or directive, acquiesce to such a violation, or are indifferent to any such violation by a subordinate.
- (d) The unequal or disparate exercise of authority on the part of a supervisor toward any member for malicious or other improper purpose.

### **324.4 GENERAL STANDARDS**

Members shall conduct themselves, whether on- or off-duty, in accordance with the United States and California Constitutions and all applicable laws, ordinances and rules enacted or established pursuant to legal authority.

Members shall familiarize themselves with policies and procedures and are responsible for compliance with each. Members should seek clarification and guidance from supervisors in the event of any perceived ambiguity or uncertainty.

Discipline may be initiated for any good cause. It is not mandatory that a specific policy or rule violation be cited to sustain discipline. This policy is not intended to cover every possible type of misconduct.

### **324.5 CAUSES FOR DISCIPLINE**

The following are illustrative of causes for disciplinary action. This list is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for violation of other rules, standards, ethics and specific action or inaction that is detrimental to efficient department service:

#### **324.5.1 LAWS, RULES AND ORDERS**

- (a) Violation of, or ordering or instructing a subordinate to violate any policy, procedure, rule, order, directive, requirement or failure to follow instructions contained in department or City manuals.
- (b) Disobedience of any legal directive or order issued by any department member of a higher rank.
- (c) Violation of federal, state, local or administrative laws, rules or regulations.

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### 324.5.2 ETHICS

- (a) Using or disclosing one's status as a member of the Walnut Creek Police Department in any way that could reasonably be perceived as an attempt to gain influence or authority for non-department business or activity.
- (b) The wrongful or unlawful exercise of authority on the part of any member for malicious purpose, personal gain, willful deceit or any other improper purpose.
- (c) The receipt or acceptance of a reward, fee or gift from any person for service incident to the performance of the member's duties (lawful subpoena fees and authorized work permits excepted).
- (d) Acceptance of fees, gifts or money contrary to the rules of this department and/or laws of the state.
- (e) Offer or acceptance of a bribe or gratuity.
- (f) Misappropriation or misuse of public funds, property, personnel or services.
- (g) Any other failure to abide by the standards of ethical conduct.

### 324.5.3 DISCRIMINATION, OPPRESSION OR FAVORITISM

Discriminating against, oppressing or providing favoritism to any person because of age, race, color, creed, religion, sex, sexual orientation, gender identity or expression, national origin, ancestry, marital status, physical or mental disability, medical condition or other classification protected by law, or intentionally denying or impeding another in the exercise or enjoyment of any right, privilege, power or immunity, knowing the conduct is unlawful.

### 324.5.4 RELATIONSHIPS

- (a) Unwelcome solicitation of a personal or sexual relationship while on-duty or through the use of one's official capacity.
- (b) Engaging in on-duty sexual activity including, but not limited to, sexual intercourse, excessive displays of public affection or other sexual contact.
- (c) Establishing or maintaining an inappropriate personal or financial relationship, as a result of an investigation, with a known victim, witness, suspect or defendant while a case is being investigated or prosecuted, or as a direct result of any official contact.
- (d) Associating with or joining a criminal gang, organized crime and/or criminal syndicate when the member knows or reasonably should know of the criminal nature of the organization. This includes any organization involved in a definable criminal activity or enterprise, except as specifically directed and authorized by this department.
- (e) Associating on a personal, rather than official basis with persons who demonstrate recurring involvement in serious violations of state or federal laws after the member knows, or reasonably should know of such criminal activities, except as specifically directed and authorized by this department.

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### 324.5.5 ATTENDANCE

- (a) Leaving the job to which the member is assigned during duty hours without reasonable excuse and proper permission and approval.
- (b) Unexcused or unauthorized absence or tardiness.
- (c) Excessive absenteeism or abuse of leave privileges.
- (d) Failure to report to work or to place of assignment at time specified and fully prepared to perform duties without reasonable excuse.

### 324.5.6 UNAUTHORIZED ACCESS, DISCLOSURE OR USE

- (a) Unauthorized and inappropriate intentional release of confidential or protected information, materials, data, forms or reports obtained as a result of the member's position with this department.
  - 1. Members of this department shall not disclose the name, address or image of any victim of human trafficking except as authorized by law (Penal Code § 293).
- (b) Disclosing to any unauthorized person any active investigation information.
- (c) The use of any information, photograph, video or other recording obtained or accessed as a result of employment or appointment to this department for personal or financial gain or without the express authorization of the Chief of Police or the authorized designee.
- (d) Loaning, selling, allowing unauthorized use, giving away or appropriating any Walnut Creek Police Department badge, uniform, identification card or department property for personal use, personal gain or any other improper or unauthorized use or purpose.
- (e) Using department resources in association with any portion of an independent civil action. These resources include, but are not limited to, personnel, vehicles, equipment and non-subpoenaed records.

### 324.5.7 EFFICIENCY

- (a) Neglect of duty.
- (b) Unsatisfactory work performance including, but not limited to, failure, incompetence, inefficiency or delay in performing and/or carrying out proper orders, work assignments or the instructions of supervisors without a reasonable and bona fide excuse.
- (c) Concealing, attempting to conceal, removing or destroying defective or incompetent work.
- (d) Unauthorized sleeping during on-duty time or assignments.
- (e) Failure to notify the Department within 24 hours of any change in residence address, contact telephone numbers or marital status.

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#### 324.5.8 PERFORMANCE

- (a) Failure to disclose or misrepresenting material facts, or making any false or misleading statement on any application, examination form, or other official document, report or form, or during the course of any work-related investigation.
- (b) The falsification of any work-related records, making misleading entries or statements with the intent to deceive or the willful and unauthorized removal, alteration, destruction and/or mutilation of any department record, public record, book, paper or document.
- (c) Failure to participate in, or giving false or misleading statements, or misrepresenting or omitting material information to a supervisor or other person in a position of authority, in connection with any investigation or in the reporting of any department -related business.
- (d) Being untruthful or knowingly making false, misleading or malicious statements that are reasonably calculated to harm the reputation, authority or official standing of this department or its members.
- (e) Disparaging remarks or conduct concerning duly constituted authority to the extent that such conduct disrupts the efficiency of this department or subverts the good order, efficiency and discipline of this department or that would tend to discredit any of its members.
- (f) Unlawful gambling or unlawful betting at any time or any place. Legal gambling or betting under any of the following conditions:
  - 1. While on department premises.
  - 2. At any work site, while on-duty or while in uniform, or while using any department equipment or system.
  - 3. Gambling activity undertaken as part of an officer official duties and with the express knowledge and permission of a direct supervisor is exempt from this prohibition.
- (g) Improper political activity including:
  - 1. Unauthorized attendance while on-duty at official legislative or political sessions.
  - 2. Solicitations, speeches or distribution of campaign literature for or against any political candidate or position while on-duty or, on department property except as expressly authorized by City policy, the memorandum of understanding, or the Chief of Police.
- (h) Engaging in political activities during assigned working hours except as expressly authorized by City policy, the memorandum of understanding, or the Chief of Police.
- (i) Any act on- or off-duty that brings discredit to this department.

#### 324.5.9 CONDUCT

- (a) Failure of any member to promptly and fully report activities on his/her part or the part of any other member where such activities resulted in contact with any other law

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enforcement agency or that may result in criminal prosecution or discipline under this policy.

- (b) Unreasonable and unwarranted force to a person encountered or a person under arrest.
- (c) Exceeding lawful peace officer powers by unreasonable, unlawful or excessive conduct.
- (d) Unauthorized or unlawful fighting, threatening or attempting to inflict unlawful bodily harm on another.
- (e) Engaging in horseplay that reasonably could result in injury or property damage.
- (f) Discourteous, disrespectful or discriminatory treatment of any member of the public or any member of this department or the City.
- (g) Use of obscene, indecent, profane or derogatory language while on-duty or in uniform.
- (h) Criminal, dishonest, or disgraceful conduct, whether on- or off-duty, that adversely affects the member's relationship with this department.
- (i) Unauthorized possession of, loss of, or damage to department property or the property of others, or endangering it through carelessness or maliciousness.
- (j) Attempted or actual theft of department property; misappropriation or misuse of public funds, property, personnel or the services or property of others; unauthorized removal or possession of department property or the property of another person.
- (k) Activity that is incompatible with a member's conditions of employment or appointment as established by law or that violates a provision of any memorandum of understanding or contract to include fraud in securing the appointment or hire.
- (l) Initiating any civil action for recovery of any damages or injuries incurred in the course and scope of employment or appointment without first notifying the Chief of Police of such action.
- (m) Any other on- or off-duty conduct which any member knows or reasonably should know is unbecoming a member of this department, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon this department or its members.

### 324.5.10 SAFETY

- (a) Failure to observe or violating department safety standards or safe working practices.
- (b) Failure to maintain current licenses or certifications required for the assignment or position (e.g., driver license, first aid).
- (c) Failure to maintain good physical condition sufficient to adequately and safely perform law enforcement duties.
- (d) Unsafe firearm or other dangerous weapon handling to include loading or unloading firearms in an unsafe manner, either on- or off- duty.
- (e) Carrying, while on the premises of the work place, any firearm or other lethal weapon that is not authorized by the member's appointing authority.

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- (f) Unsafe or improper driving habits or actions in the course of employment or appointment.
- (g) Any personal action contributing to a preventable traffic collision.
- (h) Concealing or knowingly failing to report any on-the-job or work-related accident or injury as soon as practicable but within 24 hours.

### 324.5.11 INTOXICANTS

- (a) Reporting for work or being at work while intoxicated or when the member's ability to perform assigned duties is impaired due to the use of alcohol, medication or drugs, whether legal, prescribed or illegal.
- (b) Possession or use of alcohol at any work site or while on-duty, except as authorized in the performance of an official assignment. A member who is authorized to consume alcohol is not permitted to do so to such a degree that it may impair on-duty performance.
- (c) Unauthorized possession, use of, or attempting to bring a controlled substance, illegal drug or non-prescribed medication to any work site.

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# Information Technology Use

## 325.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the proper use of department information technology resources, including computers, electronic devices, hardware, software and systems.

### 325.1.1 DEFINITIONS

Definitions related to this policy include:

**Computer system** - All computers (on-site and portable), electronic devices, hardware, software, and resources owned, leased, rented or licensed by the Walnut Creek Police Department that are provided for official use by its members. This includes all access to, and use of, Internet Service Providers (ISP) or other service providers provided by or through the Department or department funding.

**Hardware** - Includes, but is not limited to, computers, computer terminals, network equipment, electronic devices, telephones, including cellular and satellite, pagers, modems or any other tangible computer device generally understood to comprise hardware.

**Software** - Includes, but is not limited to, all computer programs, systems and applications, including shareware. This does not include files created by the individual user.

**Temporary file, permanent file or file** - Any electronic document, information or data residing or located, in whole or in part, on the system including, but not limited to, spreadsheets, calendar entries, appointments, tasks, notes, letters, reports, messages, photographs or videos.

## 325.2 POLICY

It is the policy of the Walnut Creek Police Department that members shall use information technology resources, including computers, software and systems, that are issued or maintained by the Department in a professional manner and in accordance with this policy.

## 325.3 PRIVACY EXPECTATION

Members forfeit any expectation of privacy with regard to emails, texts, or anything published, shared, transmitted, or maintained through file-sharing software or any internet site that is accessed, transmitted, received, or reviewed on any department computer system.

The Department reserves the right to access, audit, and disclose, for whatever reason, any message, including attachments, and any information accessed, transmitted, received, or reviewed over any technology that is issued or maintained by the Department, including the department email system, computer network, and/or any information placed into storage on any department system or device. This includes records of all keystrokes or Web-browsing history made at any department computer or over any department network. The fact that access to a database, service, or website requires a username or password will not create an expectation of privacy if it is accessed through department computers, electronic devices, or networks.

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The Department shall not require a member to disclose a personal username or password for accessing personal social media or to open a personal social website; however, the Department may request access when it is reasonably believed to be relevant to the investigation of allegations of work-related misconduct (Labor Code § 980).

### **325.4 RESTRICTED USE**

Members shall not access computers, devices, software or systems for which they have not received prior authorization or the required training. Members shall immediately report unauthorized access or use of computers, devices, software or systems by another member to their supervisors or Watch Commanders.

Members shall not use another person's access passwords, logon information and other individual security data, protocols and procedures unless directed to do so by a supervisor.

#### **325.4.1 SOFTWARE**

Members shall not copy or duplicate any copyrighted or licensed software except for a single copy for backup purposes in accordance with the software company's copyright and license agreement.

To reduce the risk of a computer virus or malicious software, members shall not install any unlicensed or unauthorized software on any department computer. Members shall not install personal copies of any software onto any department computer.

When related to criminal investigations, software program files may be downloaded only with the approval of the information systems technology (IT) staff and with the authorization of the Chief of Police or the authorized designee.

No member shall knowingly make, acquire or use unauthorized copies of computer software that is not licensed to the Department while on department premises, computer systems or electronic devices. Such unauthorized use of software exposes the Department and involved members to severe civil and criminal penalties.

Introduction of software by members should only occur as part of the automated maintenance or update process of department- or City-approved or installed programs by the original manufacturer, producer or developer of the software.

Any other introduction of software requires prior authorization from IT staff and a full scan for malicious attachments.

#### **325.4.2 HARDWARE**

Access to technology resources provided by or through the Department shall be strictly limited to department-related activities. Data stored on or available through department computer systems shall only be accessed by authorized members who are engaged in an active investigation or assisting in an active investigation, or who otherwise have a legitimate law enforcement or department-related purpose to access such data. Any exceptions to this policy must be approved by a supervisor.



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## *Information Technology Use*

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### **325.5 PROTECTION OF AGENCY SYSTEMS AND FILES**

All members have a duty to protect the computer system and related systems and devices from physical and environmental damage and are responsible for the correct use, operation, care, and maintenance of the computer system.

Members shall ensure department computers and access terminals are not viewable by persons who are not authorized users. Computers and terminals should be secured, users logged off and password protections enabled whenever the user is not present. Access passwords, logon information, and other individual security data, protocols, and procedures are confidential information and are not to be shared. Password length, format, structure, and content shall meet the prescribed standards required by the computer system or as directed by a supervisor and shall be changed at intervals as directed by IT staff or a supervisor.

It is prohibited for a member to allow an unauthorized user to access the computer system at any time or for any reason. Members shall promptly report any unauthorized access to the computer system or suspected intrusion from outside sources (including the internet) to a supervisor.

### **325.6 INSPECTION OR REVIEW**

A supervisor or the authorized designee has the express authority to inspect or review the computer system, all temporary or permanent files, related electronic systems or devices, and any contents thereof, whether such inspection or review is in the ordinary course of his/her supervisory duties or based on cause.

Reasons for inspection or review may include, but are not limited to, computer system malfunctions, problems or general computer system failure, a lawsuit against the Department involving one of its members or a member's duties, an alleged or suspected violation of any department policy, a request for disclosure of data, or a need to perform or provide a service.

The IT staff may extract, download or otherwise obtain any and all temporary or permanent files residing or located in or on the department computer system when requested by a supervisor or during the course of regular duties that require such information.

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## Report Preparation

### 326.1 PURPOSE AND SCOPE

Report preparation is a major part of each officer's job. The purpose of reports is to document sufficient information to refresh the officer's memory and to provide sufficient information for follow-up investigation and successful prosecution. Report writing is the subject of substantial formalized training and on-the-job training.

#### 326.1.1 REPORT PREPARATION

Employees should ensure that reports are sufficiently detailed for their purpose and free from errors prior to submission. It is the responsibility of the assigned employee to complete and submit all reports taken during the shift before going off-duty unless permission to hold the report has been approved by a supervisor. Generally, reports requiring prompt follow-up action on active leads, or arrest reports where the suspect remains in custody should not be held.

Handwritten reports must be prepared legibly. If the report is not legible, the submitting employee will be required by the reviewing supervisor to promptly make corrections and resubmit the report. Employees who dictate reports shall use appropriate grammar, as content is not the responsibility of the typist. Employees who generate reports on computers are subject to all requirements of this policy.

All reports shall accurately reflect the identity of the persons involved, all pertinent information seen, heard or assimilated by any other sense, and any actions taken. Employees shall not suppress, conceal or distort the facts of any reported incident, nor shall any employee make a false report orally or in writing. Generally, the reporting employee's opinions should not be included in reports unless specifically identified as such.

#### 326.1.2 REPORT WRITING STANDARDS

Report Organization:

- (a) All reports will be organized by the category system
- (b) M.O.'s will be completely developed and will include as many of the nine elements found present by the investigating officer
- (c) A complete scene description will be included in the narrative of all criminal investigative reports, and other cases as appropriate
- (d) All criminal reports will include adequate facts to substantiate the elements of the crime being investigated
- (e) Evidence will be described thoroughly under the evidence category. Under the investigation category, finders will be identified and location of discovery stated, and evidence will be correlated through discussion to the crime scene and involved parties. Evidence item numbers will also correlate with those numbers assigned to individual pieces of evidence that are booked into the evidence lockers

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## Report Preparation

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- (f) All critical issues and authorities pertaining to probable cause for stop, detention, and arrest, Miranda statements and waivers, and search and seizure will be thoroughly discussed, explained and documented
- (g) Each person listed in the report will be indexed. This shall include: name, all physical descriptors, DOB, Driver's License/ID numbers when possible, address and phone numbers

### 326.2 REQUIRED REPORTING

Written reports are required in all of the following situations on the appropriate department approved form unless otherwise approved by a supervisor.

#### 326.2.1 CRIMINAL ACTIVITY

When a member responds to a call for service, or as a result of self-initiated activity becomes aware of any activity where a crime has occurred, the member shall document the incident regardless of whether a victim desires prosecution. Activity to be documented in a written report includes:

- (a) All arrests
- (b) All felony crimes
- (c) Non-Felony incidents involving threats or stalking behavior
- (d) Situations covered by separate policy. These include:
  1. Use of Force Policy
  2. Domestic Violence Policy
  3. Child Abuse Policy
  4. Adult Abuse Policy
  5. Hate Crimes Policy
  6. Suspicious Activity Reporting Policy
- (e) All misdemeanor crimes where the victim desires a report

Misdemeanor crimes where the victim does not desire a report shall be documented using the department-approved alternative reporting method (e.g., dispatch log).

#### 326.2.2 NON-CRIMINAL ACTIVITY

The following incidents shall be documented using the appropriate approved report:

- (a) Anytime an officer points a firearm at any person
- (b) Any use of force against any person by a member of this department (see the Use of Force Policy)
- (c) Any firearm discharge (see the Firearms Policy)

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## Report Preparation

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- (d) Anytime a person is reported missing, regardless of jurisdiction (see the Missing Persons Policy)
- (e) Any found property or found evidence
- (f) Any traffic collisions above the minimum reporting level (see Traffic Collision Reporting Policy)
- (g) Suspicious incidents that may indicate a potential for crimes against children or that a child's safety is in jeopardy
- (h) All protective custody detentions
- (i) Suspicious incidents that may place the public or others at risk
- (j) Whenever the employee believes the circumstances should be documented or at the direction of a supervisor

### 326.2.3 DEATH CASES

Death investigations require specific investigation methods depending on circumstances and should be handled in accordance with the Death Investigations Policy. The handling officer should notify and apprise a supervisor of the circumstances surrounding the incident to determine how to proceed. The following cases shall be appropriately investigated and documented using the approved report:

- (a) Sudden or accidental deaths
- (b) Suicides
- (c) Homicide or suspected homicide
- (d) Unattended deaths (No physician or qualified hospice care in the 20 days preceding death)
- (e) Found dead bodies or body parts

### 326.2.4 INJURY OR DAMAGE BY CITY PERSONNEL

Reports shall be taken if an injury occurs that is a result of an act of a City employee. Additionally, reports shall be taken involving damage to City property or City equipment.

### 326.2.5 MISCELLANEOUS INJURIES

Any injury that is reported to this department shall require a report when:

- (a) The injury is a result of drug overdose
- (b) Attempted suicide
- (c) The injury is major/serious, whereas death could result

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## *Report Preparation*

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- (d) The circumstances surrounding the incident are suspicious in nature and it is desirable to record the event

The above reporting requirements are not intended to be all-inclusive. A supervisor may direct an employee to document any incident he/she deems necessary.

### **326.2.6 MANDATORY REPORTING OF JUVENILE GUNSHOT INJURIES**

A report shall be taken when any incident in which a child 18 years or younger suffered an unintentional or self-inflicted gunshot wound. The Records Bureau shall notify the California Department of Public Health (CDPH) of the incident as required by CDPH (Penal Code § 23685).

### **326.3 GENERAL POLICY OF EXPEDITIOUS REPORTING**

In general, all officers and supervisors shall act with promptness and efficiency in the preparation and processing of all reports. An incomplete report, unorganized reports or reports delayed without supervisory approval are not acceptable. Reports shall be processed according to established priorities or according to special priority necessary under exceptional circumstances.

#### **326.3.1 GENERAL POLICY OF HANDWRITTEN REPORTS**

Some incidents and report forms lend themselves to block print rather than typing. In general, the narrative portion of those reports where an arrest is made or when there is a long narrative should be typed or dictated.

Supervisors may require, with the foregoing general policy in mind, block printing or typing of reports of any nature for department consistency.

#### **326.3.2 GENERAL USE OF OTHER HANDWRITTEN FORMS**

County, state and federal agency forms may be block printed as appropriate. In general, the form itself may make the requirement for typing apparent.

### **326.4 REPORT CORRECTIONS**

Supervisors shall review reports for content and accuracy. If the original report needs corrections, the report should be returned to the reporting employee for correction as soon as practical. It shall be the responsibility of the originating officer to ensure that any report returned for correction is completed and resubmitted for approval in a timely manner.

### **326.5 REPORT CHANGES OR ALTERATIONS**

Reports that have been approved by a supervisor and submitted to the Records Bureau for filing and distribution shall not be modified or altered except by way of a supplemental report. Reviewed reports that have not yet been submitted to the Records Bureau may be corrected or modified by the authoring officer only with the knowledge and authorization of the reviewing supervisor.

### **326.6 ON LINE REPORTING**

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## *Report Preparation*

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### 326.6.1 POLICY

It shall be the policy of the Walnut Creek Police Department to offer citizens the option of submitting reports online via CopLogic when certain criteria are met.

### 326.6.2 PURPOSE

The purpose of online reporting is to allow citizens a more convenient and efficient way to report certain types of crimes/incidents online. The purpose of this policy is to establish guidelines and procedures for the taking and handling of these reports.

### 326.6.3 GUIDELINES

Online reporting will have to meet certain criteria; such as the incident must have occurred within our jurisdiction and DOES NOT involve any of the following:

- A Known Suspect (including suspect vehicle license number)
- Violent Crime (personal assault, kidnapping, robbery)
- Hate Crime
- Sex Crime (rape or sexual assault)
- Stolen Vehicle (theft of a vehicle, trailer, motorcycle)
- Lost/Stolen License Plate
- Domestic Violence
- Assault and Battery
- Traffic Accident Involving an Injury
- A Missing Person

Once this criterion has been met, a citizen will be able to file the following types of reports:

- Lost property
- Misdemeanor thefts of property, other than firearms or materials that threaten public safety, when there is no suspect information, serial number or ability to trace the item. (Misdemeanor thefts of cellular telephones may be reported even though they have a serial number or ability to trace the item)
- Misdemeanor vandalism with no suspect information and no hate crime implications
- Vehicle burglaries with no suspect information or evidence
- Stolen vehicle attempts with no suspect information or evidence
- Identity theft without an identifiable suspect
- Online or email fraud solicitations without an identifiable suspect and if the financial loss classifies the crime as a misdemeanor
- Hit-and-run vehicle collisions with no suspect or suspect vehicle

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- Annoying telephone calls with no suspect information

Officers at the scene of one of the above incidents should not refer the reporting party to online reporting without authorization from a supervisor. Officers may refer victims to online victim assistance programs (e.g., Federal Communications (FCC) website for identity theft, Internet Crime Complaint Center (IC3) website for computer crimes).

### 326.6.4 PROCEDURES

#### (a) Procedures for Citizens

- Citizens wanting to report a vehicle burglary, stolen vehicle attempts, vehicle tampering, theft, vandalism, annoying/harassing phone calls, identity theft, non-injury accidents, child custody issue or lost property can do so by accessing the department's website at [www.walnutcreekpd.com](http://www.walnutcreekpd.com). An Online Report icon will be located on the facepage of the website. This will take the user to the online reports instructions, which will guide the user through the necessary steps to submit a report. After the citizen completes the required steps, they will receive an email with a temporary case number and information advising them that a permanent case number will be issued when the report has been approved. Once the report is approved the citizen will receive a second email with the permanent case number as well as a PDF attachment of the case.

#### (b) Procedures for Dispatch/Front Counter Personnel

- Dispatch or the front counter personnel will offer RP's online reporting when the information received meets the criteria for online reporting and they feel that it would be beneficial to the RP to report it in this manner (i.e.: not available for officer contact, no officers available, they need a copy of the report as soon as possible, etc.).

#### (c) Procedures for the approval Sergeants

- The graveyard Sergeants will monitor the CopLogic approval queue 7 days a week. They will review any submitted reports and approve or send the report back to the reporting party requesting more information, etc. If the report does not fit the criteria for online reporting, at their discretion, they will send the report back to the reporting party and ask that they contact dispatch for officer response or they will give the information to an officer for contact. The decision will depend on time of day, current calls for service, etc.

#### (d) Procedures for the Police Records Technicians

- Once the report is approved by the Sergeant, it will automatically be forwarded to the Versaterm transcription queue. A Records Technician will then transcribe that report the same as any other report in the queue.

### 326.7 TELEPHONE REPORT UNIT

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## *Report Preparation*

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### 326.7.1 PURPOSE

To designate and staff, on a temporary basis, a "Telephone Report Unit" (TRU). The assignment will augment department services, handling cold reports and investigations that would otherwise occupy, or take an officer away from field duties. The position may be called upon to assist other divisions, based on availability.

### 326.7.2 POLICY

The TRU may be staffed when an officer(s) is available for modified or light duty and the work restrictions allow the officer to complete these duties. This determination will be made at the discretion of the Chief of Police. The TRU will assist by handling cold reports and investigations that require administrative follow up, and will assist other divisions when necessary. The Operations and Administration Captains will make the assignment.

The TRU may handle the following types of reports, investigations, or other services as assigned:

- Counter Report 10851 CVC reports
- Cold misdemeanor crimes that do not require field follow up.
- Auto Burglaries when the victim comes to the police department with the victim vehicle, when the victim calls the department but cannot come into the station with the victim vehicle.
- Grand Thefts when only administrative follow-up is required
- Suspicious Circumstances
- Cold Insurance Report (R/P has necessary documentation information)
- Cold minor property damage traffic collisions
- Service to Citizens
- Civil Matters not requiring a field response
- Felony Crimes that do not have sufficient leads for further field contact investigation
- Misdemeanor Vandalism
- Felony Vandalism reported for insurance purposes
- Identity Theft when other related crimes occurred outside our jurisdiction
- Thefts from victims who were visiting our jurisdiction but have returned to their residence
- Misdemeanor hit and run collisions without leads
- Missing Adults where foul play is not suspected (not-at-risk) and an immediate response is not required (The initial report will be forwarded to the on-duty supervisor for follow up assignment)



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- Lost and Found Property
- Annoying/Harassing phone calls
- Other cases as assigned or approved by the on-duty supervisor or manager
- (Note: Once approved by the on-duty supervisor, those investigations requiring in-field follow-up may be referred to an appropriate officer for disposition)
- Reception counter duties
- Review and completion of On-line Reports

### 326.7.3 SCHEDULING GUIDELINES

The TRU schedule will be assigned based on organizational needs. Determination of hours and days will be the responsibility of the Operations Captain. The TRU will be assigned to a line supervisor unless otherwise directed by the Operations Captain.

The Chief of Police will determine the number of officers assigned to the unit at any given time.

The On-duty Watch Commander, Sergeant and Communications staff will be advised when the TRU is staffed.

During duty hours the TRU will always be available via radio, cellphone or at the TRU desk.

Cases may be held for the TRU with the approval of the shift supervisor.

The TRU(s) shall update dispatch and the on-duty supervisor when they are unavailable during their scheduled assignment.

### 326.7.4 DISPATCH RESPONSIBILITIES

When the communication center receives a call for service the following options will be offered to the caller:

- A field officer will respond when available (The dispatcher will include the approximate response time)
- On-line reporting system information
- Referral to the TRU (when staffed) for the most timely telephone response

Dispatch will raise the TRU via portable radio, cell phone, or desk phone, and dispatch the call accordingly

### 326.7.5 TRU ASSIGNMENT

The TRU will be located at an available workstation.

A computer and telephone will be available for the TRU.

If necessary, a member of the Police Information Technology Team will provide training in the Records Management System for the TRU.

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## *Report Preparation*

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The call sign of "15 'Charles' 1," will be assigned to the TRU. Only officers assigned to the TRU will have this unique identifier.

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## Extradition/Fugitive, Arrest Procedures

### 327.1 PURPOSE AND SCOPE

WCPD uses the services of the Contra Costa County Sheriff's Office Fugitive Extradition Unit (CCCSOFEU) for the handling of all 1551 PC arrests, as well as all extraditions from other states.

### 327.2 DEFINITIONS

**Extradition** - The surrender, by one nation or state to another, of an individual accused or convicted of an offense outside its own territory and within the jurisdiction of the other, which being competent to try and punish him, demands surrender.

**Fugitive** - One who is accused or convicted of a crime in one state and is later found in another state, regardless of the manner or reason for his departure from the first state.

**Magistrate** - Any judge in the State of California (PC 808) or a person certified to be a magistrate under the laws of the demanding state.

**Extraditable offense** - Any criminal offense, felony or misdemeanor regardless of whether the offense is a crime in the asylum state.

**Asylum State** - Where the fugitive or defendant has taken refuge or is found.

**Demanding State** - The state which seeks to extradite the fugitive.

**Fugitive Complaint** - The document filed in the asylum state prior to receipt of the Governor's warrant charging the person arrested with being a fugitive from justice.

**Fugitive Warrant** - The arrest warrant issued by the local court prior to receipt of the Governor's warrant authorizing the arrest and detention of the fugitive pending receipt of the Governor's warrant.

**Governor's Warrant** - The warrant issued by the Governor of the asylum state commanding the fugitive be arrested and delivered over to the designated agents of the demanding state.

**Waiver of Extradition** - Waiver by the accused of the issuance and service of a governor's warrant and consent to be transported to the demanding state.

### 327.3 PROCEDURES FOR HANDLING FUGITIVES ON OUT-OF-STATE CHARGES

A fugitive from another state may be arrested without a California warrant if there is reasonable information that the accused was convicted or charged in the courts of another state and the crime they are charged with or were convicted of is punishable by death or imprisonment for a term exceeding one year. Reasonable information forms the basis for a probable cause arrest of the fugitive and the fugitive is being arrested under section 1551.1 PC.

Under 1551 PC, a fugitive may be arrested on a locally issued fugitive arrest warrant.

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## *Extradition/Fugitive, Arrest Procedures*

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### **327.4 PROCEDURES FOR HANDLING FUGITIVES ARRESTED ON PROBABLY CAUSE UNDER 1551 PC**

#### **327.4.1 ARREST**

- (a) When an Officer contacts a fugitive with an outstanding out-of-state warrant, the fugitive should be detained and the officer should request dispatch confirm the warrant.
- (b) Dispatch should immediately, by phone, contact the out-of-state agency holding the warrant and confirm that the warrant is still valid and that the out-of-state agency will extradite the fugitive. If the warrant is valid and the out-of-state agency will extradite the fugitive, dispatch should request confirmation of the warrant. The confirmed warrant can be sent to WCPD by teletype or by fax.
- (c) While waiting for confirmation of the warrant, the detaining Officer shall make every effort to ensure that the person named in the warrant and the person being detained are one and the same.
- (d) When dispatch receives confirmation of the warrant they should immediately notify the arresting officer who should take the fugitive into custody. The fugitive should always be booked into MDF and a Probable Cause Declaration must be submitted.

#### **327.4.2 INTERVIEW OF SUBJECT**

The arresting Officer should attempt to interview the arrestee as soon as possible. The interview must be preceded by Miranda warning and waiver. The purpose of the interview is to obtain the arrestee's statement that he/she is the person wanted in the other state. Also, the Officer should explain to the arrestee that he/she may voluntarily waive extradition by appearing in court and signing a waiver of extradition before a magistrate. The interview is not to determine the details of the out-of-state crime, but rather the two key questions that must be answered are:

- Is the arrestee the same person as named in the warrant?
- Will the arrestee waive extradition?

#### **327.4.3 ARREST REPORTS**

Unless there are elements of other crimes, the arrest report should be titled as an Outside Felony Warrant. The report must be completed prior to the conclusion of the arresting Officer's shift. The report shall include:

- Information leading to the probable cause arrest.
- Information regarding the identification of the arrestee.
- Information regarding the out-of-state warrant charges and if possible, confirmation that the sentence for the arrestee's crime is more than one year or death.
- If the arrestee intends to waive extradition.

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## *Extradition/Fugitive, Arrest Procedures*

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A Detective Bureau follow up request must be immediately forwarded to the Detective Bureau, who will be responsible for following up with the CCCSOFEU. A felony complaint package is not necessary, just a copy of the report with the follow up request.

### **The CCCSOFEU will handle all of the following:**

#### **327.4.4 COMPLAINT/ARRAIGNMENT**

- (a) Even if the arrestee states that he/she will waive extradition, the CCCSOFEU must seek an in-custody fugitive complaint from the District Attorney's office. Appropriate documentation will be needed for the complaint and possible future hearings. The CCCSOFEU will call the out-of-state agency holding the fugitive warrant and request the following to be over-night mailed or Fed-Ex delivery to them immediately.
  - 1. Certified copies of the arrest warrant/warrants, which must state:
    - (a) The type of crime alleged or convicted.
    - (b) The jurisdiction (Court) in which it is charged.
    - (c) The name of the magistrate or other authorized authority.
    - (d) The information identifying the named defendant.
  - 2. Charging documents, fingerprints, booking photographs and other documents regarding the identification of the arrestee and documents to assist in the Governor's warrant (faxed copies of these documents are not acceptable).
  - 3. The CCCSOFEU will confirm with the out-of-state agency that they will extradite the arrestee to their home state.
- (b) Once the complaint is issued by the District Attorney's Office, the fugitive complaint with five copies of the Waiver of Extradition form must be filed at the Mt. Diablo court in Martinez and the Jail must be contacted for transportation for arraignment. (Forms are available from the civil division of the Sheriff's Department).
- (c) If the arrestee has stated that he/she will waive extradition, the District Attorney's Office must be notified so that they will be available for the waiving of extradition at arraignment.
  - (a) The waiving of extradition must be done in Court to make it valid and the waiver negates all other formalities regarding the arrestee.
  - (b) If the arrestee fails to waive extradition, he/she can be ordered held in custody or released on bail pending extradition.
- (d) If the arrestee denies that he/she is the same person wanted in the fugitive warrant, a hearing is held within 10 days to determine if there is probable cause to believe he/she is the wanted person.
  - (a) If an identity hearing is held, the District Attorney's office may need further documentation to prove the arrestee's identity.

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## *Extradition/Fugitive, Arrest Procedures*

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- (e) If there is a need for a Governor's warrant, this will be handled by the District Attorney's office.

An important reminder, the Sheriff's Department does not have the responsibility to obtain fugitive complaints on arrestees housed in the County Jail who are arrested by the Walnut Creek Police Department. The arresting Officer and later the assigned Detective have the responsibility of coordinating the investigation and attaining the criminal complaint and required documents if for some reason, the CCCSOFEU cannot handle.

## Media Relations

### 328.1 PURPOSE AND SCOPE

This policy provides guidelines for media releases and media access to scenes of disasters, criminal investigations, emergencies and other law enforcement activities.

### 328.2 RESPONSIBILITIES

The ultimate authority and responsibility for the release of information to the media shall remain with the Chief of Police, however, in situations not warranting immediate notice to the Chief of Police and in situations where the Chief of Police has given prior approval, Bureau Commanders, Watch Commanders and designated Press Information Officer(s) may prepare and release information to the media in accordance with this policy and the applicable law.

#### 328.2.1 MEDIA REQUEST

Any media request for information or access to a law enforcement situation shall be referred to the designated department media representative, or if unavailable, to the first available supervisor. Prior to releasing any information to the media, employees shall consider the following:

- (a) At no time shall any employee of this department make any comment or release any official information to the media without prior approval from a supervisor or the designated department media representative.
- (b) In situations involving multiple law enforcement agencies, every reasonable effort should be made to coordinate media releases with the authorized representative of each involved agency prior to the release of any information by this department.
- (c) Under no circumstance should any member of this department make any comments to the media regarding any law enforcement incident not involving this department without prior approval of the Chief of Police.

### 328.3 MEDIA ACCESS

Authorized members of the media shall be provided access to scenes of disasters, criminal investigations, emergencies and other law enforcement activities subject to the following conditions (Penal Code § 409.5(d)):

- (a) The media representative shall produce valid press credentials that shall be prominently displayed at all times while in areas otherwise closed to the public.
- (b) Media representatives may be prevented from interfering with emergency operations and criminal investigations.
  - 1. Reasonable effort should be made to provide a safe staging area for the media that is near the incident and that will not interfere with emergency or criminal investigation operations. All information released to the media should

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## Media Relations

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be coordinated through the department Press Information Officer or other designated spokesperson.

2. Whenever the presence of media or other aircraft pose a threat to public or officer safety or significantly hampers incident operations, the field supervisor should consider requesting a Temporary Flight Restriction (TFR). All requests for a TFR should be routed through the Watch Commander. The TFR request should include specific information regarding the perimeter and altitude necessary for the incident and should be requested through the appropriate control tower. If the control tower is not known, the Federal Aviation Administration should be contacted (14 CFR 91.137).
- (c) No member of this department who is under investigation shall be subjected to media visits or interviews without the consent of the involved employee (Government Code § 3303(e)).
  - (d) Media interviews with individuals who are in custody should not be permitted without the approval of the Chief of Police and the express consent of the person in custody.

A tactical operation should be handled in the same manner as a crime scene, except the news media shall be permitted within the outer perimeter of the scene, subject to any restrictions as determined by the supervisor in charge. Department members shall not jeopardize a tactical operation in order to accommodate the news media. All comments to the media shall be coordinated through a supervisor or the Press Information Officer.

### 328.3.1 PROVIDING ADVANCE INFORMATION

To protect the safety and rights of officers and other persons, advance information about planned actions by law enforcement personnel, such as movement of persons in custody or the execution of an arrest or search warrant, should not be disclosed to the news media, nor should media representatives be invited to be present at such actions except with the prior approval of the Chief of Police.

Any exceptions to the above should only be considered for the furtherance of legitimate law enforcement purposes. Prior to approving any exception the Chief of Police will consider, at minimum, whether the release of information or presence of the media would unreasonably endanger any individual, prejudice the rights of any person or is otherwise prohibited by law.

### 328.4 SCOPE OF INFORMATION SUBJECT TO RELEASE

The Department will maintain a daily information log of significant law enforcement activities that shall be made available via the department website, or upon request by media representatives. This log will generally contain the following information:

- (a) The date, time, location, case number, type of crime, extent of injury or loss, and names of individuals (except confidential informants) involved in crimes occurring



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within this jurisdiction unless the release of such information would endanger the safety of any individual or jeopardize the successful completion of any ongoing investigation

- (b) The date, time, location, case number, name, birth date and charges for each person arrested by this department unless the release of such information would endanger the safety of any individual or jeopardize the successful completion of any ongoing investigation
- (c) The time and location of other significant law enforcement activities or requests for service with a brief summary of the incident subject to the restrictions of this policy and applicable law

At no time shall identifying information pertaining to a juvenile arrestee, victim or witness be publicly released without prior approval of a competent court.

Information concerning incidents involving certain sex crimes and other offenses set forth in Government Code § 6254(f) shall be restricted in accordance with applicable statutory provisions.

Identifying information concerning deceased individuals shall not be released to the media until notification of next of kin or otherwise cleared through the Coroner's Office.

Any requests for copies of related reports or additional information not contained in this log shall be referred to the designated department media representative, the custodian of records, or if unavailable, to the Watch Commander. Such requests will generally be processed in accordance with the provisions of the Public Records Act (Government Code § 6250, et seq.)

### 328.4.1 RESTRICTED INFORMATION

It shall be the responsibility of the authorized employee dealing with media requests to ensure that restricted information is not inappropriately released to the media by this department. When in doubt, authorized and available legal counsel should be obtained.

### 328.5 PRESS RELEASES

The on duty Watch Commander or Investigations Bureau Commander should prepare, as soon as possible, a written news media release on police involved matters of significant public interest. All written news media releases will be distributed via Nixle and be attached to the daily shift report.

Generally, written Press Releases should contain specific information (unless legally prohibited) such as the following:

- Crimes committed
- The identity of victims, if appropriate, and not prohibited
- Dates and times
- Locations

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- Suspect's name (or suspects' names) and charges, bail amount and location of suspect if arrested
- Vehicle descriptions
- Probable cause of injury or death
- Other pertinent information which is appropriate by law or policy, i.e., a synopsis of the event

Information, which may hamper future criminal investigations or proceedings or that may create a risk of harm to involved parties shall not be released. News releases shall comply with all guidelines and procedures pertaining to the release of information.

Requests for statements of policy regarding official department positions, official responses to departmental criticism, pending or ongoing civil litigation, or internal investigations shall be referred to the office of the Chief of Police.

### **328.6 NIXLE MESSAGES**

#### **328.6.1 BACKGROUND**

Nixle is a privately funded company that provides Community Information Service built exclusively for secure and reliable communications. The Nixle service is built on an authenticated, secure, reliable, and high-speed platform, ensuring communications are trusted and accurate.

Nixle currently delivers information to consumers over their cell phones (SMS text messaging), emails (computers and smart phone devices), and simple web access at [www.nixle.com](http://www.nixle.com).

Nixle is a partner with Nlets, the International Public Safety and Justice Network. Nlets is the international, computer-based message switching system that links together local, state, and federal law enforcement and justice agencies for the purpose of exchanging information. Nixle's servers are housed within the Nlets secure facility. All local, state, and federal law enforcement agencies can send out instant, geographically-targeted information from their existing secure law enforcement terminals.

#### **328.6.2 GUIDELINES**

Nixle broadcasts will be used to disseminate information to citizens within our community as a means of sharing information that may assist our department. In order to ensure necessary information gets to the proper subscribers, the following guidelines have been set.

- (a) Nixle broadcasts should be distributed on the types of incidents specified in below and at the discretion of the Watch Commander or responsible Lieutenant.
- (b) Upon distribution of a Nixle broadcast, a Police Assistant will note in the internal portion of the CAD event that a Nixle broadcast was distributed and the P-Number of the broadcasting employee will be noted.

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- (c) Nixle broadcasts may be done on the following types of cases when there is sufficient information for a BOLO. If a Watch Commander or Supervisor requests a BOLO, the Police Assistant will be responsible for distributing a "Nixle BOLO."
  - ° Note: Sufficient information can include a full vehicle license plate, a partial vehicle license plate, other distinctive information.
    - 459 PC
    - 487 PC
    - 211 PC
    - 261 PC
    - 187 PC
    - 245 PC
    - 273.5 PC
    - 243 and 243(e)(1) PC
    - 417 PC
    - 273.6 PC
    - 314 PC
    - 647.6 PC
    - 288 PC
    - 207 PC
    - Missing Persons
- (d) Other types of Nixle broadcasts can be distributed at the direction of the Watch Commander or responsible Lieutenant. Examples may include information based messages on City Events, Natural Disasters, Street Closures, Arrests, Criminal Activity or Crime trends.
- (e) Officers and investigators will not issue Nixle broadcasts without the permission of a Watch Commander or Supervisor.
- (f) The following types of information will not be entered into Nixle broadcasts unless approval is granted from a Watch Commander or Supervisor.
  1. Names of Victims or Suspects in crimes (Missing Persons Cases see (g) below)
  2. Information which indicates a person is 5150 W&I.
  3. Any CLETS/DMV information including registered owner's information (for vehicle license plate numbers see (g) below).

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4. Any Criminal History or CII and/or III information.
  5. Address location of residences (use generic information i.e., 2400 block of Buena Vista Avenue instead of 2426 Buena Vista Avenue)
- (g) The following information should appear in Nixle broadcasts. Exceptions may be made by any supervisor.
1. First names of Missing adults or juveniles.
  2. Business names and addresses are permissible e.g., Burger King or 2855 N. Main Street.
  3. Vehicle descriptions including license plate numbers.
  4. Contact telephone numbers for dispatch, investigating officers/detectives, or Watch Commander.
- (h) Nixle broadcasts should be sent to subscribers based on geographical locations and proximity to the crime or event that is being shared. For example, if a street closure is occurring in the Northgate area, only subscribers living in that area shall be identified as receiving the Nixle message.
- (i) The time of day and the seriousness of the event will be considered prior to sending Nixle messages. Every effort will be made to ensure messages are sent out in a timely manner based on the event being broadcast: however, non-criminal events such as street closures should be sent during reasonable hours of the day. Avoid sending messages between the hours of 2300 and 0600 unless authorization has been granted by the on-duty watch commander. Each Police Assistant will have a second Police Assistant review the Nixle broadcast prior to disseminating to avoid sending messages with mistakes or typos.

All information released to the public shall comply with the Release of Records and Information, Policy 810 and Code 666 and BOLO Broadcasts, Policy 805.

### **328.7 DISASTER SCENES**

The Incident Commander should appoint a staff level officer, if available, to serve as a media relations officer at any field operation that may be particularly interesting to the public.

Disaster and accident scenes may be closed to the public pursuant to law; however, news media representatives are exempt from these legal restrictions. As soon as a scene has been secured, authorized news media representatives shall be permitted access to affected areas. Media personnel should be advised of any existing dangers. Officers shall not decline the rescue of news media personnel who are in danger unless such rescue may jeopardize the safety of the officer. At the discretion of the Incident Commander department personnel may provide escorts into or out of affected areas which are safe; but escorts should not be provided into areas which

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are dangerous, and access by media personnel to these areas should be discouraged. By law, news media personnel are authorized free access and movement in affected areas as long as they do not hamper, deter, or interfere with law enforcement or public safety functions. Fear for their personal safety is not a reason to deny them access.

### **328.8 CRIME SCENES**

These areas may be closed to all unauthorized persons including news media representatives. Secured crime scenes may be opened to news media access for inspection or photos after the search for and the preservation of evidence is completed.

### **328.9 SUGGESTIONS FOR OFFICERS DEALING WITH THE MEDIA**

- Always be professional.
- Have a positive attitude. Do not be arrogant or falsely humble. We are a fact gathering agency and not judges of fact. Respect your own competence and knowledge. Recognize that a news reporter is skilled at asking provocative questions in order to elicit interesting or controversial answers.
- Prepare for an interview. Try to anticipate questions and research facts. Release relevant information in a professional and non-biased manner.
- Answer questions directly and completely in your own words. Speak in simple language. Police jargon can be misunderstood.
- If you do not know the answer to a question, state that you do not know but that you will have an answer provided. Act on this promise.
- If you do not want a statement quoted, then do not make it. There is no such thing as "off the record".
- State the most important facts first in your answer to a question. This is especially important in television interviews.
- Do not allow a media representative to dominate an interview with leading questions. Establish firm ground rules prior to the interview and do not digress from these rules.
- Do not argue with a media representative or lose your poise.
- Provide media representatives and photographers with as much access to a scene as is consistent with the preservation of physical evidence and safety and assist the media as good judgment dictates.
- Do not provide information that may compromise the investigation or endanger others.
- Refer media personnel to the appropriate departmental representative when you are unable to answer a question accurately or when you are uncertain whether information should be released.

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- Never do anything that may be considered unprofessional in a news clip.
- Remember microphones are very sensitive and can pick up the slightest noise or conversation between personnel.
- Be aware of reporters within earshot when relaying, monitoring or receiving information from departmental sources.
- Cell phone conversations can be monitored, attempt to use a landline whenever possible.
- Attempt to give the media at least a little information and tell them you will have more information for them shortly.

## **Court Appearance And Subpoenas**

### **329.1 PURPOSE AND SCOPE**

This policy establishes the guidelines for department members who must appear in court. It will allow the Walnut Creek Police Department to cover any related work absences and keep the Department informed about relevant legal matters.

### **329.2 POLICY**

Walnut Creek Police Department members will respond appropriately to all subpoenas and any other court-ordered appearances.

#### **329.2.1 REFUSAL OF SUBPOENA**

Except where previous arrangements with the issuing court exist, training, vacations and regularly scheduled days off are not valid reasons for refusing a subpoena or missing court. If, due to illness or injury, the named employee is unable to appear in court as directed by a previously served subpoena, he/she shall, at least one hour before the appointed date and time, inform the subpoena clerk or the Watch Commander of his/her absence. It shall then be the responsibility of the subpoena clerk to notify the issuing authority of the employee's unavailability to appear.

If the immediate supervisor or other authorized individual knows that he/she will be unable to deliver a copy of the subpoena to the named employee within sufficient time for the named employee to comply with the subpoena, the supervisor or other authorized individual may refuse to accept service (Penal Code § 1328(d)).

If a subpoena is presented for service to an immediate supervisor or other authorized individual less than five working days prior to the date listed for an appearance and the supervisor or other authorized individual is not reasonably certain that the service can be completed, he/she may refuse to accept service (Penal Code § 1328(e)).

If, after initially accepting service of a subpoena, a supervisor or other authorized individual determines that he/she will be unable to deliver a copy of the subpoena to the individually named employee within sufficient time for the named employee to comply with the subpoena, the supervisor or the subpoena clerk shall notify the server or the attorney named on the subpoena of such not less than 48 hours prior to the date listed for the appearance (Penal Code § 1328(f)).

### **329.3 SUBPOENAS**

Only department members authorized to receive a subpoena on behalf of this department or any of its members may do so. This may be accomplished by personal service to the officer or by delivery of two copies of the subpoena to the officer's supervisor or other authorized departmental agent (Government Code § 68097.1; Penal Code § 1328(c)).

The party that issues a civil subpoena to an officer to testify as a witness must tender the statutory fee of \$275 with the subpoena for each day that an appearance is required before service is accepted of the subpoena (Government Code § 68097.2).

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An immediate supervisor or authorized individual may refuse to accept service for a criminal subpoena if (Penal Code § 1328(d)(e)):

- (a) He/she knows that he/she will be unable to deliver a copy of the subpoena to the named officer within sufficient time for the named officer to comply with the subpoena.
- (b) It is less than five working days prior to the date listed for an appearance and he/she is not reasonably certain that service can be completed.

If, after initially accepting service of a criminal subpoena, a supervisor or other authorized individual determines that he/she is unable to deliver a copy of the subpoena to the named officer within sufficient time for the named officer to comply with the subpoena, the supervisor or the subpoena clerk shall notify the server or the attorney named on the subpoena of such not less than 48 hours prior to the date listed for the appearance (Penal Code § 1328(f)).

### 329.3.1 SPECIAL NOTIFICATION REQUIREMENTS

Any member who is subpoenaed to testify, agrees to testify or provides information on behalf of or at the request of any party other than the City Attorney or the prosecutor shall notify his/her immediate supervisor without delay regarding:

- (a) Any civil case where the City or one of its members, as a result of his/her official capacity, is a party.
- (b) Any civil case where any other city, county, state or federal unit of government or a member of any such unit of government, as a result of his/her official capacity, is a party.
- (c) Any criminal proceeding where the member is called to testify or provide information on behalf of the defense.
- (d) Any civil action stemming from the member's on-duty activity or because of his/her association with the Walnut Creek Police Department.
- (e) Any personnel or disciplinary matter when called to testify or to provide information by a government entity other than the Walnut Creek Police Department.

The supervisor will then notify the Chief of Police and the appropriate prosecuting attorney as may be indicated by the case. The Chief of Police should determine if additional legal support is necessary.

No member shall be retaliated against for testifying in any matter.

### 329.3.2 CIVIL SUBPOENA

The Department will compensate members who appear in their official capacities on civil matters arising out of their official duties, as directed by the current memorandum of understanding or collective bargaining agreement.

The Department should seek reimbursement for the member's compensation through the civil attorney of record who subpoenaed the member.



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### **329.3.3 OFF-DUTY RELATED SUBPOENAS**

Members receiving valid subpoenas for off-duty actions not related to their employment or appointment will not be compensated for their appearance. Arrangements for time off shall be coordinated through their immediate supervisors.

### **329.4 FAILURE TO APPEAR**

Any member who fails to comply with the terms of any properly served subpoena or court-ordered appearance may be subject to discipline. This includes properly served orders to appear that were issued by a state administrative agency.

### **329.5 STANDBY**

To facilitate standby agreements, members are required to provide and maintain current information on their addresses and contact telephone numbers with the Department.

If a member on standby changes his/her location during the day, the member shall notify the designated department member of how he/she can be reached. Members are required to remain on standby until released by the court or the party that issued the subpoena.

### **329.6 COURTROOM PROTOCOL**

When appearing in court, members shall:

- (a) Be punctual and prepared to proceed immediately with the case for which they are scheduled to appear.
- (b) Dress in the department uniform or business attire.
- (c) Observe all rules of the court in which they are appearing and remain alert to changes in the assigned courtroom where their matter is to be heard.

#### **329.6.1 TESTIMONY**

Before the date of testifying, the subpoenaed member shall request a copy of relevant reports and become familiar with the content in order to be prepared for court.

### **329.7 OVERTIME APPEARANCES**

When a member appears in court on his/her off-duty time, he/she will be compensated in accordance with the current memorandum of understanding or collective bargaining agreement.

## Reserve Officers

### 330.1 PURPOSE AND SCOPE

The Walnut Creek Police Department Reserve Unit was established to supplement and assist regular sworn police officers in their duties. This unit provides professional, sworn volunteer reserve officers who can augment regular staffing levels.

### 330.2 SELECTION AND APPOINTMENT OF POLICE RESERVE OFFICERS

The Walnut Creek Police Department shall endeavor to recruit and appoint to the Reserve Unit only those applicants who meet the high ethical, moral and professional standards set forth by this department.

#### 330.2.1 PROCEDURE

All applicants shall be required to meet and pass the same pre-employment procedures as regular police officers before appointment.

Before appointment to the Police Reserve Unit, an applicant must have completed, or be in the process of completing, a POST approved basic academy or modular basic academy.

#### 330.2.2 APPOINTMENT

Applicants who are selected for appointment to the Police Reserve Division shall, on the recommendation of the Chief of Police, be sworn in by the Chief of Police and take a loyalty oath to observe and obey all of the laws of the land and to carry out their duties to the best of their ability.

#### 330.2.3 COMPENSATION FOR POLICE RESERVE OFFICERS

Compensation for reserve officers is provided as follows:

All reserve officer appointees are issued uniforms and all designated attire and safety equipment. All property issued to the reserve officer shall be returned to the Department upon termination or resignation.

Reserve officers shall not be directly compensated with pay or benefits for their duties.

#### 330.2.4 EMPLOYEES WORKING AS RESERVE OFFICERS

Qualified employees of this department, when authorized, may also serve as reserve officers. However, the Department must not utilize the services of a reserve or volunteer in such a way that it would violate employment laws or labor agreements (e.g., a detention officer working as a reserve officer for reduced or no pay). Therefore, the Reserve Coordinator should consult the Department of Human Resources prior to an employee serving in a reserve or volunteer capacity (29 CFR 553.30).

### 330.3 DUTIES OF RESERVE OFFICERS

Reserve officers assist regular officers in the enforcement of laws and in maintaining peace and order within the community. Assignments of reserve officers will usually be to augment the Patrol Bureau. Reserve officers may be assigned to other areas within the Department as needed.

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Reserve officers are required to work a minimum of 16 hours per month and attend all mandatory monthly training (CPT) sessions.

### **330.3.1 POLICY COMPLIANCE**

Police reserve officers shall be required to adhere to all departmental policies and procedures. A copy of the policies and procedures will be made available to each reserve officer upon appointment and he/she shall become thoroughly familiar with these policies.

Whenever a rule, regulation, or guideline in this manual refers to a sworn regular full-time officer, it shall also apply to a sworn reserve officer unless by its nature it is inapplicable.

### **330.3.2 RESERVE OFFICER ASSIGNMENTS**

All reserve officers will be assigned to duties by the Reserve Coordinator or his/her designee.

### **330.3.3 RESERVE COORDINATOR**

The Chief of Police shall delegate the responsibility for administering the Reserve Officer Program to a Reserve Coordinator.

The Reserve Coordinator (usually a Reserve Captain) shall have the responsibility of, but not be limited to:

- (a) Assignment of reserve personnel
- (b) Conducting reserve meetings
- (c) Establishing and maintaining a reserve call-out roster
- (d) Maintaining and ensuring performance evaluations are completed
- (e) Monitoring individual reserve officer performance
- (f) Monitoring overall Reserve Program
- (g) Maintaining liaison with other agency Reserve Coordinators
- (h) Report to a Police Manager for policy and administrative actions.

### **330.4 FIELD TRAINING**

Penal Code § 832.6 requires Level II reserve officers, who have not been released from the immediate supervision requirement per the Completion of the Formal Training Process subsection, to work under the immediate supervision of a peace officer who possesses a Basic POST Certificate while performing general law enforcement duties.

All new reserve officers are required to complete their field training within 18 months of appointment unless otherwise modified on an individual basis by the Reserve Coordinator or his/her designee.

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### 330.4.1 TRAINING OFFICERS

Officers of this department, who demonstrate a desire and ability to train reserve officers, may train the reserves during Phase II and III, subject to Watch Commander approval. Regular Field Training Officers may also train Reserves.

### 330.4.2 PRIMARY TRAINING OFFICER

Upon completion of the Academy, reserve officers will be assigned to a primary reserve training officer. After successful completion of orientation phases I and II of the Reserve Field Training program, the role of primary training officer will be assigned to a regular officer with at least a POST Basic Certificate. Final certification (Phase IV) that affirms that the reserve officer has successfully completed field training will be performed by members of the WCPD Field Training Team.

### 330.4.3 FIELD TRAINING MANUAL

Each new reserve 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 Walnut Creek Police Department. The reserve 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.

### 330.4.5 RESERVE OFFICER EVALUATIONS

While in training, reserves will be continuously evaluated using standardized daily and weekly observation reports. The reserve will be considered a trainee until all of the training phases have been completed. Reserves having completed their field training will be evaluated annually using performance dimensions applicable to the duties and authorities granted to that reserve.

### 330.4.7 COMPLETION OF THE FORMAL TRAINING PROCESS

When a reserve officer has satisfactorily completed all three phases of formal training, he/she will have had a minimum of 284 hours of on-duty training. He/she will no longer be required to ride with a reserve training officer. The reserve officer may now be assigned to ride with any officer for the remaining 200-hour requirement for a total of 484 hours before being considered for relief of immediate supervision.

## **330.5 SUPERVISION OF RESERVE OFFICERS**

Reserve officers who have attained the status of Level II shall be under the immediate supervision of a regular sworn officer (Penal Code 832.6(a)(2)) while performing duties categorized as "general law enforcement" in the POST Administrative Manual. The immediate supervision requirement shall also continue for reserve officers who have attained Level I status unless special authorization is received from the Reserve Coordinator with the approval of the Bureau Commander.

### 330.5.1 SPECIAL AUTHORIZATION REQUIREMENTS

Reserve officers certified as Level I may, with prior authorization of the Reserve Coordinator and on approval of the Bureau Commander, be relieved of the "immediate supervision" requirement.

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Level I reserve officers may function under the authority of Penal Code § 832.6(a)(1) only for the duration of the assignment or purpose for which the authorization was granted.

In the absence of the Reserve Coordinator and the Bureau Commander, the Watch Commander may assign a certified Level I reserve officer to function under the authority of Penal Code § 832.6(a)(1) for specific purposes and duration.

### 330.5.2 UNSUPERVISED DUTIES FOR LEVEL II RESERVE OFFICERS

- (a) Level II reserve officers may be assigned without immediate supervision to the limited duties authorized for level III reserve officers and other duties that are not likely to result in physical arrests. Those other duties may include, but are not limited to:
- Traffic control
  - Security for parades, community events, school events, and sporting events.
  - Provide crowd control and direct traffic for community events in other jurisdictions.
  - Train new reserve officers in the Reserve Field Training Program
  - Prisoner and evidence transportation.
  - Participate in search and rescue operations.
  - Participate in community public information services.
  - Assist in the communications center.
  - Operate as a "cover unit" to assist and support full-time police officers
  - Participate in programs related to crime prevention, planning and research, and other support activities, such as the check recovery program.
  - Participate in limited report writing for incidents, which do not require follow-up activity.
  - Participate in the limited issuance of parking citations at the direction of police supervisor.
  - Perform station duties as assigned by a police supervisor.
  - Drive vehicles with the approval of a patrol supervisor.
  - Provide a police presence in the open space, bike trails, parks and other areas of the city.
- (b) While on such limited assignments, should a level II or level III reserve officer observe a possible crime, the reserve officer should:
- Immediately request the assistance of a peace officer that has completed the P.O.S.T. Basic Training Course.

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- Take only the steps necessary to stabilize the situation to which they are confronted.
- Await the arrival and supervision of the peace officer prior to taking any further action.

However, if under the above circumstances, the reserve officer observes an offense which necessitates immediate law enforcement action because of a potential threat to the public safety, the safety of an individual, property damage, or the reserve officer personally, the reserve officer may take action consistent with the powers of a peace officer.

### 330.5.3 UNSUPERVISED DUTIES FOR LEVEL III RESERVE OFFICERS

Level III reserve officers are authorized only to carry out limited support duties not requiring general law enforcement powers in their routine performance. Those limited duties shall include traffic control, security at parades and sporting events, report taking, evidence transportation, parking enforcement and other duties that are not likely to result in physical arrests. Level III reserve officers while assigned these duties shall be supervised in the accessible vicinity by an officer with at least a POST Basic Certificate. Level III reserve officers may transport prisoners without immediate supervision.

### 330.5.4 RESERVE OFFICER MEETINGS AND TRAINING

All reserve officer meetings will be scheduled and conducted by the Reserve Coordinator. All reserve officers are required to attend scheduled meetings. Any absences must be satisfactorily explained to the Reserve Coordinator.

Reserve officers are held to the same training standards as all sworn personnel. Department training will be scheduled and provided throughout each calendar year to conform to POST Continuous Proficiency Training standards. All department training is mandatory. Failure to adhere to department (and POST) training standards will result in the reserve officer placed on leave until training requirements have been satisfied.

### 330.5.5 IDENTIFICATION OF RESERVE OFFICERS

All reserve officers will be issued a uniform badge and a Department identification card. The uniform badge shall be the same as that worn by a regular full-time officer except that the word "Reserve" will always be silver in color (regardless of rank) and the badge number will be displayed with an "R" prefix. The identification card will be the standard identification card with the exception that "Reserve" will be indicated on the card.

### 330.5.6 UNIFORM

Reserve officers shall conform to all uniform regulation and appearance standards of this department.

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### **330.7 FIREARMS REQUIREMENTS**

Penal Code 830.6(a)(1) designates a reserve officer as having peace officer powers during his/her assigned tour of duty, provided the reserve officer qualifies or falls within the provisions of Penal Code 832.6.

#### **330.7.1 CARRYING WEAPON ON DUTY**

Penal Code 830.6(a)(1) permits qualified reserve officers to carry a loaded firearm while on-duty. It is the policy of this department to allow reserves to carry firearms only while on-duty or to and from duty.

#### **330.7.2 CONCEALED FIREARMS PROHIBITED**

No reserve officer will be permitted to carry a concealed firearm while in an off-duty capacity, other than to and from work, except those reserve officers who possess a valid CCW permit. An instance may arise where a reserve officer is assigned to a plainclothes detail for his/her assigned tour of duty. Under these circumstances, the reserve officer may be permitted to carry a weapon more suited to the assignment with the knowledge and approval of the supervisor in charge of the detail.

Any reserve officer who is permitted to carry a firearm other than the assigned duty weapon may do so only after verifying that the weapon conforms to departmental standards. The weapon must be registered by the reserve officer and be inspected and certified as fit for service by a departmental firearms instructor.

Before being allowed to carry any optional firearm during an assigned tour of duty, the reserve officer shall have demonstrated his/her proficiency with said weapon.

When a reserve officer has satisfactorily completed all four phases of training (as outlined in Policy Manual 351.4), he/she may be issued a permit to carry a concealed weapon.

The decision to issue a concealed weapon permit will be made by the Chief of Police with input from the Reserve Program Coordinator and administrative staff. In issuing a concealed weapon permit a reserve officer's qualification will be individually judged. A reserve officer's dedication to the program and demonstrated maturity, among other factors, will be considered before a concealed weapon permit will be issued. Once issued, the concealed weapon permit will be valid only for as long as the reserve officer remains in good standing with the Walnut Creek Police Department Reserve Officer Program.

The Chief of Police may revoke a Concealed Weapons Permit at any time and for any reason.

Concealed Weapons Permits will not be granted to retired Reserves however, in accordance with state and federal law, certain honorably retired reserve officers may be credentialed with retired law enforcement identification with the corresponding concealed carry endorsement.

#### **330.7.3 RESERVE OFFICER FIREARM TRAINING**

All reserve officers are required to maintain proficiency with firearms used in the course of their assignments. Reserve officers shall comply with all areas of the firearms training section of the Policy Manual.

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### **330.8 EMERGENCY CALL-OUT FOR RESERVE PERSONNEL**

The Reserve Coordinator shall develop a plan outlining an emergency call-out procedure for reserve personnel.

### **330.9 DRIVING**

Only reserve officers who have completed driver awareness training may transport prisoners. Reserve officers authorized to drive a vehicle as a "cover unit" shall have completed both driver awareness and high-speed driver training. A reserve officer must also have satisfactorily completed the training requirements consistent with their classification level to drive a vehicle as a "cover unit".

Reserves may operate an emergency police vehicle as defined in the Vehicle Code. They must have successfully completed Driver Awareness and Pursuit Driving at least annually. Reserve Officers must notify dispatch or a supervisor before they may drive code three. Reserve officers must comply with all the provisions of the departmental directive on emergency vehicle operation. Reserve officers shall not drive police vehicles in pursuits unless accompanied and supervised by an officer with a POST Basic Certificate in the same vehicle unless explicitly authorized to do so by an on duty watch commander under exigent circumstances.



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## Mutual Aid and Outside Agency Assistance

### 331.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance to officers in the request of or answering the request for assistance involving another law enforcement agency.

It is the policy of this department to provide assistance whenever possible, consistent with the applicable laws of arrest and detention policies of this department, when another law enforcement agency requests assistance with an arrest or detention of any person. This department may also request an outside agency to provide assistance.

#### 331.1.1 ASSISTING OUTSIDE AGENCIES

Generally, calls for assistance from other agencies are routed to the Watch Commander's office for approval. When an authorized employee of an outside agency requests the assistance of this department in taking a person into custody, available officers shall respond and assist in making a lawful arrest. If an officer receives a request in the field for assistance, that officer shall notify a supervisor. Arrestees may be temporarily detained by our agency until arrangements for transportation are made by the outside agency. Only in exceptional circumstances will this department provide transportation of arrestees to other county facilities.

When such assistance is rendered, a case number will be issued to report action taken by Walnut Creek Police Department Personnel. Probation violators temporarily detained by this department will not ordinarily be booked at this department.

#### 331.1.2 REQUESTING ASSISTANCE FROM OUTSIDE AGENCIES

If assistance is needed from another agency, the employee requesting assistance shall first notify a supervisor of his/her intentions. The handling officer or supervisor should direct assisting personnel to where they are needed and to whom they should report when they arrive.

The requesting officer should secure radio frequencies for use by all involved agencies so that communication can be coordinated as needed. If necessary, reasonable effort should be taken to provide radio equipment capable of communicating on the assigned frequency to any personnel who do not have compatible radios.

### 331.2 POLICY

It shall be the policy of the Walnut Creek Police Department to support other county agencies through the Contra Costa County Law Enforcement Mutual Aid (LEMA) Agreement.

#### 331.2.1 PURPOSE

The purpose of this policy is to define the conditions for response and establish guidelines for implementation of mutual aid.

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## *Mutual Aid and Outside Agency Assistance*

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### 331.2.2 DEFINITIONS AND TERMINOLOGY

- (a) **Assembly Areas** - An area designated by the department commander, administrative commander, or the field commander for the congregation of personnel assigned to the incident.
- (b) **Department Commander** - That person who heads a law enforcement agency, especially an agency which has requested mutual aid because of an incident in his jurisdiction (the Sheriff or senior command officer acting in his stead).
- (c) **Emergency Operations Center (E.O.C.)** - The Walnut Creek Police Department command post for mutual aid control. The E.O.C. shall serve as headquarters for the department commander and shall provide department resources to the field task force as requested (located on the second floor of the police department).
- (d) **Emergency Operations Center Commander** - The person responsible for the operation of the E.O.C.
- (e) **Field Task Force** - The department's overall field operation concerned with the actual event.
- (f) **Incident Commander** - That person responsible for the deployment of personnel and equipment of field forces, including support personnel.
- (g) **Mutual Aid** - The duly proclaimed existence of conditions of disaster or extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city caused by such conditions as air pollution, fire, flood, storm, epidemic, riot or earthquake, or other conditions which are or are likely to be beyond the control of the services, personnel, equipment and facilities of that political subdivision and require the combined forces of other political subdivisions to combat the situation.
- (h) **Office of Emergency Services (O.E.S.)** - The state agency that manages disasters and recovery from the effects of emergencies that threaten lives, property, and the environment.
- (i) **Operational Area Law Enforcement Coordinator** - That person selected, usually the Sheriff (except in San Francisco County), within an operational area to coordinate requests for law enforcement mutual aid between the region, operational area, and local jurisdictions.
- (j) **Public Information Officer** - That person responsible for the gathering, coordinating, and preparing news releases, disseminating news releases for/or through the department commander, issuing news media credentials, and arranging periodic news briefings.
- (k) **Regional Law Enforcement Coordinator** - That person selected from among the operational area law enforcement coordinators in a given region to coordinate requests for mutual aid and between the state, region, and operational area.

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- (l) **Staging Area** - An area designated by the department commander, administrative commander, or incident commander that the task force responds to prior to deployment and commitment on the incident.
- (m) **State Law Enforcement Coordinator** - That person who is incumbent in the position of the chief of the law enforcement division of the Office of Emergency Services.
- (n) **State Law Enforcement Mutual Aid Plan** - That plan developed by state, county, and local law enforcement elements to provide for mutual aid and support during periods of disaster.
- (o) **Task Force** - The total departmental involvement in the control of an incident; all personnel assigned to duties concerned with the incident, including the field task force, emergency command center personnel, manpower tools, and supporting elements assigned on full time basis.

### **331.3 ORGANIZATION**

- (a) **Coordination Responsibilities**
  - 1. The Sheriff Coroner of Contra Costa County is responsible for coordination of all requests for assistance among the county's law enforcement agencies.
  - 2. The Walnut Creek Police Chief is responsible for making requests for assistance to the Sheriff. This responsibility is delegated to the highest ranking official on duty at the time assistance is needed.
  - 3. The command responsibility for the incident is determined by jurisdiction. The law enforcement officer responsible for the maintenance of law and order in that jurisdiction shall be in command and shall be known as the Incident Commander. He/She shall meet and confer with the sheriff of the county relative to the problem. In the event that no agreement can be reached to resolve necessary decisions, the final responsibility shall rest with the Sheriff.
  - 4. The responsible local law enforcement officer in whose jurisdiction an incident requiring mutual aid has occurred shall be responsible to provide food and shelter for those forces responding to his request.
  - 5. In the use of mutual aid, the integrity of responding forces should be maintained as much as possible. The field commander shall make every effort to assign officers as units, squads, platoons, etc.
- (b) **Request for Assistance from the Sheriff**
  - 1. Any time the on duty Watch Commander receives a request for assistance from the Sheriff's Office, that request shall be honored.
  - 2. The on duty Watch Commander shall notify the Chief of Police, or his designee, of the request as soon as it is convenient to do so.

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3. Should personnel be provided to another agency, a command officer or supervisor shall also be sent when appropriate. The purpose is to insure proper utilization of Walnut Creek personnel and to assist the incident commander, if needed.
  4. The person receiving the request for assistance shall obtain the following information:
    - Number of personnel
    - Type and amount of equipment
    - Reporting time and location
    - To whom they are to report
    - Access routes
    - Estimated duration of operation
- (c) Requests made to the Sheriff
1. The Walnut Creek Police Department must commit all available resources before making any requests for assistance.
  2. When making a request, the following information must be given:
    - (a) Type of situation
    - (b) Number of personnel needed
    - (c) Type and amount of equipment
    - (d) Reporting time and location
    - (e) To whom to report
    - (f) Access routes
    - (g) Estimated duration of operation
  3. The department head or his designee should advise other governmental entities that may be involved of the situation (fire, medical, etc.).
  4. The Chief of Police, or his designee, shall be notified of the situation as soon as convenient to do so.

### **331.4 COMMAND RESPONSIBILITIES**

- (a) Divisional Responsibilities
1. **Patrol Bureau** - Patrol has the task of providing the majority of personnel, transportation, coordination, and command.

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2. **Investigation Bureau** - Investigation will provide personnel while maintaining a basic investigative staff for the investigation of high priority crimes. In the event of arrest situations, detectives will assist in the identification and coordination of the arrests.
  3. **Services Unit** - Services will provide command level personnel as well as clerical assistance where needed.
  4. **Communications Unit** - Communications will provide dispatch personnel as well as technical assistance for establishing and maintaining communications centers.
- (b) Emergency Operation Line of Command (E.O.C.)
1. Chief of Police
  2. Operations Division Captain
  3. Administrative Division Captain
  4. Watch Commander
- (c) Incident Command Post Line of Command
1. Watch Commander / Lieutenant
  2. Sergeant
  3. Senior officer designated by ranking officer on duty
- (d) Emergency Work Scheduling
- o All command officers report to duty
  - o All Administrative Division supervisors report to duty
  - o Remainder of department sworn personnel, including sergeants, report per following schedule:
    - |                      |                      |
|----------------------|----------------------|
| 0900 -<br>2100 hours | 2100 -<br>0900 hours |
| A Shift              | B Shift              |
| D Shift              | C Shift              |
| Motors               | E Shift              |
| 4 Detectives         | F Shift              |
|                      | 2 Detectives         |
  - o Records and Communication personnel will be called in based on need.

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### **331.5 MOBILIZATION**

- (a) Minor Incident:
  - o This type of incident usually does not require assistance from adjoining agencies and can be handled by on duty personnel with assistance normally available from other on duty personnel in other divisions or bureaus.
  - o Action Taken: A tactical alert calling for a controlled redistribution of on duty personnel to the scene of the incident.
- (b) Serious Incident:
  - o This type of incident is usually such that available on duty resources and facilities are inadequate to maintain control and which requires temporary modification of the department organization.
  - o Action Taken:
    - (a) All, or a selected number of off duty personnel, are recalled to duty.
    - (b) On duty shift personnel may be held over.
    - (c) Oncoming shift may be called in early.
- (c) Major Incident:
  - o This form of incident is one, which threatens the safety of the public to such an extent that in the opinion of the department commander, it is necessary to activate the entire department and solicit assistance from neighboring agencies. This is a mutual aid situation.
  - o Action Taken:
    - (a) All off duty personnel called to duty.
    - (b) The deferment of all time off (prescheduled vacations excepted, unless specifically stated to the contrary) is in effect.
    - (c) Normal work shifts extended to twelve (12) hours a day, seven (7) days a week (see scheduling in Section 352.4, above).

### **331.6 CRITICAL INCIDENT AGREEMENT**

To ensure an adequate countywide response to critical incidents, the Sheriff Coroner's Department and other Contra Costa County law enforcement agencies have agreed to assist each other when specially trained personnel from other jurisdictions are needed to properly handle critical incidents.

- (a) Definition
  1. **Bomb Squad** - Personnel trained and equipped to deal primarily with explosive devices and whose duties include rendering safe and/or removing suspected explosive devices.

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2. **Critical Incident** - A hostage situation; barricaded subject posing immediate threat to life; or any other unusual life threatening circumstance in which the utilization of specially trained personnel is required.
  3. **Hostage Negotiation Team/Crisis Management Team** - Personnel trained to deal with the release of hostage(s) and the surrender of suspect(s) through the negotiation process.
  4. **S.W.A.T. (Special Weapons and Tactics) Team** - Teams trained and equipped to deal with armed and/or dangerous persons. The definition includes acronyms utilized by various agencies for similarly trained and equipped units.
- (b) Agreement Intent
- o The purpose of the countywide agreement is to properly handle critical incidents, which may be beyond the resources and expertise of a single agency. It specifically pertains to those specially trained personnel who are most capable of handling such incidents.
  - o Each participating agency has agreed to provide any requested assistance and accept the direction and orders of the requesting agency. However, a command officer or a designated supervisor from the agency supplying the specialized personnel will make the final determination of whether or not the specialized personnel will carry out the directions of the incident commander. This determination will be based on tactical, political, legal, and safety considerations within his/her expertise. Due to the specialized nature of S.W.A.T. and hostage negotiation teams, participating agencies shall take the necessary steps to insure that their command and supervisory personnel are familiar with the capabilities and limitations of these specially trained teams.
- (c) Procedures
- o The Sheriff Coroner has agreed to coordinate all requests for outside assistance among the county's law enforcement agencies. The following guidelines have been accepted by the participating agencies.
    - (a) Request for Outside Assistance
      - (a) The requesting agency shall contact the Sheriff Coroner's Department, designating the type and amount of assistance required. It is then the duty of the Sheriff Coroner's Department to contact the necessary participating agency or agencies.
      - (b) It shall be the responsibility of the requesting agency to determine the type and amount of assistance needed based upon the totality of the situation.

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- (c) Requests for S.W.A.T. assistance shall be for entire teams and not for individual officers.
- (d) Request for hostage negotiators may be for a team or for an individual officer to cover a vacancy in the requesting agency's team.
- (b) Reporting Procedures for Responding Agencies
  - (a) Each responding agency will have its officers report to a designated staging area.
  - (b) Each responding agency shall also have a command officer or supervisor accompany its personnel. This officer shall be in addition to any supervisory personnel assigned to the responding S.W.A.T. team(s) or hostage negotiations team(s). His/her presence is to ensure the proper utilization of his/her agency's personnel and to assist the incident commander if needed. If a command officer or designated supervisor does not respond, the team leader(s) of the special team(s) will ensure that their personnel are properly utilized.
- (c) Command of Operation
  - (a) The agency that has jurisdictional responsibility for the incident will be in charge of the operation unless it relinquishes that authority.
  - (b) It will be the incident commander's responsibility to determine the tasks to be performed by the assisting personnel. It will be expected that the requesting agency will assign primary responsibilities to its own specialized personnel.
  - (c) When assignments are made to outside agency personnel, the incident commander will make them in cooperation with the assisting agency's on scene command officer or supervisor.
- (d) Calls for Assistance
  - Contra Costa County Sheriff's Office Dispatch at: (925) 646-2441

### 331.6.1 INFORMAL MUTUAL AID REQUESTS FOR ASSISTANCE

There will be occasions when an agency will receive requests from other jurisdictions for immediate assistance. It will be the policy of this department to provide needed assistance when requested without a formal mutual aid call out. The Watch Commander must approve any request for assistance



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## Coordination with Concurrent Jurisdictions

### 332.1 POLICY

The Walnut Creek Police Department will cooperate with other agencies that have investigative responsibilities within its city limits.

### 332.2 PURPOSE

To establish a philosophy for assisting concurrent jurisdiction agencies in investigations of criminal matters for which those agencies have responsibility.

### 332.3 PROCEDURE

To establish a philosophy for assisting concurrent jurisdiction agencies in investigations of criminal matters for which those agencies have responsibility.

#### Jurisdiction

- When appropriate, Walnut Creek officers will respond to crimes in progress, requests for police aid, or serious criminal incidents on property where concurrent jurisdiction with another police agency exist. Once police action is taken to stabilize a situation, the determination as to investigative responsibility can be resolved. If it is determined that the incident occurred at a location where another agency has investigative responsibility, then that agency should be contacted and advised of the incident. Walnut Creek officers should render aid, accumulate information, protect evidence, and provide assistance (as requested) until the investigating agency can respond to assume responsibility.
- If a request for an investigation is received which does not require immediate police action and is another agency's concurrent jurisdiction, the caller should be referred to that agency for assistance. If that agency cannot respond in a timely manner, the watch commander should determine the level of assistance that Walnut Creek officers will provide. If an issue of jurisdiction or availability should arise and the watch commander has determined that we should respond, Walnut Creek officers will open an outside assist case and forward that case to the investigating agency as soon as possible.
- If there is a dispute about the jurisdictional responsibility then Walnut Creek Police shall investigate the crime.

#### BART Police

- (a) BART Police responds to all calls for service on BART property. BART has a large investigative staff that is well equipped to handle all types of investigations. WCPD will investigate crimes when BART is the victim and the crime is not on BART property.
- (b) Lost Property Reports: BART does not take lost property reports and will often refer citizens to WCPD. Our main concern in handling these issues is to assure service to Citizens of our City.

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## Coordination with Concurrent Jurisdictions

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- (c) If the citizen lives in Walnut Creek and wants a lost property report, WCPD will open an outside assist event as an incident report and forward a copy of the CAD screen to BART PD. We will also give the person a copy of the incident report.
- (d) We will explain to the resident that BART P.D. will be responsible for conducting any follow-up investigation on the lost property. We will provide residents with information on how to deal with lost property such as identification fraud, credit cards, or checks.
- (e) If the citizen does not live in Walnut Creek they will be referred to BART P.D.'s lost and found number. No event will be opened. If citizens wish to speak directly with BART P.D., their general number is 510-464-7000.

### **California Highway Patrol**

- (a) Since 1996, CHP has had a criminal investigation division and will respond and investigate any traffic or criminal related offense on the freeways, on CalTrans property, or at the State's Park N Ride commuter lots. Dispatch should first contact CHP and request an officer to respond for the investigation. If there is a delay a watch commander will be notified who will make the decision to send our units.

### **East Bay Regional Parks Police**

- (a) EBRPP will respond and investigate any crime which occurs in their jurisdiction (all canal trails in Walnut Creek except between Wiget Lane and Oak Grove Rd, south of Ygnacio Valley Rd.) EBRPP has an investigative division, which is housed, at their headquarters in Castro Valley. They will send investigators and officers but they may have an extended arrival time.

### **Conclusion**

- (a) Walnut Creek Police should handle any criminal investigation where a concurrent jurisdiction will not or cannot respond. The watch commander shall determine whether the classifications of these types of investigations are deemed outside assists or WCPD cases. The watch commander shall also decide the scope of the WCPD officers' involvement.

## Registered Offender Information

### 333.1 PURPOSE AND SCOPE

This policy establishes guidelines by which the Walnut Creek Police Department will address issues associated with certain offenders who are residing in the jurisdiction and how the Department will disseminate information and respond to public inquiries for information about registered sex, arson and drug offenders.

### 333.2 POLICY

It is the policy of the Walnut Creek Police Department to identify and monitor registered offenders living within this jurisdiction and to take reasonable steps to address the risks those persons may pose.

### 333.3 REGISTRATION

The Detective Bureau supervisor shall establish a process to reasonably accommodate registration of certain offenders. The process should rebut any allegation on the part of the offender that the registration process was too confusing, burdensome, or difficult for compliance. If it is reasonable to do so, an investigator assigned to related investigations should conduct the registration in order to best evaluate any threat the person may pose to the community. Those assigned to register offenders should receive appropriate training regarding the registration process.

Upon conclusion of the registration process, the investigator shall ensure that the registration information is provided to the California Department of Justice (DOJ) in accordance with applicable law (Penal Code § 457.1; Penal Code § 290 et seq.).

The refusal of a registrant to provide any of the required information or complete the process should initiate a criminal investigation for failure to register.

#### 333.3.1 CONTENTS OF REGISTRATION

The information collected from the registering offenders shall include a signed statement as required by the California DOJ, fingerprints and a photograph, and any other information required by applicable law (Penal Code § 457.1; Penal Code § 290 et seq.).

### 333.4 MONITORING OF REGISTERED OFFENDERS

The Detective Bureau supervisor should establish a system to periodically, and at least once annually, verify that a registrant remains in compliance with his/her registration requirements after the initial registration. This verification should include:

- (a) Efforts to confirm residence using an unobtrusive method, such as an internet search or drive-by of the declared residence.
- (b) Review of information on the California DOJ website for sex offenders.
- (c) Contact with a registrant's parole or probation officer.

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Any discrepancies should be reported to the California DOJ.

The Detective Bureau supervisor should also establish a procedure to routinely disseminate information regarding registered offenders to Walnut Creek Police Department personnel, including timely updates regarding new or relocated registrants.

### **333.5 DISSEMINATION OF PUBLIC INFORMATION**

Members will not unilaterally make a public notification advising the community of a particular registrant's presence in the community. Members who identify a significant risk or other public safety issue associated with a registrant should promptly advise their supervisor. The supervisor should evaluate the request and forward the information to the Chief of Police if warranted. A determination will be made by the Chief of Police, with the assistance of legal counsel as necessary, whether such a public alert should be made.

Members of the public requesting information on sex registrants should be provided the Megan's Law website or the Walnut Creek Police Department's website. Information on sex registrants placed on the Walnut Creek Police Department's website shall comply with the requirements of Penal Code § 290.46.

The Records Manager may release local registered offender information to residents only in accordance with applicable law (Penal Code § 290.45; Penal Code § 290.46; Penal Code § 457.1), and in compliance with a California Public Records Act (Government Code § 6250-6276.48) request.

#### **333.5.1 LIMITED RELEASE WITHIN COLLEGE CAMPUS COMMUNITY**

California law allows the following additional information regarding a registered sex offender on campus, whose information is not available to the public via the internet website, to be released to a campus community (Penal Code § 290.01(d)):

- (a) The offender's full name
- (b) The offender's known aliases
- (c) The offender's sex
- (d) The offender's race
- (e) The offender's physical description
- (f) The offender's photograph
- (g) The offender's date of birth
- (h) Crimes resulting in the registration of the offender under Penal Code § 290
- (i) The date of last registration

For purposes of this section, campus community shall be defined as those persons present at or regularly frequenting any place constituting campus property, satellite facilities, laboratories, public areas contiguous to the campus and other areas set forth in Penal Code § 290.01(d).

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### 333.5.2 RELEASE NOTIFICATIONS

Registrant information that is released should include notification that:

- (a) The offender registry includes only those persons who have been required by law to register and who are in compliance with the offender registration laws.
- (b) The information is provided as a public service and may not be current or accurate.
- (c) Persons should not rely solely on the offender registry as a safeguard against offenses in their communities.
- (d) The crime for which a person is convicted may not accurately reflect the level of risk.
- (e) Anyone who uses information contained in the registry to harass registrants or commit any crime may be subject to criminal prosecution.
- (f) The purpose of the release of information is to allow members of the public to protect themselves and their children from sex offenders (Penal Code 290.45).

## Major Incident Notification

### 334.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance to members of this department in determining when, how and to whom notification of major incidents should be made.

### 334.2 POLICY

The Walnut Creek Police Department recognizes that certain incidents should be brought to the attention of supervisors or other specified personnel of this department to facilitate the coordination of activities and ensure that inquiries from the media and the public may be properly addressed.

### 334.3 MINIMUM CRITERIA FOR NOTIFICATION

Most situations where the media show a strong interest are also of interest to the Chief of Police and the affected Bureau Commander. The following list of incident types is provided as a guide for notification and is not intended to be all inclusive:

- Homicides
- Traffic accidents with fatalities
- Officer-involved shooting - on or off duty (see Officer-Involved Shootings and Deaths Policy for special notifications)
- Significant injury or death to employee - on or off duty
- Death of a prominent Walnut Creek official
- Arrest of a department employee or prominent Walnut Creek official
- Aircraft crash with major damage and/or injury or death
- In-custody deaths

### 334.4 WATCH COMMANDER RESPONSIBILITY

The Watch Commander is responsible for making the appropriate notifications. The Watch Commander shall make reasonable attempts to obtain as much information on the incident as possible before notification. The Watch Commander shall attempt to make the notifications as soon as practicable. Notification should be made by calling the home telephone number first and then by any other available contact numbers.

#### 334.4.1 STAFF NOTIFICATION

In the event an incident occurs described in the Major Incident Notification Policy, the Chief of Police shall be notified along with the affected Bureau Commander and the Detective Lieutenant if that bureau is affected.

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### 334.4.2 DETECTIVE NOTIFICATION

If the incident requires that a detective(s) respond from home, the immediate supervisor of that employee shall be contacted who will then contact the appropriate detective(s).

### 334.4.3 TRAFFIC BUREAU NOTIFICATION

In the event of a traffic fatality or major injury, the Watch Commander shall be notified who will then contact the appropriate accident investigator(s) and/or activate the MAIT Team.

### 334.4.4 PRESS INFORMATION OFFICER (PIO)

The Press Information Officer shall be called after members of staff have been notified that it appears the media may have a significant interest in the incident.

## Death Investigation

### 335.1 PURPOSE AND SCOPE

The investigations of cases involving death include those ranging from natural cause to homicide. Some causes of death may not be readily apparent and some cases differ substantially from what they appeared to be initially. The thoroughness of death investigations cannot be emphasized enough.

### 335.2 INVESTIGATION CONSIDERATIONS

Death investigation cases require certain actions be taken. Paramedics shall be called in all suspected death cases unless the death is obvious (decapitated, decomposed, etc.). A supervisor shall be notified in all death investigations.

#### 335.2.1 CORONER REQUEST

Government Code § 27491 and Health & Safety Code § 102850 direct the Coroner to inquire into and determine the circumstances, manner and cause of certain deaths. The Coroner shall be called in any of the following cases:

- (a) Unattended deaths (No physician in attendance or during the continued absence of the attending physician. Also, includes all deaths outside hospitals and nursing care facilities.).
- (b) Deaths where the deceased has not been attended by either a physician or a registered nurse, who is a member of a hospice care interdisciplinary team, as defined by subdivision (e) of Section 1746 of the Health and Safety Code in the 20 days prior to death.
- (c) Physician unable to state the cause of death. Unwillingness does not apply. Includes all sudden, unexpected and unusual deaths and fetal deaths when the underlying cause is unknown.
- (d) Known or suspected homicide.
- (e) Known or suspected suicide.
- (f) Involving any criminal action or suspicion of a criminal act. Includes child and dependent adult negligence and abuse.
- (g) Related to or following known or suspected self-induced or criminal abortion.
- (h) Associated with a known or alleged rape or crime against nature.
- (i) Following an accident or injury (primary or contributory). Deaths known or suspected as resulting (in whole or in part) from or related to accident or injury, either old or recent.
- (j) Drowning, fire, hanging, gunshot, stabbing, cutting, starvation, exposure, alcoholism, drug addiction, strangulation or aspiration.



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- (k) Accidental poisoning (food, chemical, drug, therapeutic agents).
- (l) Occupational diseases or occupational hazards.
- (m) Known or suspected contagious disease and constituting a public hazard.
- (n) All deaths in operating rooms and all deaths where a patient has not fully recovered from an anesthetic, whether in surgery, recovery room or elsewhere.
- (o) In prison or while under sentence. Includes all in-custody and police involved deaths.
- (p) All deaths of unidentified persons.
- (q) All deaths of state hospital patients.
- (r) Suspected Sudden Infant Death Syndrome (SIDS) deaths.
- (s) All deaths where the patient is comatose throughout the period of the physician's attendance. Includes patients admitted to hospitals unresponsive and expire without regaining consciousness.

The body shall not be disturbed or moved from the position or place of death without permission of the coroner.

### 335.2.2 SEARCHING DEAD BODIES

The Coroner or Deputy Coroner is generally the only person permitted to search a body known to be dead from any of the circumstances set forth in Government Code § 27491. The only exception is that an officer is permitted to search the body of a person killed in a traffic collision for the limited purpose of locating an anatomical donor card (Government Code § 27491.3). If such a donor card is located, the Coroner or a designee shall be promptly notified. Should exigent circumstances indicate to an officer that any search of a known dead body is warranted prior to the arrival of the Coroner or a designee; the investigating officer shall first obtain verbal consent from the Coroner or a designee (Government Code § 27491.2).

Whenever possible, a witness, preferably a relative to the deceased or a member of the household, should be requested to remain at the scene with the officer pending the arrival of the Coroner or a designee. The name and address of this person shall be included in the narrative of the death report. Whenever personal effects are removed from the body of the deceased by the Coroner or a designee, a receipt shall be obtained. This receipt shall be attached to the death report.

### 335.2.3 DEATH NOTIFICATION

When practical, and if not handled by the Coroner's Office, notification to the next-of-kin of the deceased person shall be made, in person, by the officer assigned to the incident. If the next-of-kin lives in another jurisdiction, a law enforcement official from that jurisdiction should be requested to make the personal notification. If the relatives live outside this county, the Coroner may be requested to make the notification. The Coroner needs to know if notification has been made. Assigned detectives may need to talk to the next-of-kin.

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### 335.2.4 UNIDENTIFIED DEAD BODIES

If the identity of a dead body cannot be established after the Coroner arrives, the Coroner's office will issue a "John Doe" or "Jane Doe" number for the report.

### 335.2.5 DEATH INVESTIGATION REPORTING

All incidents involving a death shall be documented on the appropriate form.

### 335.2.6 SUSPECTED HOMICIDE

If the initially assigned officer suspects that the death involves a homicide or other suspicious circumstances, the Investigations Bureau shall be notified to determine the possible need for a detective call out.

### 335.2.7 EMPLOYMENT RELATED DEATHS OR INJURIES

Any member of this agency who responds to and determines that a death, serious illness, or serious injury has occurred as a result of an accident at or in connection with the victim's employment shall ensure that the nearest office of Cal-OSHA is notified by telephone or teletype with all pertinent information (8 CCR 342(b)).

## **335.3 SEARCH, REMOVAL, AND RETENTION OF ITEMS FROM THE PERSON OR THE ESTATE OF DECEASED**

### 335.3.1 GENERAL RESTRICTIONS

It is unlawful for any person to search for or remove any papers, moneys, valuable property or weapons constituting the estate of the deceased, from the person or the estate of the deceased, prior to the arrival of the Coroner OR without the express permission of the Coroner. (Government Code 27491.3(c)).

- (a) **EXCEPTION:** A peace officer may search the person and property around a decedent, whose death was caused by a traffic accident, for the purpose of locating a driver's license or identification card to determine if an anatomical donor card is attached. (Government Code 27491.3(d)).
- (b) When a police officer wishes to search a decedent or his estate for a purpose other than to locate an anatomical donor card AND the Coroner has not yet arrived, permission for the search may be obtained from the Coroner's Office by telephone or radio.
- (c) Apart from the search restriction imposed by the Government Code, police officers wishing to search a decedent and/or his property must also consider:
  - 1. The possible necessity of obtaining a search warrant to authorize the search of other than the decedent's body, in any case which may ultimately result in a criminal prosecution.
  - 2. The preservation of physical evidence which may be contaminated, lost or moved by a careless and hasty search.

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3. The provisions of Section 360.3.2.

### 335.3.2 SUICIDE CASES

(a) **Notes:**

- o Documents apparently written by the deceased which may tend to indicate the deceased's intention to take his own life, including directions for disposition of his property or the disposal of his remains, are the property of the Coroner's Office.
- o The Coroner's Office shall collect these documents. (Government Code 27464). Copies of these documents will be made available to the police agency investigating the death, and the originals will be available for criminalistics examinations.

(b) Physical evidence from scenes within the estate of the decedent:

1. Weapons, wallets, papers, money and valuables which have evidentiary value to the investigating agency may be inspected and collected by the investigating agency without the prior approval of the Coroner's Office. However, these items shall not be removed from that scene without the Coroners express approval.
2. Officers conducting a search for evidence are responsible for determining the lawfulness of their search. Searches, including those of a decedent's property, are justified under one or more of the following grounds:
  - (a) Consent, implied: from the victim of the crime, where only the victim has a reasonable expectation of privacy over the property and its contents
  - (b) Consent, actual: from competent person(s) with legal capacity to give consent
  - (c) Search warrant: Searches for evidence and the removal of items from a decedent's estate which are conducted under authority of a search warrant are not subject to the provisions of the Government Code which require approval of the Coroner.
  - (d) Probation search clause
  - (e) Parole search clause
  - (f) Plain (open) view
  - (g) Vehicle search law
  - (h) Exigent circumstances

### 335.4 DISCLOSURE OF FACTS AND EVIDENCE

One of the statutory duties of the Coroner is to determine the circumstances, manner and cause of death in cases which are within the Coroner's jurisdiction. These determinations are made

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through an investigation of the actual circumstances of the death and through a medical post-mortem examination (autopsy). To achieve the most reliable and meaningful determinations, the Coroner's Office, as well as its pathologist, must be promptly and fully informed of all the relevant facts and physical evidence.

### 335.4.1 PATHOLOGIST'S BRIEFING

- (a) The pathologist must be informed of all information which may be relevant to the cause of death or to any condition of the body. These factors shall be included: \
  1. Relevant observations made at the scene
  2. Relevant witness statements
  3. Presentation of certain physical items (see below)
  4. An accounting of items and evidence removed from the body
  5. An accounting of any changes in the position of the body since its discovery
  6. An accounting of any obvious visible changes in the body since first viewed
- (b) The briefing of the pathologist shall be done through the following methods:
  1. Reports of Coroner's deputies
  2. Photographs which are available at the time of autopsy and sketches
  3. Verbal briefing by coroner's deputies
  4. Verbal briefings by investigating police officers
  5. Verbal briefing by criminalists or evidence technicians

### 335.4.2 ITEMS FOR PATHOLOGIST'S INSPECTION

The following items shall be brought to the Coroner's Office and shall be available for inspection by the pathologist at the time of autopsy:

- (a) Weapons and Objects:
  - o In deaths caused by suicide, accident or homicide, any portable item which may have inflicted a traumatic injury upon the body of the deceased in a possible association with the death shall be collected and brought to the Coroner's Office at the time of autopsy. Such items will be inspected by the pathologist. Examples of items include:
    - weapons. (Firearms are included where there is any indication that part of the firearm may have come into contact with the body of the decedent)
    - cutting and stabbing instruments
    - blunt force objects, such as rocks, clubs, furniture
    - tools

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- ligatures and bindings
  - clothing or other items which may have caused impressions in the skin
  - If an item would normally be displayed to the pathologist but is not portable, photographs, sketches, diagrams or a detailed description must be available at the time of autopsy.
- (b) Clothing:
- All articles of clothing which are known or suspected to have been worn by the decedent at the time of death and/or at the time of injury shall be brought to the Coroner's Office at the time of autopsy for inspection by the pathologist. This category includes inner and outer clothing, footwear and jewelry. In cases where the decedent was hospitalized, care must be taken to obtain all clothing worn at the time of hospital admission. Extreme care must be taken to avoid the loss of trace evidence and to prevent contamination of evidence. Evidence adhering to the clothing which may be rearranged, lost, contaminated or damaged should be recorded, removed and properly packaged before the clothing is transported for display to the pathologist.
- (c) Medications, Poisons and Intoxicants:
- Diligent efforts must be made to locate any medication, poison or intoxicant which could have been taken internally by the decedent at or near the time of the fatal event. Likewise, containers and paraphernalia for such substances (including needles, syringes, spoons, glasses, labeled drug containers, etc.) must be sought and collected. These items shall be brought to the Coroner's Office to be inspected by the pathologist at the time of autopsy. If not required as evidence in a police agency investigation, the Coroner's Office will determine the disposition of these items.
  - **Exceptions:** Not included in this section are substances (and their containers) which were directly administered by medical professionals (including emergency life-saving crews) who have documented their use in medical records.
- (d) Hospital Evidence:
- Blood and urine samples collected by medical personnel prior to blood transfusions and before administration of medications may be quite important. These samples should be located and obtained promptly. If the hospital will not release them to the Coroner immediately, steps must be taken to safeguard them until their release can be obtained. X-rays, CAT scans, medical records and other such items created by medical personnel are also important and should be obtained. A Coroner's subpoena may be required.

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- Other important evidence may also be located at the hospital, such as the decedent's clothing, projectiles removed from the body, evidence falling onto the floor or gurney from the body, personal items in the decedent's possession, and trace evidence.
- (e) Responsibility:
  - Responsibility for locating, transporting and maintaining integrity items to be displayed to the pathologist is listed below. Where two agencies are listed, they share the responsibility, with the first-listed agency having the initial and primary duty:
  - **Responsible agency(cies)**
    - (a) Accidental deaths by motor vehicles:
      - (a) Hospital evidence - Coroner / Police
      - (b) All other items - Police
    - (b) Accidental death by other than motor vehicle, where criminal negligence is suspected (manslaughter):
      - (a) Hospital evidence - Coroner / Police
      - (b) Medications, intoxicants, poisons, And their containers - Coroner / Police
      - (c) All other items - Police
    - (c) Accidental deaths by all other means:
      - (a) All evidence - Coroner / Police
    - (d) Suicidal deaths:
      - (a) All evidence - Coroner / Police
    - (e) Homicidal deaths:
      - (a) Hospital evidence:
        - (a) Blood, urine, X-rays, medical records, CAT Scans - Coroner / Police
        - (b) Decedent's clothing (which has been removed from the body) - Police / Coroner
        - (c) Decedent's property (which has been removed from the body) - Police/Coroner
        - (d) Trace evidence from body - Police / Coroner
        - (e) Bullets, etc., surgically removed - Police / Coroner

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- (f) Evidence from gurney, emergency room floor, ambulance, etc.  
- Police/Coroner
  - (b) Medications, intoxicants and their containers and paraphernalia -  
Police/Coroner
  - (c) Poison containers and associated paraphernalia - Coroner / Police
  - (d) All other items - Police
- Items brought to the Coroner's Office for inspection by the pathologist will normally be retained in the custody of the transporting agency and will not be released to the Coroner or pathologist.
- (f) Integrity of Evidence:
  - Extreme caution must be utilized in the handling of any item which is displayed to the pathologist. Items must be absolutely protected from contamination at the autopsy (e.g. blood from the autopsy being transferred to a piece of evidence being displayed.) Latent fingerprints must be protected. Trace evidence must be protected from loss and from contamination. Care must also be taken to maintain the chain of custody of such items. (Clean paper is available at the Morgue for display of items.)
- (g) Pathologist's Report:
  - When the pathologist's inspection of physical evidence reveals information of significance to the autopsy, the pathologist will normally dictate a supplementary report describing his inspection, observations and conclusions (if any). To avoid confusion and possible misidentification the object referred to should be described unambiguously, its reported source indicated, and the identity of the presenting officer noted. The pathologist should mark the item or its container for identification purposes.

### 335.5 AUTOPSY RULES

- (a) No audio or video recording of an autopsy shall be allowed without the express prior permission of the Coroner's Division Commander and the pathologist.
- (b) Attendance at an autopsy by persons other than Coroner's Division personnel is subject to the approval of the Coroner (Government Code 27491.4). The number of people attending an autopsy must be kept to a minimum due to space limitation, evidentiary considerations, and the need to eliminate distractions.
- (c) Persons attending an autopsy are present to observe the findings and to collect and record evidence. The extent of their contact with the body will be governed by the pathologist.
- (d) All persons attending an autopsy are required to sign the Coroner's Office log book.

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- (e) Until the pathologist has inspected the body and given his approval, the body shall not be disturbed nor its condition altered in any of the following illustrative ways:
  - 1. fingerprinting
  - 2. movement or removal of clothing
  - 3. movement or removal of any weapon or object
  - 4. collection of hair standards
  - 5. collection of gunshot residue which is associated with wound sites
  - 6. clipping or scraping of fingernails
  - 7. washing or cleaning
    - The collection of trace evidence from areas of the body not directly involved with trauma is permissible without the pathologist's approval, and photography of the body (without disturbing it) is encouraged.
- (f) Autopsy attendees who take notes or make diagrams of autopsy results are strongly urged to use extra care to ensure that their notes and diagrams are accurate.

### **335.6 PHOTOGRAPHY (IN GENERAL)**

In all coroner's cases, officers are encouraged to take photographs of the general scene, as well as the deceased. This should be done without disturbing the body. After permission is obtained from the coroner, the body can be moved and photographs should be taken of the body, as well as the area where the body was found.

### **335.7 RESPONDING TO A SUDDEN DEATH WHERE THE DECEASED IS UNDER HOSPICE CARE**

Hospice Care is defined as medical treatment ordered by a physician to a terminally ill patient whose prognosis is that the patient has been given six months or less to live. The care consists of keeping the patient comfortable with assistance and prescribed medication.

California Law (as of February 2008): requires the coroner to inquire (or be notified by a local agency) into, and determine the circumstances, manner, and cause of, all deaths where the deceased **has not been attended by either a physician or registered nurse (who is a member of a hospice care) in the 20 days before death.**

For the purposes of Walnut Creek Police Department, our responsibility if sent to a hospice care death is to conduct an investigation. Once hospice care has been verified and nothing suspicious noted, the coroner does not have to be notified. A WCPD incident report, with hospice verification information included, will minimally be required.

Determining Criteria for Hospice (these will usually be present at the location of the deceased person):



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- (a) Written doctor's orders, which consist of the actual ordering of hospice care, instructions to hospice care staff (which may include family members), and effective date.
- (b) Hospice care log binder (includes time and dates when the patient was last seen)
- (c) Speaking with the attending physician or registered nurse.
- (d) A licensed hospice facility.

## Identity Theft

### 336.1 PURPOSE AND SCOPE

Identity theft is a growing trend that frequently involves related crimes in multiple jurisdictions. This policy is intended to provide guidelines for the reporting and investigation of such crimes.

### 336.2 IDENTITY THEFT DEFINED

PC §530.5 states that every person who willfully obtains, or who with the intent to defraud, acquires and retains the personal identifying information of another person without the authorization of that person and uses that information for any unlawful purpose, including to obtain or attempt to obtain credit, goods, services, real property or medical information in the name of the other person is guilty of a public offense.

PC §530.55(a) defines a "person" as a natural person, living or deceased, a firm, association, organization, partnership, business trust, company, corporation, LLC, public entity, or any other legal entity.

PC §530.55(b) defines "personal identifying information" as any name, address, telephone number, health insurance identification number, taxpayer identification number, school identification number, driver's license number or identification number, social security number, place of employment, employee ID number, professional or occupational number, mother's maiden name, demand deposit account number, savings account number, checking account number, PIN (personal identification number) or password, alien registration number, government passport number, date of birth, unique biometric data including fingerprint, facial scan identifiers, voice print, retina or iris image, or other unique physical representation, unique electronic data including identification number assigned to the person, address or routing code, telecommunication identifying information or access device, information contained in a birth or death certificate, or credit card number of an individual.

### 336.3 REPORTING

PC §530.6(a) states that a person who has learned or reasonably suspects that his/her personal identifying information has been unlawfully used by another, may initiate a law enforcement investigation by contacting the local agency that has jurisdiction over his/her actual residence or place of business, which shall take a police report of the matter, provide the reporting party with a copy of the report and begin an investigation of the facts. If the suspected crime occurred in a different jurisdiction, the local agency may refer the matter to the agency where the suspected crime was committed for further investigation of the facts.

### 336.4 INVESTIGATIVE PROCEDURES

All Identity Theft reports must be reported by the victim. Officers taking reports over the phone should take extra care in establishing the victim's identity (i.e. verifying information through CalPhoto, Aries, DMV records, Entersect, etc.) and document these verification steps.

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Identity Theft reports may be made online if there are no suspects, and the theft seems to be a one-time occurrence (i.e.: credit card was used for a couple of purchases, but no other transactions have occurred). For extensive Identity Thefts, with a large loss or that is ongoing, the RP should be encouraged to make a report with an officer.

### **336.4.1 IF IDENTITY THEFT OCCURRED IN WALNUT CREEK**

If the crime occurred in our jurisdiction, use the PC §530.5 classification and as required, investigate the case just as you would any other investigation. If the investigation requires out of City follow up (such as fraudulent credit card charges made at other cities in addition to fraudulent credit charges made in Walnut Creek) or expertise beyond that of the investigating patrol officer, then the case may be referred to the Detective Bureau with supervisor approval.

### **336.4.2 IF IDENTITY THEFT OCCURRED IN ANOTHER JURISDICTION**

The report may be classified as an outside assist case ONLY if the crime of "using" the identity occurred outside Walnut Creek. If the identity theft occurred outside our jurisdiction, make sure you forward the case to the appropriate jurisdiction(s). The victim will be able to assist by providing specific on-line addresses, websites or copies of applicable screens, should they apply.

### **336.4.3 IF LOCATION OF IDENTITY THEFT IS UNKNOWN**

If you are unable to determine the exact location of the crime, investigate the case as you would any other investigation and, if applicable, forward the case on to the appropriate jurisdiction. (i.e. a Walnut Creek resident has identity stolen to make online purchases. Contact or subpoena companies for records to determine where the purchases were made. Then forward the case to the agency from where the purchases were made). An exception to this would be if the charges were made online/via phone to a company located in Walnut Creek.

(Note: For prosecution purposes, the Contra Costa County District Attorney is able to prosecute an Identity Theft suspect in Contra Costa County even if the victim's Personal Identifying Information was used outside of the county - refer to PC §786(b)(1)).

## **336.5 REFERENCES**

When appropriate, the officer should offer victims reference contacts such as credit bureaus, creditors, banks, DMV, the Social Security Administration or Passport department. The Federal Trade Commission (FTC) has a useful webpage, <http://www.consumer.gov/idtheft/>, which can assist a victim of identity theft in reporting the crime to the two major credit bureaus. Another useful website is <http://www.phonebusters.com>, which has information regarding current scams. The WCPD Home Page, a sub-section of the city webpage ([www.walnut-creek.org](http://www.walnut-creek.org)), has a link "Are you an Identity Theft Victim?" to assist persons who are victims of identity theft and it includes a link to the FTC webpage. Walnut Creek PD also has Identity Theft Resource Guides, which can be given to victims of Identity Theft.

## Credit Card and Check Fraud Investigations

### 337.1 PROCEDURE

Patrol officers handle fraud and forgery cases, and the investigation should be carried out as in any other crime. Officers are encouraged to contact a fraud investigator for assistance as fraud investigators have numerous resources available such as bank and credit card contacts to assist in these investigations. Officers should attempt to obtain evidence such as surveillance footage as soon as possible.

When officers have completed as much of the investigation as they can, it may then be referred to the Investigations Bureau for follow-up using the Detective Follow-Up Request. It is important that officers include copies of documentation such as copies of checks, credit card statements, surveillance photos/videos and any other relevant materials.

#### 337.1.1 INVESTIGATION

Intent must be proved with each of these offenses. In order to do so, the officer should interview the victim and witnesses to determine if the suspect(s) did or said anything to bring about a question of deception, e.g. did the suspect use a false ID or an ID in the name of a fictitious person?

Verify the status of the credit card or checking account with the issuing bank (see CONTACT NUMBERS section). A statement from the true account holder or the financial institution (if they are the victim) will be needed. Victim contact can be handled in the Detective Follow-Up Request if needed.

If victims have reported their checks stolen or their credit card compromised to another agency, obtain a copy of that report.

#### 337.1.2 EVIDENCE

- All relevant documents including the original check, false/fictitious ID, credit card, merchandise receipts, delivery receipts and surveillance footage. Be sure to use proper evidence handling techniques as items can be sent to the Crime Lab for fingerprint analysis. Make copies of all relevant documents and include them in the case jacket and with the Detective Follow-Up Request.
- Descriptions of items purchased including unique items such as serial numbers. Include copies of sales receipts or account statements.
- Obtain exemplar items from the victim and suspect if possible/applicable. A Contra Costa County Crime Lab exemplar form can be used for comparison purposes. Have the suspect write the same suspected forged writings 15-20 times on a form that is similar in appearance to the suspected forged item.
- On-view arrest ID's and in-field show-up identifications should be documented within the report. These persons should also be included on the witness roster. Include copies of any photo line-up identifications and document these identifications within the report. Include a copy of the surveillance footage with the Request for Prosecution or with the Detective follow-up request.

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## *Credit Card and Check Fraud Investigations*

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### 337.1.3 JURISDICTION

The police department having jurisdiction at the place where the check or credit card was passed, used, or uttered, has investigative responsibility. If the crime is the use-of-access card information by phone or mail, the crime occurs where the order was placed or received. Please remember that while the fraud may have occurred elsewhere, you may still be responsible for investigating the identity theft.

If the crime occurred via the mail, see Policy 341 and refer the RP to the US Postal Inspector for the investigation (877-876-2455).

If a bank receives a check(s) that was passed outside of Walnut Creek, the check(s) should be sent to the victim business. The victim business should then be referred to the police agency with jurisdiction. If the business is within Contra Costa County, they can be referred to the Bad Check Restitution Program (see NSF AND ACCOUNTS-CLOSED section).

### 337.2 CREDIT CARD FRAUD

- (a) Useful Penal Code sections when dealing with these investigations are: PC 484e Sale or transfer of access card or account information
  - With the intent to defraud
  - Sells, transfers, or conveys, an access card
  - Without the cardholder's or issuers consent
- (b) PC 484f Design, make, alter, or counterfeit an access card
  - With the intent to defraud
  - Designs, makes, alters or embosses a counterfeit access card OR
  - With the intent to defraud
  - Signs the name of another or of a fictitious person
  - To an access card, sales slip, sales draft, or instrument for the payment of money that evidences an access card transaction.
- (c) PC 484g Use of forged, expired, revoked access card or account information
  - With the intent to defraud
  - Uses for purposes of obtaining money, goods, services, or anything else of value
  - An access card or access card account information
  - That has been:
    - Forged, expired, or revoked; or
    - Altered, obtained, or retained in violation PC 484e or 484f; or

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- Obtains money, goods, services, or anything else of value by representing without the consent of the cardholder that he/she is the holder of the access card.
- (d) PC 484i(b) Forgery or modification of access cards
  - With the intent to defraud;
  - Makes, alters, varies, changes, or modifies; or authorizes another to alter or modify
    - Alteration includes encoded magnetic strip information, or
    - Other medium not directly readable by the human eye
  - Access account information on any part of the access card;
  - In a manner that causes transactions initiated by that access card to be charged to a person other than the cardholder to whom the access card was issued.

**REMEMBER:** Where you have one of these crimes you most likely also have PC 460b, Commercial Burglary; PC 530.5, Identity Theft; and/or PC 529, False Personation.

### **337.3 CHECK FRAUD/FORGERY**

- (a) Useful Penal Code sections when dealing with these investigations are: PC 470(a) Forgery
  - With the intent to defraud;
  - Knowing that he/she has no authority to do so;
  - Signs the name of another person or of a fictitious person to any of the items listed in PC 470(d)
- (b) PC 470(b) Forgery: counterfeit or forge
  - With the intent to defraud;
  - Counterfeits, or forges the seal or handwriting of another
- (c) PC 470(c) Forgery: Alter or falsify
  - With the intent to defraud;
  - Alters, corrupts, or falsifies any record of any will, codicil, conveyance, or other instrument
- (d) PC 470(d) Forgery; Legally significant writing
  - With the intent to defraud;
  - Falsely makes, alters, forges, or counterfeits;
  - Utters, publishes, passes, or attempts or offers to pass;
  - Any check, bank bill/note, cashier's check, traveler's check, money order;

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- Knowing the same to be false, altered, forged, or counterfeited.
    -
  
  - Alters, falsifies, forges, duplicates or in any other manner reproduces or counterfeits;
  - Any driver's license or identification card issued by a government agency;
  - With the intent that it be used to facilitate the commission of a forgery.
- (e) PC 470b Display or possession of forged driver's license or identification card
- Displays or causes or permits to be displayed or has in his/her possession;
  - Any driver's license or ID card of the type enumerated in PC 470a;
  - With the intent that it be used to facilitate the commission of a forgery.
- (f) PC 475(a) Pass forged items
- Possesses or receives, with the intent to pass or facilitate the passage or utterance;
  - Of any forged, altered, or counterfeit items, or completed items within PC 470(d);
  - With the intent to defraud;
  - Knowing the same to be forged, altered or counterfeited.
- (g) PC 475(b) Blank or unfinished checks
- Possesses any blank or unfinished item with PC 470(d);
  - Whether real or fictitious;
  - With the intention of completing the same or the intention of facilitating the completion of the same;
  - In order to defraud any person
- (h) PC 475(c) Completed check, etc.
- Possesses any completed item within PC 470(d);
  - Whether real or fictitious;
  - With the intent to utter or pass or facilitate the utterance or passage of the same
  - In order to defraud any person
- (i) PC 476 Fictitious check, bill or note

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## *Credit Card and Check Fraud Investigations*

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- Makes, passes, utters or publishes;
  - Any fictitious, or altered bill, note or check;
  - With the intent to defraud
- (j) PC 476(a) Insufficient funds check
- With intent to defraud;
  - Makes or draws or utters passes or delivers any check upon;
  - Any bank, depository, person, firm or corporation;
  - Knowing that the funds to cover the check do not exist in the account (NSF) or;
  - No credit exists with the financial institution from which the check is drawn (account-closed). \*\*\*This includes non-sufficient funds (NSF) checks and accounts-closed checks (see section on NSF and Account-Closed Checks for additional information).

**REMEMBER:** Where you have one of these crimes you most likely also have PC 460b, Commercial Burglary; PC 530.5, Identity Theft; and/or PC 529, False Personation.

### **337.4 NSF AND ACCOUNT-CLOSED CHECKS**

Non-sufficient funds and account-closed check cases should be handled through the Contra Costa County District Attorney, Bad Check Diversion Restitution Program. Use the following protocol for these cases:

Dispatch should refer all people reporting NSF and account-closed incidents to the Contra Costa County District Attorney, Bad Check Diversion Restitution Program and provide the caller the with one of the following contact methods:

- <http://www.co.contra-costa.ca.us>
- Contra Costa County District Attorney, Bad Check Diversion Restitution Program, P.O. Box 3130 Martinez, CA 94553-8130
- Toll-free number, 1-866-639-8093

When it is difficult to determine the exact circumstances of a case from the caller, patrol officers will be dispatched. If it is determined that the crime is an NSF/account closed check case, explain to the reporting party that because there are so many NSF and account-closed cases and because many of these incidents are civil and not criminal matters, the District Attorney's Office generally does not file criminal charges in these cases. The exception to this rule is if the check amount is \$5,000 (or several checks exceeding this total) or more and specific intent can be proven. The District Attorney may review these cases for criminal charges.

The Check Restitution Program will attempt to locate and collect funds from the check writer. If the Restitution Program is unable to collect monies from the check writer and there is a criminal case that is reasonable to investigate, the Check Restitution Program will forward the case to the



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## *Credit Card and Check Fraud Investigations*

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fraud investigator having jurisdiction. The fraud investigator will review the case and determine if an investigation is warranted.

After providing the above information, the responding officer should close the case on a Service-to-Citizen incident report. No case should be drawn at this time.

\*\*\*Be sure that the incident is not a forgery or counterfeit. Officers will respond and investigate any in-progress check fraud involving NSF or account-closed incidents.

## Private Persons Arrests

### 338.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for the handling of private person's arrests made pursuant to Penal Code § 837.

### 338.2 ADVISING PRIVATE PERSONS OF THE ARREST PROCESS

Penal Code § 836(b) expressly mandates that all officers shall advise victims of domestic violence of the right to make a private person's arrest, including advice on how to safely execute such an arrest. In all other situations, officers should use sound discretion in determining whether or not to advise an individual of the arrest process.

- (a) When advising any individual regarding the right to make a private person's arrest, officers should refrain from encouraging or dissuading any individual from making such an arrest and should instead limit advice to the legal requirements for such an arrest as listed below.
- (b) Private individuals should be discouraged from using force to effect a private person's arrest, and absent immediate threat to their own safety or the safety of others, private individuals should be encouraged to refer matters to law enforcement officials for further investigation or arrest.

### 338.3 ARRESTS BY PRIVATE PERSONS

Penal Code § 837 provides that a private person may arrest another:

- (a) For a public offense committed or attempted in his or her presence;
- (b) When the person arrested has committed a felony, although not in his or her presence;
- (c) When a felony has been in fact committed, and he or she has reasonable cause for believing the person arrested has committed it.

Unlike peace officers, private persons may not make an arrest on suspicion that a felony has been committed - the felony must in fact have taken place.

### 338.4 OFFICER RESPONSIBILITIES

Any officer presented with a private person wishing to make an arrest must determine whether or not there is reasonable cause to believe that such an arrest would be lawful (Penal Code § 847).

- (a) Should any officer determine that there is no reasonable cause to believe that a private person's arrest is lawful, the officer should take no action to further detain or restrain the individual beyond that which reasonably appears necessary to investigate the matter, determine the lawfulness of the arrest and protect the public safety.

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1. Any officer who determines that a private person's arrest appears to be unlawful should promptly release the arrested individual pursuant to Penal Code § 849(b) (1). The officer must include the basis of such a determination in a related report.
  2. Absent reasonable cause to support a private person's arrest or other lawful grounds to support an independent arrest by the officer, the officer should advise the parties that no arrest will be made and that the circumstances will be documented in a related report.
- (b) Whenever an officer determines that there is reasonable cause to believe that a private person's arrest is lawful, the officer may exercise any of the following options:
1. Take the individual into physical custody for booking
  2. Release the individual pursuant to a Notice to Appear
  3. Release the individual pursuant to Penal Code § 849

### **338.5 REPORTING REQUIREMENTS**

In all circumstances in which a private person is claiming to have made an arrest, the individual must complete and sign a department Private Person's Arrest form under penalty of perjury.

In addition to the Private Person's Arrest Form (and any other related documents such as citations, booking forms, etc.), officers shall complete a narrative report regarding the circumstances and disposition of the incident.

# Counterfeit Money Investigations

## 339.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for the response and investigation of counterfeit notes.

## 339.2 PROCEDURE

Generally, it is the responsibility of the Department of the Treasury United States Secret Service to investigate incidents involving the manufacturing, passing and/or possession of counterfeit notes. However, WCPD officers may be asked to respond to incidents occurring within city boundaries. When these incidents occur, WCPD units should respond and collect all information relevant to the investigation. The collected information should include:

- The original note(s).
- The date, time, and location of the offense.
- The name, date of birth, address and telephone number of the person reporting the offense.
- The name, date of birth, address and telephone number of any additional witnesses, involved parties, etc.
- A detailed account of what transpired, including reporting party, involved party and witness statements.
- The name, date of birth, address, telephone number and description of the person passing, or possessing the note.
- The name, date of birth, address, telephone number and description of any associates of the person passing, or possessing the note.
- A Complete description of any involved vehicles.

### IF SUSPECT HAS BEEN ARRESTED:

In the event the suspect is arrested, the officer should transport the suspect to WCPD for booking. The Duty Agent will advise if he, or she will respond to WCPD. After reviewing the investigation with the Duty Agent, a decision will have to be made whether to charge the arrestee on the State, or Federal level. If the decision is made to charge the arrestee on the State level, the appropriate charging code is 476 PC. If the Duty Agent accepts the case and wants the case to be charged on the Federal level, transfer custody of the arrestee to the Duty Agent, along with all relevant evidence. Document the incident in a numbered report, classified "U.S Laws".

### IF SUSPECT HAS NOT BEEN ARRESTED:

In most cases, the suspect leaves prior to the discovery of the counterfeit note(s). The information gathered should be documented in a numbered report, classified "U.S. Laws." A U.S. Secret

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## *Counterfeit Money Investigations*

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Service form # SSF 1604 should be completed and a copy of the form included in the case. The forms are located in the forms shelves (slot #21), in report writing. The Duty Agent will advise if he, or she will be picking up the counterfeit note and WCPD report, or if it should be sent to the U.S. Secret Service by U.S. mail. I

Once the matter is referred to the U.S. Secret Service, no further investigation is required. The status of the WCPD case is closed.

## Anti-Reproductive Rights Crimes Reporting

### 340.1 PURPOSE AND SCOPE

This policy shall establish a procedure for the mandated reporting of Anti-Reproductive Rights Crimes (ARRC) to the Attorney General pursuant to the Reproductive Rights Law Enforcement Act (Penal Code § 13775 et seq.).

### 340.2 DEFINITIONS

Penal Code § 423.2 provides that the following acts shall be considered Anti-Reproductive Rights Crimes (ARRC) when committed by any person, except a parent or guardian acting towards his or her minor child or ward:

- (a) By force, threat of force, or physical obstruction that is a crime of violence, intentionally injures, intimidates, interferes with, or attempts to injure, intimidate, or interfere with any person or entity because that person or entity is a reproductive health services client, provider, or assistant, or in order to intimidate any person or entity, or any class of persons or entities, from becoming or remaining a reproductive health services client, provider, or assistant
- (b) By non-violent physical obstruction, intentionally injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with, any person or entity because that person or entity is a reproductive health services client, provider, or assistant, or in order to intimidate any person or entity, or any class of persons or entities, from becoming or remaining a reproductive health services client, provider or assistant
- (c) Intentionally damages or destroys the property of a person, entity, or facility, or attempts to do so, because the person, entity, or facility is a reproductive health services client, provider, assistant, or facility

### 340.3 REPORTING REQUIREMENTS TO THE ATTORNEY GENERAL

- (a) Upon the receipt of the report of an ARRC, it shall be the responsibility of the employee taking such a report to also select the location type as 27 (Private/Public Health Facility) and also add the study flag of AN on the GO facesheet.
- (b) The ARRC report will be sent to Records through transcription. The transcribing PRT will assure that the location type is correctly identified and that the study flag is appropriately added if the report occurs at a reproductive facility and falls under the definition of 432.2PC.
- (c) By the tenth day of each month, the Statistical PRT will browse for an reports that have the study flag AN and ensure that any ARRC reports are submitted to the Department of Justice Criminal Justice Statistics Center.

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Walnut Creek PD Policy Manual

## *Anti-Reproductive Rights Crimes Reporting*

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1. In the event that no ARRC(s) were reported during the previous month, a Negative Records report shall be submitted via to the Department of Justice via their ECARS website.
2. Any ARRC(s) reported shall be sent to the Department of Justice via their ECARS website.

Refer to the POST Anti-Reproductive Rights Guidelines for additional information.

## Postal Crimes Investigations

### 341.1 PURPOSE AND SCOPE

The purpose of this policy is to provide officers with guidelines for the response and investigation of crimes dealing with the United States Mail.

### 341.2 PROCEDURE

The protection of the United States Mail and Postal System including the investigation of crimes against carriers and the theft of mail is the responsibility of the Postal Inspection Service. Postal Inspectors are federal agents who carry firearms, make felony arrests, and serve federal search warrants and subpoenas. They work closely with United States Attorneys and (on occasion) with state, county, and local prosecutors in investigating postal cases and preparing them for court. Postal inspectors investigate alleged violations of about one hundred different federal laws relating to the U.S. Mail and the Postal System, including the following crimes:

- Theft of mail or possession of stolen mail - the illegal taking of mail from postal custody or from the mail receptacle of a postal customer, by a non-postal person, or the receipt or possession of mail known to have been stolen. This includes theft or tampering with mail in a Postal Service mailbox, residential or rural mailbox, and apartment house mailbox. (18 USC 1708)
- Theft of mail by a postal employee - the illegal taking of mail by a postal officer or employee. (18 USC 1709)
- Mail fraud - the use of the mail with intent to obtain money or property through a fraudulent scheme. (18 USC 1341)
- Burglary - the forcible breaking into and entering of (or attempt to so enter) a postal facility with intent to commit larceny. (18 USC 2115)
- Robbery - the taking of mail, money, blank postal money orders, or other postal property from any person having custody or control of same. (18 USC 2114)

Due to the nature of mail related offenses, Walnut Creek officers may be asked to respond to incidents occurring within city boundaries.

When citizens report the theft of incoming or outgoing mail or suspected tampering of mail, and there are no witnesses or suspect information, an officer will be dispatched to take the initial report. The officer needs to obtain the victim's name, address and telephone number, etc. as well as the details of the case. The officer taking the report should tell the victim that the U.S. Postal Inspection Service will be conducting the follow-up investigation. When clearing the call, officers should select the "Postal" option from the drop down menu in CAD. After writing the initial investigation, the officer will then forward the case to the U.S. Postal Inspection Service. Once the matter is referred to the U.S. Postal Inspection Service, the WCPD case shall be closed and no further investigation required. Refer Victims' questions regarding loss, further investigation, and follow-up to:

United States Postal Service



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## *Postal Crimes Investigations*

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P.O. Box 13130

Sacramento, CA 95813

Public telephone number: (877) 876-2455

Additional information can be found on their web site: <https://www.uspis.gov/>

If the crime is "in progress," a person is found to be in possession of mail, or when the victim or witnesses have suspect information, appropriate police action should be taken and the Postal Inspection Service notified immediately at their 24-hour telephone number and the Duty Agent should be informed of the circumstances. The Duty Agent will arrange for a Field Agent to respond to assist the investigating officer. Once the matter is referred to the U.S. Postal Inspection Service, the WCPD case shall be closed and no further investigation required.

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## Limited English Proficiency Services

### 342.1 PURPOSE AND SCOPE

This policy provides guidance to members when communicating with individuals with limited English proficiency (LEP) (42 USC § 2000d).

#### 342.1.1 DEFINITIONS

**Limited English Proficient (LEP)** - Designates individuals whose primary language is not English and who have a limited ability to read, write, speak or understand English. LEP individuals may be competent in certain types of communication (e.g., speaking or understanding), but still be LEP for other purposes (e.g., reading or writing). Similarly, LEP designations are context-specific: an individual may possess sufficient English language skills to function in one setting, but these skills may be insufficient in other situations.

**Interpretation** - The act of listening to a communication in one language (source language) and orally converting it to another language (target language) while retaining the same meaning.

**Translation** - The replacement of written text from one language (source language) into an equivalent written text (target language).

**Bilingual** - The ability to communicate in two languages fluently, including the ability to communicate technical and law enforcement terminology. Bilingual includes a variety of skill levels. For example, some bilingual individuals may be fluent enough to engage in direct communications in a non-English language, but insufficiently fluent to interpret or translate from one language into another. For example, a bilingual individual, depending on his or her skill level, could be utilized to communicate fluently in a non-English language, but not to interpret between two languages if he or she does not possess the specialized skills necessary to interpret between two languages effectively. In order to be utilized to interpret or translate from one language into another an individual must possess the skill, training and demonstrated competence to do so. For purposes of this policy employees, in order to be identified as bilingual, must initially and periodically demonstrate, through a procedure to be established by the Department, their level of skill and competence such that the Department is able to determine the purposes for which an employee's language skills may be used.

### 342.2 POLICY

It is the policy of the Walnut Creek Police Department to reasonably ensure that LEP individuals have meaningful access to law enforcement services, programs and activities, while not imposing undue burdens on its members.

The Department will not discriminate against or deny any individual access to services, rights or programs based upon national origin or any other protected interest or right.

# Walnut Creek Police Department

Walnut Creek PD Policy Manual

## *Limited English Proficiency Services*

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### **342.3 FOUR-FACTOR ANALYSIS**

Since there are many different languages that members could encounter, the Department will utilize the four-factor analysis outlined in the U.S. Department of Justice (DOJ) Guidance to Federal Financial Assistance Recipients, available at the DOJ website, to determine which measures will provide meaningful access to its services and programs. It is recognized that law enforcement contacts and circumstances will vary considerably. This analysis, therefore, must remain flexible and will require an ongoing balance of four factors, which are:

- (a) The number or proportion of LEP individuals eligible to be served or likely to be encountered by department members, or who may benefit from programs or services within the jurisdiction of the Department or a particular geographic area.
- (b) The frequency with which LEP individuals are likely to come in contact with department members, programs or services.
- (c) The nature and importance of the contact, program, information or service provided.
- (d) The cost of providing LEP assistance and the resources available.

### **342.4 TYPES OF LEP ASSISTANCE AVAILABLE**

Walnut Creek Police Department members should never refuse service to an LEP individual who is requesting assistance, nor should they require an LEP individual to furnish an interpreter as a condition for receiving assistance. The Department will make every reasonable effort to provide meaningful and timely assistance to LEP individuals through a variety of services.

The Department will utilize all reasonably available tools, such as language identification cards, when attempting to determine an LEP individual's primary language.

LEP individuals may choose to accept department-provided LEP services at no cost or they may choose to provide their own.

Department-provided LEP services may include, but are not limited to, the assistance methods described in this policy.

### **342.6 AUDIO RECORDINGS**

The Department may develop audio recordings of important or frequently requested information in a language most likely to be understood by those LEP individuals who are representative of the community being served.

### **342.6 AUTHORIZED INTERPRETERS**

Any person designated by the Department to act as an authorized interpreter and/or translator must have demonstrated competence in both English and the involved non-English language, must have an understanding of the functions of an interpreter that allows for correct and effective translation, and should not be a person with an interest in the department case or investigation involving the LEP individual. A person providing interpretation or translation services may be

# Walnut Creek Police Department

Walnut Creek PD Policy Manual

## *Limited English Proficiency Services*

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required to establish the accuracy and trustworthiness of the interpretation or translation in a court proceeding.

Authorized interpreters must pass a screening process established by the LEP Coordinator which demonstrates that their skills and abilities include:

- (a) The competence and ability to communicate information accurately in both English and in the target language.
- (b) Knowledge, in both languages, of any specialized terms or concepts peculiar to this department and of any particularized vocabulary or phraseology used by the LEP individual.
- (c) The ability to understand and adhere to the interpreter role without deviating into other roles, such as counselor or legal adviser.
- (d) Knowledge of the ethical issues involved when acting as a language conduit.

### 342.6.1 SOURCES OF AUTHORIZED INTERPRETERS

The Department may contract with authorized interpreters who are available over the telephone. Members may use these services with the approval of a supervisor and in compliance with established procedures.

Other sources may include:

- Qualified bilingual members of this department or personnel from other City departments.
- Individuals employed exclusively to perform interpretation services.
- Contracted in-person interpreters, such as state or federal court interpreters, among others.
- Interpreters from other agencies who have been qualified as interpreters by this department, and with whom the Department has a resource-sharing or other arrangement that they will interpret according to department guidelines.

### 342.6.2 COMMUNITY VOLUNTEERS AND OTHER SOURCES OF LANGUAGE ASSISTANCE

Language assistance may be available from community volunteers who have demonstrated competence in either monolingual (direct) communication and/or in interpretation or translation (as noted in above), and have been approved by the Department to communicate with LEP individuals.

Where qualified bilingual members or other authorized interpreters are unavailable to assist, approved community volunteers who have demonstrated competence may be called upon when appropriate. However, department members must carefully consider the nature of the contact and the relationship between the LEP individual and the volunteer to ensure that the volunteer can provide neutral and unbiased assistance.

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## *Limited English Proficiency Services*

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While family or friends of an LEP individual may offer to assist with communication or interpretation, members should carefully consider the circumstances before relying on such individuals. For example, children should not be relied upon except in exigent or very informal and non-confrontational situations.

### **342.7 CONTACT AND REPORTING**

While all law enforcement contacts, services and individual rights are important, this department will utilize the four-factor analysis to prioritize service to LEP individuals so that such services may be targeted where they are most needed, according to the nature and importance of the particular law enforcement activity involved.

Whenever any member of this department is required to complete a report or other documentation, and interpretation services are provided to any involved LEP individual, such services should be noted in the related report. Members should document the type of interpretation services utilized and whether the individual elected to use services provided by the Department or some other identified source.

### **342.8 RECEIVING AND RESPONDING TO REQUESTS FOR ASSISTANCE**

The Walnut Creek Police Department will take reasonable steps and will work with the Department of Human Resources to develop in-house language capacity by hiring or appointing qualified members proficient in languages representative of the community being served.

#### **342.8.1 EMERGENCY CALLS TO 9-1-1**

Department members will make every reasonable effort to promptly accommodate LEP individuals utilizing 9-1-1 lines. When a 9-1-1 call-taker receives a call and determines that the caller is an LEP individual, the call-taker shall quickly determine whether sufficient information can be obtained to initiate an appropriate emergency response. If language assistance is still needed, the language is known and a qualified bilingual member is available in Dispatch, the call shall immediately be handled by the qualified bilingual member.

If a qualified bilingual member is not available or the call-taker is unable to identify the caller's language, the call-taker will contact the contracted telephone interpretation service and establish a three-way call between the call-taker, the LEP individual and the interpreter.

Dispatchers will make every reasonable effort to dispatch a qualified bilingual member to the assignment, if available and appropriate.

While 9-1-1 calls shall receive top priority, reasonable efforts should also be made to accommodate LEP individuals seeking routine access to services and information by utilizing the resources listed in this policy.

### **342.9 FIELD ENFORCEMENT**

Field enforcement will generally include such contacts as traffic stops, pedestrian stops, serving warrants and restraining orders, crowd/traffic control and other routine field contacts that may involve LEP individuals. The scope and nature of these activities and contacts will inevitably vary.

# Walnut Creek Police Department

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## *Limited English Proficiency Services*

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Members and/or supervisors must assess each situation to determine the need and availability of language assistance to all involved LEP individuals and utilize the methods outlined in this policy to provide such assistance.

Although not every situation can be addressed in this policy, it is important that members are able to effectively communicate the reason for a contact, the need for information and the meaning or consequences of any enforcement action. For example, it would be meaningless to request consent to search if the officer is unable to effectively communicate with an LEP individual.

If available, officers should obtain the assistance of a qualified bilingual member or an authorized interpreter before placing an LEP individual under arrest.

### **342.10 INVESTIGATIVE FIELD INTERVIEWS**

In any situation where an interview may reveal information that could be used as the basis for arrest or prosecution of an LEP individual and a qualified bilingual member is unavailable or lacks the skills to directly communicate with the LEP individual, an authorized interpreter should be used. This includes interviews conducted during an investigation with victims, witnesses and suspects. In such situations, audio recordings of the interviews should be made when reasonably possible. Identification and contact information for the interpreter (e.g., name, address) should be documented so that the person can be subpoenaed for trial if necessary.

If an authorized interpreter is needed, officers should consider calling for an authorized interpreter in the following order:

- An authorized department member or allied agency interpreter
- An authorized telephone interpreter
- Any other authorized interpreter

Any *Miranda* warnings shall be provided to suspects in their primary language by an authorized interpreter or, if the suspect is literate, by providing a translated *Miranda* warning card.

The use of an LEP individual's bilingual friends, family members, children, neighbors or bystanders may be used only when a qualified bilingual member or authorized interpreter is unavailable and there is an immediate need to interview an LEP individual.

### **342.11 CUSTODIAL INTERROGATIONS**

Miscommunication during custodial interrogations may have a substantial impact on the evidence presented in a criminal prosecution. Only qualified bilingual members or, if none is available or appropriate, authorized interpreters shall be used during custodial interrogations. *Miranda* warnings shall be provided to suspects in their primary language by the qualified bilingual member or an authorized interpreter.

In order to ensure that translations during custodial interrogations are accurately documented and are admissible as evidence, interrogations should be recorded whenever reasonably possible. See guidance on recording custodial interrogations in the Investigation and Prosecution Policy.

## *Limited English Proficiency Services*

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### **342.12 BOOKINGS**

When gathering information during the booking process, members should remain alert to the impediments that language barriers can create. In the interest of the arrestee's health and welfare, the safety and security of the facility, and to protect individual rights, it is important that accurate medical screening and booking information be obtained. Members should seek the assistance of a qualified bilingual member whenever there is concern that accurate information cannot be obtained or that booking instructions may not be properly understood by an LEP individual.

### **342.13 COMPLAINTS**

The Department shall ensure that LEP individuals who wish to file a complaint regarding members of this department are able to do so. The Department may provide an authorized interpreter or translated forms, as appropriate. Complaints will be referred to the LEP Coordinator.

Investigations into such complaints shall be handled in accordance with the Personnel Complaints Policy. Authorized interpreters used for any interview with an LEP individual during an investigation should not be members of this department.

Any notice required to be sent to an LEP individual as a complaining party pursuant to the Personnel Complaints Policy should be translated or otherwise communicated in a language-accessible manner.

### **342.14 COMMUNITY OUTREACH**

Community outreach programs and other such services offered by this department are important to the ultimate success of more traditional law enforcement duties. This department will continue to work with community groups, local businesses and neighborhoods to provide equal access to such programs and services.

### **342.15 TRAINING**

To ensure that all members who may have contact with LEP individuals are properly trained, the Department will provide periodic training on this policy and related procedures, including how to access department-authorized telephonic and in-person interpreters and other available resources.

The Training Manager shall be responsible for ensuring new members receive LEP training. Those who may have contact with LEP individuals should receive refresher training at least once every two years thereafter. The Training Manager shall maintain records of all LEP training provided, and will retain a copy in each member's training file in accordance with established records retention schedules.

#### **342.15.1 TRAINING FOR AUTHORIZED INTERPRETERS**

All members on the authorized interpreter list must successfully complete prescribed interpreter training. To complete interpreter training successfully, an interpreter must demonstrate proficiency in and ability to communicate information accurately in both English and in the target language,

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demonstrate knowledge in both languages of any specialized terms or phraseology, and understand and adhere to the interpreter role without deviating into other roles, such as counselor or legal adviser.

Members on the authorized interpreter list must receive refresher training annually or they will be removed from the authorized interpreter list. This annual training should include language skills competency (including specialized terminology) and ethical considerations.

The Training Manager shall be responsible for coordinating the annual refresher training and will maintain a record of all training the interpreters have received.



## Hearing Impaired/Disabled Communications

### 343.1 PURPOSE AND SCOPE

This policy provides guidance to members when communicating with individuals with disabilities, including those who are deaf or hard of hearing, have impaired speech or vision, or are blind.

#### 343.1.1 DEFINITIONS

Definitions related to this policy include:

**Auxiliary aids** - Tools used to communicate with people who have a disability or impairment. They include, but are not limited to, the use of gestures or visual aids to supplement oral communication; a notepad and pen or pencil to exchange written notes; a computer or typewriter; an assistive listening system or device to amplify sound; a teletypewriter (TTY) or videophones (video relay service or VRS); taped text; qualified readers; or a qualified interpreter.

**Disability or impairment** - A physical or mental impairment that substantially limits a major life activity, including hearing or seeing, regardless of whether the disabled person uses assistive or adaptive devices or auxiliary aids. Individuals who wear ordinary eyeglasses or contact lenses are not considered to have a disability (42 USC § 12102).

**Qualified interpreter** - A person who is able to interpret effectively, accurately and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include oral interpreters, translators, sign language interpreters and intermediary interpreters.

### 343.2 POLICY

It is the policy of the Walnut Creek Police Department to reasonably ensure that people with disabilities, including victims, witnesses, suspects and arrestees have equal access to law enforcement services, programs and activities. Members must make efforts to communicate effectively with individuals with disabilities.

The Department will not discriminate against or deny any individual access to services, rights or programs based upon disabilities.

### 343.3 AMERICANS WITH DISABILITIES (ADA) COORDINATOR

The Chief of Police shall delegate certain responsibilities to an ADA Coordinator (28 CFR 35.107). The ADA Coordinator shall be appointed by, and directly responsible, to the Patrol Bureau Commander or the authorized designee.

The responsibilities of the ADA Coordinator shall include, but not be limited to:

- (a) Working with the City ADA coordinator regarding the Walnut Creek Police Department's efforts to ensure equal access to services, programs and activities.
- (b) Developing reports, new procedures, or recommending modifications to this policy.

# Walnut Creek Police Department

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## *Hearing Impaired/Disabled Communications*

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- (c) Acting as a liaison with local disability advocacy groups or other disability groups regarding access to department services, programs and activities.
- (d) Ensuring that a list of qualified interpreter services is maintained and available to each Watch Commander and Dispatch Supervisor. The list should include information regarding the following:
  - 1. Contact information
  - 2. Availability
- (e) Developing procedures that will enable members to access auxiliary aids or services, including qualified interpreters, and ensure the procedures are available to all members.
- (f) Ensuring signage is posted in appropriate areas, indicating that auxiliary aids are available free of charge to people with disabilities.
- (g) Ensuring appropriate processes are in place to provide for the prompt and equitable resolution of complaints and inquiries regarding discrimination in access to department services, programs and activities.

### **343.3.1 TELEPHONE INTERPRETER SERVICES**

The Dispatch Supervisor will maintain a list of qualified interpreter services to be contacted at department expense to assist deaf or hearing impaired individuals upon approval of a supervisor. When utilized, notification to such interpreters shall be made at the earliest reasonable opportunity and the interpreter should be available to respond within a reasonable time (generally not to exceed three hours).

### **343.3.2 FAMILY AND FRIENDS OF DISABLED OR IMPAIRED INDIVIDUAL**

While family and friends of a disabled or impaired individual may frequently offer to assist with interpretation, employees should carefully consider the circumstances before relying on such individuals. For example, children should not be relied upon except in emergency or critical situations. Further, the nature of the contact and relationship between the disabled individual and the individual offering services must be carefully considered (e.g., victim/suspect).

### **343.4 FACTORS TO CONSIDER**

Because the nature of any law enforcement contact may vary substantially from one situation to the next, members of this department should consider all information reasonably available to them when determining how to communicate with an individual with a disability. Members should carefully balance all known factors in an effort to reasonably ensure people who are disabled have equal access to services, programs and activities. These factors may include, but are not limited to:

- (a) Members should not always assume that effective communication is being achieved. The fact that an individual appears to be nodding in agreement does not always mean he/she completely understands the message. When there is any doubt, members

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## *Hearing Impaired/Disabled Communications*

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should ask the individual to communicate back or otherwise demonstrate their understanding.

- (b) The nature of the disability (e.g., deafness or blindness vs. hard of hearing or low vision).
- (c) The nature of the law enforcement contact (e.g., emergency vs. non-emergency, custodial vs. consensual contact).
- (d) The availability of auxiliary aids. The fact that a particular aid is not available does not eliminate the obligation to reasonably ensure access. However, in an emergency, availability may factor into the type of aid used.

### **343.4.1 RECEIVING AND RESPONDING TO REQUESTS FOR ASSISTANCE**

In order to provide disabled and impaired individuals with meaningful access to law enforcement services when they are victims of, or witnesses to, alleged criminal activity or other emergencies, this department has designated its 911 lines as its top priority for assistance with such services. Department personnel will make every reasonable effort to promptly accommodate such disabled and impaired individuals utilizing 911 lines through any or all of the above resources.

While 911 calls shall receive top priority, it is also important that reasonable efforts be made to accommodate disabled and impaired individuals seeking more routine access to services and information from this department.

### **343.5 INITIAL AND IMMEDIATE CONSIDERATIONS**

Recognizing that various law enforcement encounters may be potentially volatile and/or emotionally charged, members should remain alert to the possibility of communication problems.

Members should exercise special care in the use of all gestures, and verbal and written communication to minimize initial confusion and misunderstanding when dealing with any individual with known or suspected disabilities.

In a non-emergency situation, when a member knows or suspects an individual requires assistance to effectively communicate, the member shall identify the individual's choice of auxiliary aid or service.

The individual's preferred communication method must be honored unless another effective method of communication exists under the circumstances (28 CFR 35.160).

Factors to consider when determining whether an alternative method is effective include:

- (a) The methods of communication usually used by the individual.
- (b) The nature, length and complexity of the communication involved.
- (c) The context of the communication.

In emergency situations involving an imminent threat to the safety or welfare of any person, members may use whatever auxiliary aids and services that reasonably appear effective under

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## *Hearing Impaired/Disabled Communications*

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the circumstances. This may include, for example, exchanging written notes or using the services of a person who knows sign language but is not a qualified interpreter, even if the person who is deaf or hard of hearing would prefer a qualified sign language interpreter or another appropriate auxiliary aid or service. Once the emergency has ended, the continued method of communication should be reconsidered. The member should inquire as to the individual's preference and give primary consideration to that preference.

If an individual who is deaf, hard of hearing or has impaired speech must be handcuffed while in the custody of the Walnut Creek Police Department, consideration should be given, safety permitting, to placing the handcuffs in the front of the body to facilitate communication using sign language or writing.

### **343.6 TYPES OF ASSISTANCE AVAILABLE**

Walnut Creek Police Department members shall never refuse to assist an individual with disabilities who is requesting assistance. The Department will not charge anyone to receive auxiliary aids, nor shall they require anyone to furnish their own auxiliary aid or service as a condition for receiving assistance. The Department will make every reasonable effort to provide equal access and timely assistance to individuals who are disabled through a variety of services.

A person who is disabled may choose to accept department-provided auxiliary aids or services or they may choose to provide their own.

Department-provided auxiliary aids or services may include, but are not limited to, the assistance methods described in this policy.

### **343.7 AUDIO RECORDINGS AND ENLARGED PRINT**

The Department may develop audio recordings to assist people who are blind or have a visual impairment with accessing important information. If such a recording is not available, members may read aloud from the appropriate form, for example a personnel complaint form, or provide forms with enlarged print.

### **343.8 QUALIFIED INTERPRETERS**

A qualified interpreter may be needed in lengthy or complex transactions (e.g., interviewing a victim, witness, suspect or arrestee), if the individual to be interviewed normally relies on sign language or speechreading (lip-reading) to understand what others are saying. The qualified interpreter should not be a person with an interest in the case or investigation involving the disabled individual. A person providing interpretation services may be required to establish the accuracy and trustworthiness of the interpretation in a court proceeding.

Qualified interpreters should be:

- (a) Available within a reasonable amount of time but in no event longer than one hour if requested.
- (b) Experienced in providing interpretation services related to law enforcement matters.

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- (c) Familiar with the use of VRS and/or video remote interpreting services.
- (d) Certified in either American Sign Language (ASL) or Signed English (SE).
- (e) Able to understand and adhere to the interpreter role without deviating into other roles, such as counselor or legal adviser.
- (f) Knowledgeable of the ethical issues involved when providing interpreter services.

Members should use department-approved procedures to request a qualified interpreter at the earliest reasonable opportunity, and generally not more than 15 minutes after a request for an interpreter has been made or it is reasonably apparent that an interpreter is needed. No individual who is disabled shall be required to provide his/her own interpreter (28 CFR 35.160).

### **343.9 TTY AND RELAY SERVICES**

In situations where an individual without a disability would have access to a telephone (e.g., booking or attorney contacts), members must also provide those who are deaf, hard of hearing or have impaired speech the opportunity to place calls using an available TTY (also known as a telecommunications device for deaf people, or TDD). Members shall provide additional time, as needed, for effective communication due to the slower nature of TTY and TDD communications.

The Department will accept all TTY or TDD calls placed by those who are deaf or hard of hearing and received via a telecommunications relay service (28 CFR 35.162).

Note that relay services translate verbatim, so the conversation must be conducted as if speaking directly to the caller.

### **343.10 COMMUNITY VOLUNTEERS**

Interpreter services may be available from community volunteers who have demonstrated competence in communication services, such as ASL or SE, and have been approved by the Department to provide interpreter services.

Where qualified interpreters are unavailable to assist, approved community volunteers who have demonstrated competence may be called upon when appropriate. However, department members must carefully consider the nature of the contact and the relationship between the individual with the disability and the volunteer to ensure that the volunteer can provide neutral and unbiased assistance.

### **343.11 FAMILY AND FRIENDS**

While family or friends may offer to assist with interpretation, members should carefully consider the circumstances before relying on such individuals. The nature of the contact and relationship between the individual with the disability and the person offering services must be carefully considered (e.g., victim/suspect).

Children shall not be relied upon except in emergency or critical situations when there is no qualified interpreter reasonably available.

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## *Hearing Impaired/Disabled Communications*

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Adults may be relied upon when (28 CFR 35.160):

- (a) There is an emergency or critical situation and there is no qualified interpreter reasonably available.
- (b) The person with the disability requests that the adult interpret or facilitate communication and the adult agrees to provide such assistance, and reliance on that adult for such assistance is reasonable under the circumstances.

### **343.12 REPORTING**

Whenever any member of this department is required to complete a report or other documentation, and communication assistance has been provided, such services should be noted in the related report. Members should document the type of communication services utilized and whether the individual elected to use services provided by the Department or some other identified source. If the individual's express preference is not honored, the member must document why another method of communication was used.

All written communications exchanged in a criminal case shall be attached to the report or placed into evidence.

### **343.13 FIELD ENFORCEMENT**

Field enforcement will generally include such contacts as traffic stops, pedestrian stops, serving warrants and restraining orders, crowd/traffic control and other routine field contacts that may involve individuals with disabilities. The scope and nature of these activities and contacts will inevitably vary.

The Department recognizes that it would be virtually impossible to provide immediate access to complete communication services to every member of this department. Members and/or supervisors must assess each situation and consider the length, complexity and importance of the communication, as well as the individual's preferred method of communication, when determining the type of resources to use and whether a qualified interpreter is needed.

Although not every situation can be addressed in this policy, it is important that members are able to effectively communicate the reason for a contact, the need for information and the meaning or consequences of any enforcement action. For example, it would be meaningless to verbally request consent to search if the officer is unable to effectively communicate with an individual who is deaf or hard of hearing and requires communications assistance.

If available, officers should obtain the assistance of a qualified interpreter before placing an individual with a disability under arrest. Individuals who are arrested and are assisted by service animals should be permitted to make arrangements for the care of such animals prior to transport.

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### 343.13.1 FIELD RESOURCES

Examples of methods that may be sufficient for transactions, such as checking a license or giving directions to a location or for urgent situations such as responding to a violent crime in progress, may, depending on the circumstances, include such simple things as:

- (a) Hand gestures or visual aids with an individual who is deaf, hard of hearing or has impaired speech.
- (b) Exchange of written notes or communications.
- (c) Verbal communication with an individual who can speechread by facing the individual and speaking slowly and clearly.
- (d) Use of computer, word processing, personal communication device or similar device to exchange texts or notes.
- (e) Slowly and clearly speaking or reading simple terms to individuals who have a visual or mental impairment.

Members should be aware that these techniques may not provide effective communication as required by law and this policy depending on the circumstances.

### 343.14 CUSTODIAL INTERROGATIONS

In an effort to ensure that the rights of individuals who are deaf, hard of hearing or have speech impairment are protected during a custodial interrogation, this department will provide interpreter services before beginning an interrogation, unless exigent circumstances exist or the individual has made a clear indication that he/she understands the process and desires to proceed without an interpreter. The use of a video remote interpreting service should be considered, where appropriate, if a live interpreter is not available. *Miranda* warnings shall be provided to suspects who are deaf or hard of hearing by a qualified interpreter or by providing a written *Miranda* warning card.

In order to ensure that communications during custodial investigations are accurately documented and are admissible as evidence, interrogations should be recorded whenever reasonably possible. See guidance on recording custodial interrogations in the Investigation and Prosecution Policy.

### 343.15 ARREST AND BOOKINGS

If an individual with speech or hearing disabilities is arrested, the arresting officer shall use department-approved procedures to provide a qualified interpreter at the place of arrest or booking as soon as reasonably practicable, unless the individual indicates that he/she prefers a different auxiliary aid or service or the officer reasonably determines another effective method of communication exists under the circumstances.

When gathering information during the booking process, members should remain alert to the impediments that often exist when communicating with those who are deaf, hard of hearing, who have impaired speech or vision, are blind, or have other disabilities. In the interest of the arrestee's health and welfare, the safety and security of the facility and to protect individual

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rights, it is important that accurate medical screening and booking information be obtained. If necessary, members should seek the assistance of a qualified interpreter whenever there is concern that accurate information cannot be obtained or that booking instructions may not be properly understood by the individual.

Individuals who require and possess personally owned communication aids (e.g., hearing aids, cochlear processors) should be permitted to retain them while in custody.

### **343.16 COMPLAINTS**

The Department shall ensure that individuals with disabilities who wish to file a complaint regarding members of this department are able to do so. The Department may provide a qualified interpreter or forms in enlarged print, as appropriate. Complaints will be referred to the department ADA Coordinator.

Investigations into such complaints shall be handled in accordance with the Personnel Complaints Policy. Qualified interpreters used during the investigation of a complaint should not be members of this Department.

### **343.17 COMMUNITY OUTREACH**

Community outreach programs and other such services offered by this department are important to the ultimate success of more traditional law enforcement duties. This department will continue to work with community groups, local businesses and neighborhoods to provide equal access to such programs and services.

### **343.18 TRAINING**

To ensure that all members who may have contact with individuals who are disabled are properly trained, the Department will provide periodic training that should include:

- (a) Awareness and understanding of this policy and related procedures, related forms and available resources.
- (b) Procedures for accessing qualified interpreters and other available resources.
- (c) Working with in-person and telephone interpreters and related equipment.

The Training Manager shall be responsible for ensuring new members receive training related to interacting with individuals who have disabilities, including individuals who are deaf, hard of hearing, who have impaired speech or vision, or are blind. Those who may have contact with such individuals should receive refresher training at least once every two years thereafter. The Training Manager shall maintain records of all training provided, and will retain a copy in each member's training file in accordance with established records retention schedules.



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### 343.18.1 CALL-TAKER TRAINING

Emergency call-takers shall be trained in the use of TTY equipment protocols for communicating with individuals who are deaf, hard of hearing or who have speech impairments. Such training and information should include:

- (a) The requirements of the ADA and Section 504 of the Rehabilitation Act for telephone emergency service providers.
- (b) ASL syntax and accepted abbreviations.
- (c) Practical instruction on identifying and processing TTY or TDD calls, including the importance of recognizing silent TTY or TDD calls, using proper syntax, abbreviations and protocol when responding to TTY or TDD calls.
- (d) Hands-on experience in TTY and TDD communications, including identification of TTY or TDD tones.

Training should be mandatory for all Dispatch members who may have contact with individuals from the public who are deaf, hard of hearing or have impaired speech. Refresher training should occur every six months.

## Mandatory Employer Notification

### 344.1 PURPOSE AND SCOPE

The purpose of this policy is to describe the requirements and procedures to follow when a public or private school employee (teacher and non-teacher) has been arrested under certain circumstances.

### 344.2 MANDATORY SCHOOL EMPLOYEE ARREST REPORTING

In the event a school employee is arrested for any offense enumerated below, the Chief of Police or his/her designee is required to report the arrest as follows.

#### 344.2.1 ARREST OF PUBLIC SCHOOL TEACHER

In the event a public school teacher is arrested for any controlled substance offense enumerated in Health and Safety Code § 11591 or Health and Safety Code § 11364, in so far as that section relates to Health and Safety Code § 11054(d)(12), or for any of the offenses enumerated in Penal Code § 290, Penal Code § 261(a), or Education Code § 44010, the Chief of Police or his/her designee is mandated to immediately notify by telephone the superintendent of the school district employing the teacher and to immediately give written notice of the arrest to the Commission on Teacher Credentialing and to the superintendent of schools in the county where the person is employed (Health and Safety Code § 11591; Penal Code § 291).

#### 344.2.2 ARREST OF PUBLIC SCHOOL NON-TEACHER EMPLOYEE

In the event a public school non-teacher employee is arrested for any controlled substance offense enumerated in Health and Safety Code § 11591 or Health and Safety Code § 11364, in so far as that section relates to Health and Safety Code § 11054(d)(12), or for any of the offenses enumerated in Penal Code § 290, Penal Code § 261(a), or Education Code § 44010, the Chief of Police or his/her designee is mandated to immediately notify by telephone the superintendent of the school district employing the non-teacher and to immediately give written notice of the arrest to the governing board of the school district employing the person (Health and Safety Code § 11591; Penal Code § 291).

#### 344.2.3 ARREST OF PRIVATE SCHOOL TEACHER

In the event a private school teacher is arrested for any controlled substance offense enumerated in Health and Safety Code § 11591 or Health and Safety Code § 11364, in so far as that section relates to Health and Safety Code § 11054(d)(12), or for any of the offenses enumerated in Penal Code § 290 or Education Code § 44010, the Chief of Police or his/her designee is mandated to immediately notify by telephone the private school authority employing the teacher and to immediately give written notice of the arrest to the private school authority employing the teacher (Health and Safety Code § 11591; Penal Code § 291.1).

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## *Mandatory Employer Notification*

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### **344.2.4 ARREST OF COMMUNITY COLLEGE INSTRUCTOR**

In the event a teacher or instructor employed in a community college district school is arrested for any controlled substance offense enumerated in Health and Safety Code § 11591.5 or Health and Safety § 11364, in so far as that section relates to Health and Safety Code § 11054(d)(9), or for any of the offenses enumerated in Penal Code § 290 or in Penal Code § 261(a)(1), the Chief of Police or the authorized designee is mandated to immediately notify by telephone the superintendent of the community college district employing the person, and shall immediately give written notice of the arrest to the California Community Colleges Chancellor's Office (Health and Safety Code § 11591.5; Penal Code § 291.5).

### **344.3 POLICY**

The Walnut Creek Police Department will meet the reporting requirements of California law to minimize the risks to children and others.

### **344.4 ARREST OF PERSONS EMPLOYED IN COMMUNITY CARE FACILITIES**

In the event an employee of a community treatment facility, a day treatment facility, a group home, a short-term residential therapeutic program or a foster family agency is arrested for child abuse (as defined in Penal Code § 11165.6) and the employee is free to return to work where children are present, the investigating member shall notify the licensee of the charge of abuse (Health and Safety Code § 1522.2).

## Chaplain Program

### 345.1 PURPOSE AND SCOPE

This policy establishes the guidelines for Walnut Creek Police Department chaplains to provide counseling or emotional support to members of the Department, their families and members of the public.

### 345.2 POLICY

The Walnut Creek Police Department shall ensure that department chaplains are properly appointed, trained and supervised to carry out their responsibilities without financial compensation.

### 345.3 ELIGIBILITY

Requirements for participation as a chaplain for the Department may include, but are not limited to:

- (a) Being above reproach, temperate, prudent, respectable, hospitable, able to teach, be free from addiction to alcohol or other drugs, and excessive debt.
- (b) Managing their households, families and personal affairs well.
- (c) Having a good reputation in the community.
- (d) Successful completion of an appropriate-level background investigation.
- (e) A minimum of five years of successful counseling experience.
- (f) Possession of a valid driver license.
- (g) Be a member in good standing with the International Conference of Police Chaplains (ICPC).

The Chief of Police may apply exceptions for eligibility based on organizational needs and the qualifications of the individual.

### 345.4 RECRUITMENT, SELECTION AND APPOINTMENT

The Walnut Creek Police Department shall endeavor to recruit and appoint only those applicants who meet the high ethical, moral and professional standards set forth by this department.

All applicants shall be required to meet and pass the same pre-employment procedures as department personnel before appointment.

#### 345.4.1 SELECTION AND APPOINTMENT

Chaplain candidates shall successfully complete the following process prior to appointment as a chaplain:

- (a) Submit the appropriate written application.
- (b) Include a recommendation from employers or volunteer programs.
- (c) Interview with the Chief of Police and the chaplain coordinator.

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- (d) Successfully complete an appropriate-level background investigation.
- (e) Complete an appropriate probationary period as designated by the Chief of Police.

Chaplains are volunteers and serve at the discretion of the Chief of Police. Chaplains shall have no property interest in continued appointment. However, if a chaplain is removed for alleged misconduct, the chaplain will be afforded an opportunity solely to clear his/her name through a liberty interest hearing, which shall be limited to a single appearance before the Chief of Police or the authorized designee.

### **345.5 IDENTIFICATION AND UNIFORMS**

As representatives of the Department, chaplains are responsible for presenting a professional image to the community. Chaplains shall dress appropriately for the conditions and performance of their duties. Uniforms and necessary safety equipment will be provided for each chaplain. Identification symbols worn by chaplains shall be different and distinct from those worn by officers through the inclusion of "Chaplain" on the uniform and not reflect any religious affiliation.

Chaplains will be issued Walnut Creek Police Department identification cards, which must be carried at all times while on-duty. The identification cards will be the standard Walnut Creek Police Department identification cards, with the exception that "Chaplain" will be indicated on the cards. Chaplains shall be required to return any issued uniforms or department property at the termination of service.

Chaplains shall conform to all uniform regulations and appearance standards of this department.

### **345.6 CHAPLAIN COORDINATOR**

The Chief of Police shall delegate certain responsibilities to a chaplain coordinator. The coordinator shall be appointed by and directly responsible to the Administration Bureau Commander or the authorized designee.

The chaplain coordinator shall serve as the liaison between the chaplains and the Chief of Police. The function of the coordinator is to provide a central coordinating point for effective chaplain management within the Department, and to direct and assist efforts to jointly provide more productive chaplain services. Under the general direction of the Chief of Police or the authorized designee, chaplains shall report to the chaplain coordinator and/or Watch Commander.

The chaplain coordinator may appoint a senior chaplain or other designee to assist in the coordination of chaplains and their activities.

The responsibilities of the coordinator or the authorized designee include, but are not limited to:

- (a) Recruiting, selecting and training qualified chaplains.
- (b) Conducting chaplain meetings.
- (c) Establishing and maintaining a chaplain callout roster.
- (d) Maintaining records for each chaplain.
- (e) Tracking and evaluating the contribution of chaplains.

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- (f) Maintaining a record of chaplain schedules and work hours.
- (g) Completing and disseminating, as appropriate, all necessary paperwork and information.
- (h) Planning periodic recognition events.
- (i) Maintaining liaison with other agency chaplain coordinators.

An evaluation of the overall use of chaplains will be conducted on an annual basis by the coordinator.

### **345.7 DUTIES AND RESPONSIBILITIES**

Chaplains assist the Department, its members and the community, as needed. Assignments of chaplains will usually be to augment the Patrol Bureau. Chaplains may be assigned to other areas within the Department as needed. Chaplains should be placed only in assignments or programs that are consistent with their knowledge, skills, abilities and the needs of the Department.

All chaplains will be assigned to duties by the chaplain coordinator or the authorized designee.

Chaplains may not proselytize or attempt to recruit members of the Department or the public into a religious affiliation while representing themselves as chaplains with this department. If there is any question as to the receiving person's intent, chaplains should verify that the person is desirous of spiritual counseling or guidance before engaging in such discussion.

Chaplains may not accept gratuities for any service or any subsequent actions or follow-up contacts that were provided while functioning as a chaplain for the Walnut Creek Police Department.

#### **345.7.1 COMPLIANCE**

Chaplains are volunteer members of this department, and except as otherwise specified within this policy, are required to comply with the Volunteer Program Policy and other applicable policies.

#### **345.7.2 OPERATIONAL GUIDELINES**

- (a) Chaplains are expected to be available on-call 24-hours a day, 7 days a week.
- (b) Generally, each chaplain will serve with Walnut Creek Police Department personnel as required.
- (c) At the end of each event the chaplain will complete an incident report summarizing their actions and submit the report to the Chief of Police or the authorized designee.
- (d) Chaplains shall be permitted to ride with officers during any shift and observe Walnut Creek Police Department operations, provided the Watch Commander has been notified and has approved the activity.
- (e) Chaplains shall not be evaluators of members of the Department.
- (f) In responding to incidents, a chaplain shall never function as an officer.
- (g) When responding to in-progress calls for service, chaplains may be required to stand-by in a secure area until the situation has been deemed safe.

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- (h) Chaplains shall serve only within the jurisdiction of the Walnut Creek Police Department unless otherwise authorized by the Chief of Police or the authorized designee.
- (i) Each chaplain shall have access to current department member rosters, addresses, telephone numbers, duty assignments and other information that may assist in his/her duties. Such information will be considered confidential and each chaplain will exercise appropriate security measures to prevent distribution of the data.

### 345.7.3 ASSISTING DEPARTMENT MEMBERS

The responsibilities of a chaplain related to department members include, but are not limited to:

- (a) Assisting in making notification to families of members who have been seriously injured or killed and, after notification, responding to the hospital or home of the member.
- (b) Visiting sick or injured members in the hospital or at home.
- (c) Attending and participating, when requested, in funerals of active or retired members.
- (d) Serving as a resource for members when dealing with the public in incidents, such as accidental deaths, suicides, suicidal subjects, serious accidents, drug and alcohol abuse and other such situations that may arise.
- (e) Providing counseling and support for members and their families.
- (f) Being alert to the needs of members and their families.

### 345.7.4 ASSISTING THE DEPARTMENT

The responsibilities of a chaplain related to this department include, but are not limited to:

- (a) Assisting members in the diffusion of a conflict or incident, when requested.
- (b) Responding to natural and accidental deaths, suicides and attempted suicides, family disturbances and any other incident that in the judgment of the Watch Commander or supervisor aids in accomplishing the mission of the Department.
- (c) Responding to all major disasters, such as natural disasters, bombings and similar critical incidents.
- (d) Being on-call and, if possible, on-duty during major demonstrations or any public function that requires the presence of a large number of department members.
- (e) Attending department and academy graduations, ceremonies and social events and offering invocations and benedictions, as requested.
- (f) Participating in in-service training classes.
- (g) Willingness to train others to enhance the effectiveness of the Department.

### 345.7.5 ASSISTING THE COMMUNITY

The duties of a chaplain related to the community include, but are not limited to:

- (a) Fostering familiarity with the role of law enforcement in the community.

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- (b) Providing an additional link between the community, other chaplain coordinators and the Department.
- (c) Providing liaison with various civic, business and religious organizations.
- (d) Promptly facilitating requests for representatives or leaders of various denominations.
- (e) Assisting the community in any other function as needed or requested.
- (f) Making referrals in cases where specialized attention is needed or in cases that are beyond the chaplain's ability to assist.

### 345.7.6 CHAPLAIN MEETINGS

All chaplains are required to attend scheduled meetings. Any absences must be satisfactorily explained to the chaplain coordinator.

### 345.8 PRIVILEGED COMMUNICATIONS

No person who provides chaplain services to members of the Department should work or volunteer for the Walnut Creek Police Department in any capacity other than that of chaplain.

Department chaplains shall be familiar with state evidentiary laws and rules pertaining to the limits of the clergy-penitent, psychotherapist-patient and other potentially applicable privileges and shall inform members when it appears reasonably likely that the member is discussing matters that are not subject to privileged communications. In such cases, the chaplain should consider referring the member to a non-department counseling resource.

No chaplain shall provide counsel to or receive confidential communications from any Walnut Creek Police Department member concerning an incident personally witnessed by the chaplain or concerning an incident involving the chaplain.

### 345.9 TRAINING

The Department will establish a minimum number of training hours and standards for department chaplains. The training, as approved by the Training Manager, may include:

- Stress management
- Death notifications
- Symptoms of post-traumatic stress
- Burnout for members of law enforcement and chaplains
- Legal liability and confidentiality
- Ethics
- Responding to crisis situations
- The law enforcement family
- Substance abuse
- Suicide



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- Officer injury or death
- Sensitivity and diversity

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## Public Safety Camera System

### 346.1 PURPOSE AND SCOPE

This policy provides guidance for the placement and monitoring of department public safety video surveillance, as well as the storage and release of the captured images.

This policy only applies to overt, marked public safety video surveillance systems operated by the Department. It does not apply to mobile audio/video systems, covert audio/video systems or any other image-capturing devices used by the Department.

### 346.2 POLICY

The Walnut Creek Police Department operates a public safety video surveillance system to complement its anti-crime strategy, to effectively allocate and deploy personnel, and to enhance public safety and security in public areas. Cameras may be placed in strategic locations throughout the City to detect and deter crime, to help safeguard against potential threats to the public, to help manage emergency response situations during natural and man-made disasters and to assist City officials in providing services to the community.

Video surveillance in public areas will be conducted in a legal and ethical manner while recognizing and protecting constitutional standards of privacy.

### 346.3 OPERATIONAL GUIDELINES

Only department-approved video surveillance equipment shall be utilized. Members authorized to monitor video surveillance equipment should only monitor public areas and public activities where no reasonable expectation of privacy exists. The Chief of Police or the authorized designee shall approve all proposed locations for the use of video surveillance technology and should consult with and be guided by legal counsel as necessary in making such determinations.

#### 346.3.1 PLACEMENT AND MONITORING

Camera placement will be guided by the underlying purpose or strategy associated with the overall video surveillance plan. As appropriate, the Chief of Police should confer with other affected City divisions and designated community groups when evaluating camera placement. Environmental factors, including lighting, location of buildings, presence of vegetation or other obstructions, should also be evaluated when determining placement.

The cameras shall only record video images and not sound. Recorded images may be used for a variety of purposes, including criminal investigations and monitoring of activity around high-value or high-threat areas. The public video surveillance system may be useful for the following purposes:

- (a) To prevent, deter and identify criminal activity.
- (b) To target identified areas of gang and narcotics complaints or activity.
- (c) To respond to critical incidents.

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## *Public Safety Camera System*

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- (d) To assist in identifying, apprehending and prosecuting offenders.
- (e) To document officer and offender conduct during interactions to safeguard the rights of the public and officers
- (f) To augment resources in a cost-effective manner.
- (g) To monitor pedestrian and vehicle traffic activity.

Images from each camera should be recorded in a manner consistent with the underlying purpose of the particular camera. Images should be transmitted to monitors installed in the Watch Commander's office and Dispatch. When activity warranting further investigation is reported or detected at any camera location, the available information should be provided to responding officers in a timely manner. The Watch Commander or trained Dispatch personnel are authorized to adjust the cameras to more effectively view a particular area for any legitimate public safety purpose.

The Chief of Police may authorize video feeds from the public safety video surveillance system to be forwarded to a specified location for monitoring by other than police personnel, such as allied government agencies, road or traffic crews, or fire or emergency operations personnel.

Unauthorized recording, viewing, reproduction, dissemination or retention is prohibited.

### **346.3.2 TRAINING**

Personnel involved in video monitoring will be appropriately trained and supervised.

### **346.3.3 INTEGRATION WITH OTHER TECHNOLOGY**

The Department may elect to integrate its public safety video surveillance system with other technology to enhance available information. Systems such as gunshot detection, incident mapping, crime analysis, license plate recognition, facial recognition and other video-based analytical systems may be considered based upon availability and the nature of department strategy.

The Department should evaluate the availability and propriety of networking or otherwise collaborating with appropriate private sector entities and should evaluate whether the use of certain camera systems, such as pan-tilt-zoom systems and video enhancement or other analytical technology, requires additional safeguards.

## **346.4 VIDEO SUPERVISION**

Supervisors should monitor video surveillance access and usage to ensure members are within department policy and applicable laws. Supervisors should ensure such use and access is appropriately documented.

### **346.4.1 PROHIBITED ACTIVITY**

Public safety video surveillance systems will not intentionally be used to invade the privacy of individuals or observe areas where a reasonable expectation of privacy exists.

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## *Public Safety Camera System*

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Public video surveillance equipment shall not be used in an unequal or discriminatory manner and shall not target protected individual characteristics including, but not limited to race, ethnicity, national origin, religion, disability, gender or sexual orientation.

Video surveillance equipment shall not be used to harass, intimidate or discriminate against any individual or group.

### **346.5 REVIEW OR RELEASE OR OF VIDEO IMAGES**

The review or the release of video images shall be done only with the authorization of the Chief or his/her designee and only with a properly completed written request. Video images needed for a criminal investigation or other official reason shall be collected and booked in accordance with current departmental evidence procedures.

#### **346.5.1 PUBLIC AND OTHER AGENCY REQUESTS**

Requests for recorded video images from other government agencies or by the submission of a court order or subpoena shall be promptly submitted to the Custodian of Records, who will promptly research the request and submit the results of such search through the Chief of Police to the City Attorney's office for further handling. Every reasonable effort should be made to preserve the data requested until the request has been fully processed by the City Attorney's office.

Video images captured by the CCTV camera system are considered a Police work product and they are surveillance videos, therefore subject to the exemption for disclosure under Govt. Code Section 6254(f).

Video images captured by public safety cameras that are requested by the public or media will be made available only to the extent required by law. Except as required by a valid court order or other lawful process, video images requested under the Public Records Act will generally not be disclosed to the public.

### **346.6 ANNUAL REVIEW OF THE PUBLIC SAFETY CAMERA SYSTEM**

The Chief of Police or his/her designee will conduct an annual review of the public safety camera system. The annual review will include an inventory of video monitoring installations, date of installation, summary of the purpose, adherence to this policy and any proposed policy changes. The results of each review will be documented and maintained by the Chief of Police or his/her designee and other applicable advisory bodies. Any concerns or deviations from this policy will be addressed promptly and effectively.

### **346.7 TRAINING**

All department members authorized to operate or access public video surveillance systems shall receive appropriate training. Training should include guidance on the use of cameras, interaction with dispatch and patrol operations and a review regarding relevant policies and procedures, including this policy. Training should also address state and federal law related to the use of video surveillance equipment and privacy.

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## Child and Dependent Adult Safety

### 347.1 PURPOSE AND SCOPE

This policy provides guidelines to ensure that children and dependent adults are not left without appropriate care in the event their caregiver or guardian is arrested or otherwise prevented from providing care due to actions taken by members of this department (Penal Code § 833.2(a)).

This policy does not address the actions to be taken during the course of a child abuse or dependent adult investigation. These are covered in the Child Abuse and Adult Abuse policies.

#### 347.1.1 POLICY

It is the policy of this department to mitigate, to the extent reasonably possible, the stressful experience children may have when their parent or caregiver is arrested. The Walnut Creek Police Department will endeavor to create a strong cooperative relationship with local, state and community-based child social services to ensure an effective, collaborative response that addresses the needs of affected children.

### 347.2 POLICY

It is the policy of this department to mitigate, to the extent reasonably possible, the stressful experience individuals may have when their parent or caregiver is arrested. The Walnut Creek Police Department will endeavor to create a strong, cooperative relationship with local, state and community-based social services to ensure an effective, collaborative response that addresses the needs of those affected, including call-out availability and follow-up responsibilities.

#### 347.2.1 AFTER AN ARREST

Whenever an arrest is made, the officer should take all reasonable steps to ensure the safety of the arrestee's disclosed or discovered, dependent minor children.

Officers should allow the arrestee reasonable time to arrange for care of minor children. Temporary placement of the child with family or friends may be appropriate. However, any decision should give priority to a child-care solution that is in the best interest of the child. In such cases the following guidelines should be followed:

- (a) Allow the person reasonable time to arrange for the care of minor children with a responsible party, as appropriate.
  1. Unless there is evidence to the contrary (e.g., signs of abuse, drug use, unsafe environment), officers should respect the parent's judgment regarding arrangements for child care. It is generally best if the child remains with relatives or family friends the child knows and trusts. Consideration regarding the child's familiarity with the surroundings, comfort, emotional state and safety should be paramount.
  2. Except when a court order exists limiting contact, the officer should attempt to locate and place dependent children with the non-arrested parent or guardian.

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## *Child and Dependent Adult Safety*

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- (b) Provide for the immediate supervision of minor children until an appropriate caregiver arrives.
- (c) Notify Child/Family Protective Services if appropriate.
- (d) Notify the field supervisor or Watch Commander of the disposition of minor children.

If children are at school or at a known location outside the household at the time of arrest, the arresting officer should attempt to contact the school or other known location and inform the principal or appropriate responsible adult of the parent's arrest and of the arrangements being made for the care of the arrestee's children, and then record the result of such actions in the associated report.

### **347.2.2 DURING THE BOOKING PROCESS**

During the booking process the arrestee should be allowed to make additional free local phone calls to relatives or other responsible individuals as is reasonably necessary to arrange for the care of any minor dependent child. These phone calls should be given immediately upon request or as soon as practicable and are in addition to any other phone calls allowed by law (Penal Code § 851.5(c)).

### **347.2.3 REPORTING**

For all arrests where children are present or living in the household, the reporting employee will include information about the children, including names, gender, age and how they were placed.

### **347.3 CHILD WELFARE SERVICES**

Whenever an arrestee is unwilling or incapable of arranging for the appropriate care of any dependent minor children, the handling officer should consider taking children into protective custody and placing them with the appropriate county child welfare service or other department-approved social service (Welfare and Institutions Code § 305).

Only when other reasonable options are exhausted should a child be transported to the police's facility, transported in a marked patrol car or taken into formal protective custody.

Under no circumstances should a child be left unattended or without appropriate care.

#### **347.3.1 SUPPORT AND COUNSELING REFERRAL**

If, in the judgment of the handling officers, the child or dependent adult would benefit from additional assistance, such as counseling services, contact with a victim advocate or a crisis telephone number, the appropriate referral information may be provided.

### **347.4 DEPENDENT WELFARE SERVICES**

Whenever an arrestee is unwilling or incapable of arranging for the appropriate care of any child or dependent adult, the handling officer should contact the appropriate welfare service or other department-approved social service to determine whether protective custody is appropriate (Welfare and Institutions Code § 305).

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## *Child and Dependent Adult Safety*

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Only when other reasonable options are exhausted should a child or dependent adult be transported to the police facility, transported in a marked patrol car or taken into formal protective custody.

Under no circumstances should a child or dependent adult be left unattended or without appropriate care.

### **347.5 TRAINING**

The Training Manager is responsible to ensure that all personnel of this department who may be involved in arrests affecting children or dependent adults receive approved POST-approved training on effective safety measures when a parent, guardian or caregiver is arrested (Penal Code § 13517.7).

## Service Animals

### 348.1 PURPOSE AND SCOPE

The purpose of this policy is to provide the guidelines necessary to ensure the rights of individuals who use service animals to assist with disabilities are protected in accordance with Title II of the Americans with Disabilities Act of 1990 (ADA).

#### 348.1.1 DEFINITIONS

Definitions related to this policy include:

**Service animal** - A dog that is trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual or other mental disability. The work or tasks performed by a service animal must be directly related to the individual's disability (28 CFR 35.104; Health and Safety Code § 113903).

Service animal also includes a miniature horse if the horse is trained to do work or perform tasks for people with disabilities, provided the horse is housebroken, is under the handler's control, the facility can accommodate the horse's type, size and weight, and the horse's presence will not compromise legitimate safety requirements necessary for safe operation of the facility (28 CFR 35.136(i)).

### 348.2 POLICY

It is the policy of the Walnut Creek Police Department to provide services and access to persons with service animals in the same manner as those without service animals. Department members shall protect the rights of persons assisted by service animals in accordance with state and federal law.

### 348.3 IDENTIFICATION AND USE OF SERVICE ANIMALS

Some service animals may be readily identifiable. However, many do not have a distinctive symbol, harness or collar.

Service animals may be used in a number of ways to provide assistance, including:

- Guiding people who are blind or have low vision.
- Alerting people who are deaf or hard of hearing.
- Retrieving or picking up items, opening doors or flipping switches for people who have limited use of their hands, arms or legs.
- Pulling wheelchairs.
- Providing physical support and assisting with stability and balance.
- Doing work or performing tasks for persons with traumatic brain injury, intellectual disabilities or psychiatric disabilities, such as reminding a person with depression to take medication.



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## *Service Animals*

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- Alerting a person with anxiety to the onset of panic attacks, providing tactile stimulation to calm a person with post-traumatic stress disorder, assisting people with schizophrenia to distinguish between hallucinations and reality, and helping people with traumatic brain injury to locate misplaced items or follow daily routines.

### **348.4 MEMBER RESPONSIBILITIES**

Service animals that are assisting individuals with disabilities are permitted in all public facilities and areas where the general public is allowed. Department members are expected to treat individuals with service animals with the same courtesy and respect that the Walnut Creek Police Department affords to all members of the public (28 CFR 35.136).

#### **348.4.1 INQUIRY**

If it is apparent or if a member is aware that an animal is a service animal, the individual generally should not be asked any questions as to the status of the animal. If it is unclear whether an animal meets the definition of a service animal, the member should ask the individual only the following questions (28 CFR 35.136(f)):

- Is the animal required because of a disability?
- What task or service has the service animal been trained to perform?

If the individual explains that the animal is required because of a disability and has been trained to work or perform at least one task, the animal meets the definition of a service animal and no further questions as to the animal's status should be asked. The individual should not be questioned about his/her disability nor should the person be asked to provide any license, certification or identification card for the service animal.

#### **348.4.2 CONTACT**

Service animals are not pets. Department members should not interfere with the important work performed by a service animal by talking to, petting or otherwise initiating contact with a service animal.

#### **348.4.3 REMOVAL**

If a service animal is not housebroken or exhibits vicious behavior, poses a direct threat to the health of others, or unreasonably disrupts or interferes with normal business operations, an officer may direct the handler to remove the animal from the premises. Barking alone is not a threat nor does a direct threat exist if the person takes prompt, effective action to control the service animal (28 CFR 35.136(b)).

Each incident must be considered individually and past incidents alone are not cause for excluding a service animal. Removal of a service animal may not be used as a reason to refuse service to an individual with disabilities. Members of this department are expected to provide all services as are reasonably available to an individual with a disability, with or without a service animal.

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## *Service Animals*

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### 348.4.4 COMPLAINTS

When handling calls of a complaint regarding a service animal, members of this department should remain neutral and should be prepared to explain the ADA requirements concerning service animals to the concerned parties. Businesses are required to allow service animals to accompany their handlers into the same areas that other customers or members of the public are allowed (28 CFR 36.302).

Absent a violation of law independent of the ADA, officers should take no enforcement action beyond keeping the peace. Individuals who believe they have been discriminated against as a result of a disability should be referred to the Civil Rights Division of the U.S. Department of Justice (DOJ).

## Investigations Involving Animals

### 349.1 POLICY

The City of Walnut Creek contracts for animal services with Contra Costa County Animal Services. The public phone number is 925-335-8300. Included in this service is the investigation of barking dog complaints and cruelty to animals. The Contra Costa County Animal Services Department is the primary agency for such complaints.

### 349.2 INVESTIGATING BARKING DOG NUISANCE COMPLAINTS

The following procedures should be used when a resident complains of a barking dog nuisance:

#### 349.2.1 COMPLAINTS MADE DURING NORMAL WEEKDAY BUSINESS HOURS

Complainants should be immediately referred to the Contra Costa County Animal Services Department (ASD) (925) 335-8300. ASD will explain the investigative process and will send the complainant a "Nuisance Complaint Form" on which the complainant can document specific circumstances of the nuisance. Complainants who insist on an immediate response may be accommodated by sending a WCPD officer to their residence. However, every effort should be made to encourage direct reporting to ASD because the investigation will be managed by that agency. Complainants who insist that a report be made immediately through WCPD should be served in the method described in the following section.

#### 349.2.2 COMPLAINTS MADE AT ANY OTHER TIME

Complainants should be encouraged to document the circumstances of the nuisance and be referred to ASD. They should be instructed to call ASD during regular business hours, at which time ASD will assume the investigation. However, if it is an on-going issue ASD can be called after hours and requested to respond. As a last resort and when appropriate WCPD action should be taken if the nuisance can be easily abated or if the resident insists on contact at the time of the call. Based on specific circumstances, our response and action should be documented in an appropriate manner. This can vary from an incident report to a case report detailing contacts, names, and results or recommended action. In the event the WCPD officer feels that a nuisance exists, a numbered case should be written. The closing sentence in the investigation should be similar to "forwarded to Animal Services for action." This statement is necessary so that ASD knows that we want them to assume responsibility for the investigation. They will then start their investigation.

#### 349.2.3 OTHER ANIMAL PROBLEMS

Complaints involving exotic animals and zoning violations involving land use should be directed to the City of Walnut Creek Planning Division, 943 5834. Section 10 2.3.108 of the Walnut Creek Municipal Code states that these animal nuisances are investigated by the City Zoning Administrator, not the police department. However, this does not preclude an officer response to a

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## *Investigations Involving Animals*

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complaint registered during the hours that the Planning Division is closed. Complainants should be encouraged to call the Planning Division during the hours they are open. A police response during the off hours should be appropriately documented. An initial investigation should be forwarded to the City Planning Division for follow up.

### **349.3 INVESTIGATING INJURED AND CRUELTY TO ANIMAL CASES**

- (a) Injured and Uncontrolled Animals; The most common calls for animal services deal with animals that are running loose on the roadway or are injured as a result of a traffic collision. Animal services will respond, pick up, and care for the animal. Uncontrolled, injured and/or stray animals may be held in the gated fenced cage located on the east side of the PD parking lot for a short time only if the officer feels the animal is not dangerous. Animal Services will later pick up the animal.
- (b) Animals in cars in violation of 416-4.402E (Authority 5-1.01 WCMC, Adoption of County Animal Ordinance). "No dog or any other animal shall be left completely enclosed in a parked vehicle without adequate ventilation, or in such a way as to subject the animal to temperatures sufficiently above ambience to affect the animal's health and welfare."
- (c) The driver of the car may be cited for violating this ordinance. If the driver cannot be located, the officer may forcibly enter the car, remove the animal, and turn it over to Animal Services for care. Animal Services should be informed of any emergency circumstances and instructed to have the animal examined by a veterinary doctor. Animal Services will arrange for the exam and will bill the owner. The following are examples of typical cases illustrating whether or not to enforce this ordinance:
  - 1. A car parked with all the windows open and a dog inside is probably not a violation.
  - 2. A car parked with most of the windows up in the winter is probably not a violation.
  - 3. A car parked in a shopping center with the windows rolled up in 100 degree heat for more than a few minutes is probably a violation. The dog will probably be panting, and its tongue generally will be a bright color. Fifteen to twenty minutes in a closed car in such heat can kill a dog.
- (d) Animal Services will assist us in our investigation. WCPD's investigating officer should arrange for entering the car, using whatever force is necessary. After we open the car, Animal Services will proceed with the capture and removal of the animal. Walnut Creek officers should complete the form carried by the Animal Services officer and indicate how the animal is to be stored (impound, release to owner, vet, exam, etc.). The citation may be completed in the violation box similar to this example: 416-4.402E CCC Code as adopted per 5-1.01 WCMC (Animal in vehicle w/o ventilation)
- (e) Removing Animals Endangering Officers Serving a Search Warrant: If officers serving a search warrant encounter or expect to encounter a dangerous or threatening animal,

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## *Investigations Involving Animals*

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Animal Services should be called and the animal captured and stored by them. Animal Services will not forcibly enter the property but will generally be with the officers serving the warrant. Complete the Animal Services form so that Animal Services may properly dispose of the animal.

- (f) **Animal Cruelty Cases (597 PC).** Animal cruelty cases should be thoroughly investigated and documented. The public has different views of what cruelty is and a report may not support a violation or the public may be misinformed. Often the officer's presence and explanation to the alleged offender may resolve the conflict. The following are some guidelines for determining whether the case falls under 597 PC:
  1. At Heather Farm, we often encounter enthusiasts training dogs. If the handler seems to harshly correct the dog but the officer does not believe that the correction was cruel, appropriate action would be for the officer to suggest that the handler train the dog out of the public's view.
  2. Owners who deny their dogs food and water a day or more may be the subjects of an animal cruelty investigation. In unusual cases in which the officer believes it is in danger of dying, the officer may order the animals removed and should call Animal Services for assistance.
- (g) **Animal Cruelty by Mentally Ill or Senile Owner -** Occasionally, an officer may be called upon to assist an elderly person who can no longer care for his animals. If the animals are denied food and water, they can be impounded, if no other feasible solution (such as calling relatives) will work. If possible, find a neighbor or relative to care for the animal. However, if the animal needs immediate attention by a veterinarian, the officer should order the animal impounded and cared for by a vet.

## Volunteer Program

### 350.1 PURPOSE AND SCOPE

It is the policy of this department to use qualified volunteers for specified tasks and duties in order to create efficiencies for the Department and improve services to the community. Volunteers are intended to supplement and support, rather than supplant, sworn officers and civilian personnel. Volunteers can be an important part of any organization and are proven to be a valuable asset to law enforcement agencies. Volunteers help to increase departmental responsiveness, delivery of services and information input, and provide new program opportunities. In addition, volunteers bring new skills and expertise to the Department and prompt new enthusiasm.

#### 350.1.1 DEFINITION OF VOLUNTEER

An individual who performs a service for the Department without promise, expectation or receipt of compensation for services rendered. This may include unpaid chaplains, unpaid reserve officers, interns, persons providing administrative support and youth involved in a law enforcement Explorer Post, among others.

### 350.2 VOLUNTEER MANAGEMENT

The Services Bureau is responsible for the overall management and coordination of the VIPS program, though other units within the Department may directly supervise specific assignments.

#### 350.2.1 VOLUNTEER COORDINATOR

The Volunteer Coordinator shall be appointed by the Administration Bureau Commander. The function of the Volunteer Coordinator is to provide a central coordinating point for effective volunteer management within the Department, and to direct and assist staff and volunteer efforts to jointly provide more productive services. The Volunteer Coordinator should work with other Department staff on an ongoing basis to assist in the development and implementation of volunteer-staffed positions.

The Volunteer Coordinator, or his/her designee, shall be responsible for the following:

- (a) Recruiting, selecting and training qualified volunteers for various positions.
- (b) Facilitating the implementation of new volunteer activities and assignments.
- (c) Maintaining records for each volunteer.
- (d) Tracking and evaluating the contribution of volunteers.
- (e) Maintaining the volunteer handbook and outlining expectations, policies and responsibilities for all volunteers.
- (f) Maintaining a record of volunteer schedules and work hours.
- (g) Completion and dissemination as appropriate of all necessary paperwork and information.
- (h) Planning periodic recognition events.

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## *Volunteer Program*

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- (i) Administering discipline when warranted.
- (j) Maintaining liaison with other volunteer-utilizing programs in the community and assisting in community-wide efforts to recognize and promote volunteering.

### 350.2.2 RECRUITMENT

Volunteers should be recruited on a continuous and ongoing basis consistent with department policy on equal opportunity nondiscriminatory employment. A primary qualification for participation in the application process should be an interest in, and an ability to assist the Department in serving the public.

Requests for volunteers should be submitted in writing by interested staff to the Volunteer Coordinator through the requester's immediate supervisor. A complete position description and a requested time-frame should be included in the request. All parties should understand that the recruitment of volunteers is enhanced by creative and interesting assignments. The Volunteer Coordinator may withhold assignment of any volunteer until such time as the requesting unit is prepared to make effective use of volunteer resources. Volunteers must be at least 18 years of age, a US Citizen or eligible for US Citizenship.

### 350.2.3 SCREENING

All prospective volunteers should complete the volunteer application form. The Volunteer Coordinator or designee should conduct a face-to-face interview with an applicant under consideration.

A documented background investigation shall be completed on each volunteer applicant and shall include, but not necessarily be limited to, the following:

- (a) Traffic and criminal background check. Fingerprints shall be obtained from all applicants and processed through the California Criminal Information Index.
- (b) Employment
- (c) References
- (d) Credit check

A polygraph exam may be required of each applicant depending on the type of assignment.

### 350.2.4 SELECTION AND PLACEMENT

Service as a volunteer with the Department shall begin with an official notice of acceptance or appointment to a volunteer position. Notice may only be given by an authorized representative of the Department, who will normally be the Volunteer Coordinator. No volunteer should begin any assignment until they have been officially accepted for that position and completed all required screening and paperwork. At the time of final acceptance, each volunteer should complete all required enrollment paperwork and will receive a copy of their position description and agreement of service with the Department. All volunteers shall receive a copy of the volunteer handbook and shall be required to sign a volunteer agreement.

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Volunteers should be placed only in assignments or programs that are consistent with their knowledge, skills, abilities and the needs of the Department.

### 350.2.5 TRAINING

Volunteers will be provided with an orientation program to acquaint them with the Department, personnel, policies and procedures that have a direct impact on their work assignment.

Volunteers should receive position-specific training to ensure they have adequate knowledge and skills to complete tasks required by the position and should receive periodic ongoing training as deemed appropriate by their supervisor or the Volunteer Coordinator.

Training should reinforce to volunteers that they may not intentionally represent themselves as, or by omission infer that they are sworn officers or other full-time members of the Department. They shall always represent themselves as volunteers.

All volunteers shall comply with the rules of conduct and with all orders and directives, either oral or written, issued by the Department.

### 350.2.6 FITNESS FOR DUTY

No volunteer shall report to work or be on-duty when his/her judgment or physical condition has been impaired by alcohol, medication, other substances, illness or injury.

Volunteers shall report to their supervisor any changes in status that may affect their ability to fulfill their duties. This includes, but is not limited to, the following:

- (a) Driver license
- (b) Medical condition
- (c) Arrests
- (d) Criminal investigations

All volunteers shall adhere to the guidelines set forth by this department regarding drug and alcohol use.

### 350.2.7 DRESS CODE

As representatives of the Department, volunteers are responsible for presenting a professional image to the community. Volunteers shall dress appropriately for the conditions and performance of their duties.

Volunteers shall conform to department-approved dress consistent with their duty assignment. Uniforms authorized for volunteers should be readily distinguishable from those worn by sworn officers. The uniform or identifiable parts of the uniform shall not be worn while off-duty except volunteers may choose to wear the uniform while in transit to or from official department assignments or functions provided an outer garment is worn over the uniform shirt so as not to bring attention to the volunteer while he/she is off duty.



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## *Volunteer Program*

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Volunteers shall be required to return any issued uniform or department property at the termination of service.

### **350.3 SUPERVISION OF VOLUNTEERS**

Each volunteer who is accepted to a position with the Department must have a clearly identified supervisor who is responsible for direct management of that volunteer. This supervisor will be responsible for day-to-day management and guidance of the work of the volunteer and should be available to the volunteer for consultation and assistance.

A volunteer may be assigned as and act as a supervisor of other volunteers provided that the supervising volunteer is under the direct supervision of a paid staff member.

Functional supervision of volunteers is the responsibility of the supervisor in charge of the unit where the volunteer is assigned. Following are some considerations to keep in mind while supervising volunteers:

- (a) Take the time to introduce volunteers to employees on all levels.
- (b) Ensure volunteers have work space and necessary office supplies.
- (c) Make sure the work is challenging. Do not hesitate to give them an assignment or task that will tap these valuable resources.

### **350.4 CONFIDENTIALITY**

With appropriate security clearance, volunteers may have access to confidential information such as criminal histories or investigative files. Unless otherwise directed by a supervisor or departmental policy, all information shall be considered confidential. Only that information specifically identified and approved by authorized personnel shall be released. Confidential information shall be given only to persons who have a need and a right to know as determined by departmental policy and supervisory personnel.

Each volunteer will be required to sign a nondisclosure agreement before being given an assignment with the Department. Subsequent unauthorized disclosure of any confidential information, verbally, in writing or by any other means, by the volunteer is grounds for immediate dismissal and possible criminal prosecution.

Volunteers shall not address public gatherings, appear on radio or television, prepare any article for publication, act as correspondents to a newspaper or other periodical, release or divulge any information concerning the activities of the Department, or maintain that they represent the Department in such matters without permission from the proper department personnel.

### **350.5 PROPERTY AND EQUIPMENT**

Volunteers will be issued an identification card that must be worn at all times while on-duty. Any fixed and portable equipment issued by the Department shall be for official and authorized use only. Any property or equipment issued to a volunteer shall remain the property of the Department and shall be returned at the termination of service.

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## *Volunteer Program*

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### 350.5.1 VEHICLE USE

Volunteers assigned to duties such as vacation house checks or other assignments that require the use of a vehicle must first complete the following:

- (a) A driving safety briefing and department approved driver safety course.
- (b) Verification that the volunteer possesses a valid California Driver License.
- (c) Verification that the volunteer carries current vehicle insurance.

The Volunteer Coordinator should insure that all volunteers receive safety briefing updates and license and insurance verification at least once a year.

When operating a Department vehicle, volunteers shall obey all rules of the road, including seat belt requirements. Smoking is prohibited in all Department vehicles.

Volunteers should not operate a marked patrol car unless there is a prominently placed sign indicating that it is out of service and are not authorized to operate a Department vehicle Code-3.

### 350.5.2 RADIO AND MDT USAGE

Volunteers shall successfully complete CLETS and radio procedures training prior to using the police radio or MDT and comply with all related provisions. The Volunteer Coordinator should ensure that radio and CLETS training is provided for volunteers whenever necessary.

## **350.6 DISCIPLINARY PROCEDURES/TERMINATION**

A volunteer may be removed from the volunteer program at the discretion of the Chief of Police or the Volunteer Coordinator. Volunteers shall have no property interests in their continued appointment. However, if a volunteer is removed for alleged misconduct, the volunteer will be afforded an opportunity solely to clear his/her name through a liberty interest hearing which shall be limited to a single appearance before the Chief of Police or authorized designee.

Volunteers may resign from volunteer service with the Department at any time. It is requested that volunteers who intend to resign provide advance notice of their departure and a reason for their decision.

### 350.6.1 EXIT INTERVIEWS

Exit interviews, where possible, should be conducted with volunteers who are leaving their positions. The interview should ascertain why the volunteer is leaving the position and solicit the volunteer's suggestions on improving the position. When appropriate, the interview should also include a discussion on the possibility of involvement in some other capacity with the Department.

## **350.7 EVALUATION**

An evaluation of the overall volunteer program will be conducted on an annual basis by the Volunteer Coordinator. Regular evaluations should be conducted with volunteers to ensure the best use of human resources available, to ensure personnel problems can be identified and dealt with promptly and fairly, and to ensure optimum satisfaction on the part of volunteers.

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# Uniform and Personnel Inspection Protocol

## 351.1 PURPOSE

This training bulletin is intended to provide a guideline for the establishment of a protocol for formal personnel and uniform inspections within the department.

## 351.2 PROCEDURE

The Chief of Police or his/her designee may conduct uniform and equipment inspections each year.

The schedule of team inspections will be disseminated at least 4 weeks in advance of the first scheduled inspection. The Operations Division Commander or his/her designee will determine the inspection schedule. The uniform to be inspected will be determined by the Operations Division Commander or his/her designee.

## 351.3 DUTIES OF THE TEAM SUPERVISORS

- Review the Department Uniform Regulations
- Ensure maximum participation by the team
- Provide the Chief's inspection date and time to the team as soon as possible
- Determine the most appropriate location to conduct the actual inspection
- Conduct a team inspection with the Team Manager at least 2 weeks prior to the Chief's inspection
- Ensure that specific deficiencies in fit or serviceability are identified during this pre-inspection
- Ensure that all corrective measures are taken as necessary
- Prior to the actual inspection if armed, all firearms will be rendered safe i.e. the magazine removed and round from the chamber removed and the pistol will be visually, mechanically and physically inspected to ensure that it is completely safe. This should be done under direct supervision in accordance with WCPD Directive # 4. The Team Supervisor and one other person will check all firearms.

## 351.4 CONDUCT OF THE FORMAL INSPECTION

- (a) The Team manager may follow the Chief and Captains through the inspection or remain to the rear of the formation.
- (b) Teams will form a single rank in descending order of the most senior to junior team member.
- (c) Each team member will be one arm's length to the left of the previous team member.

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### *Uniform and Personnel Inspection Protocol*

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- (d) The team and supervisor will be at the position of "Parade Rest" (Feet a little over shoulder width apart, hands resting in the small of the back, both hands open and right hand placed inside palm of left hand palms facing away from body).
- (e) If armed the pistols will be carried snapped in the holster completely safe.
- (f) When the inspecting members of the Command Staff (usually the Chief, Operations and Administration Division Commanders) enter the room the team supervisor will come to the "Position of Attention" (heels together, feet at a 45' angle, arms hanging naturally at the side fingers curled and thumbs along the trouser seam).
- (g) The team members will then come to the position of attention from parade rest.
- (h) If the entire team is unarmed, the team will remain at the position of attention, while the inspection is conducted.
- (i) If the team is armed, the supervisor will give the command "TEAM, PRESENT ARMS".
- (j) Team members who are not armed will remain at the position of attention.
- (k) The team members who are armed will then execute a 5 count present arms movement:
  - o Acquire grip on pistol grip, open retention snaps.
  - o Draw pistol to a position just above the holster.
  - o Rotate the pistol across body muzzle elevated at a 45' angle in front of chest.
  - o Free hand moves the slide to the rear to the locked position.
  - o Free hand returns to the side.
- (l) The team supervisor will not draw and present his/her pistol unless directed to do so by the Chief.
- (m) The Chief will then proceed through the inspection.
- (n) The Chief will inspect the team member's uniform and firearm and may make comments to and questions of the team members.
- (o) The captains will fall in after the Chief and follow him/her through the inspection. They too will inspect the team members uniform and firearm.
- (p) If the team member's pistol is taken from their hand by the Chief or one of the captains, the officer will relinquish hold of the pistol and drop his/her hand to their side.
- (q) After the team member's pistol has been inspected and is being returned to him/her the pistol grip will be provided to the team member. The team member will return the slide to the locked position if it is not already there and return the pistol to the original inspection position i.e. muzzle elevated to a 45' angle, pistol held in front of the chest.

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## *Uniform and Personnel Inspection Protocol*

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- (r) This process should be repeated until the Chief has inspected each of the team members.
- (s) After all team members have been inspected, the team supervisor will give the command "OFFICERS, ORDER ARMS".
- (t) The team members will then in unison release the slide with strong hand only and holster their weapons.
- (u) The team supervisor will give the command "TEAM, PARADE REST".
- (v) The team members will execute a movement to parade rest.
- (w) The Chief will address the team while in formation.

**NOTE:** The following additional steps are provided for the motor team:

- The officers will fall in next to their motorcycle in order of seniority from left to right as you face the formation.
- Officers will come to the position of attention while the inspection is taking place.
- The team supervisor will remain positioned next to his/her own motorcycle during the inspection.

## Off-Duty Law Enforcement Actions

### 352.1 PURPOSE AND SCOPE

The decision to become involved in a law enforcement action when off-duty can place an officer as well as others at great risk and must be done with careful consideration. This policy is intended to provide guidelines for officers of the Walnut Creek Police Department with respect to taking law enforcement action while off-duty.

### 352.2 POLICY

Initiating law enforcement action while off-duty is generally discouraged. Officers should not attempt to initiate enforcement action when witnessing minor crimes, such as suspected intoxicated drivers, reckless driving or minor property crimes. Such incidents should be promptly reported to the appropriate law enforcement agency.

Officers are not expected to place themselves in unreasonable peril. However, any sworn member of this department who becomes aware of an incident or circumstance that he/she reasonably believes poses an imminent threat of serious bodily injury or death, or significant property damage may take reasonable action to minimize the threat.

When public safety or the prevention of major property damage requires immediate action, officers should first consider reporting and monitoring the activity and only take direct action as a last resort.

### 352.3 FIREARMS

Officers of this department may carry firearms while off-duty in accordance with federal regulations and department policy. All firearms and ammunition must meet guidelines as described in the department Firearms Policy. When carrying firearms while off-duty officers shall also carry their department-issued badge and identification.

Officers should refrain from carrying firearms when the consumption of alcohol is likely or when the need to carry a firearm is outweighed by safety considerations. Firearms shall not be carried by any officer who has consumed an amount of an alcoholic beverage or taken any drugs or medications or any combination thereof that would tend to adversely affect the officer's senses or judgment.

### 352.4 DECISION TO INTERVENE

There is no legal requirement for off-duty officers to take law enforcement action. However, should officers decide to intervene, they must evaluate whether the action is necessary or desirable, and should take into consideration the following:

- (a) The tactical disadvantage of being alone and the fact there may be multiple or hidden suspects.
- (b) The inability to communicate with responding units.

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## *Off-Duty Law Enforcement Actions*

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- (c) The lack of equipment, such as handcuffs, OC or baton.
- (d) The lack of cover.
- (e) The potential for increased risk to bystanders if the off-duty officer were to intervene.
- (f) Unfamiliarity with the surroundings.
- (g) The potential for the off-duty officer to be misidentified by other peace officers or members of the public.

Officers should consider waiting for on-duty uniformed officers to arrive, and gather as much accurate intelligence as possible instead of immediately intervening.

### **352.4.1 INTERVENTION PROCEDURE**

If involvement is reasonably necessary the officer should attempt to call or have someone else call 9-1-1 to request immediate assistance. The dispatcher should be informed that an off-duty officer is on-scene and should be provided a description of the officer if possible.

Whenever practicable, the officer should loudly and repeatedly identify him/herself as a Walnut Creek Police Department officer until acknowledged. Official identification should also be displayed.

### **352.4.2 INCIDENTS OF PERSONAL INTEREST**

Officers should refrain from handling incidents of personal interest, (e.g., family or neighbor disputes) and should remain neutral. In such circumstances officers should call the responsible agency to handle the matter.

### **352.4.3 CIVILIAN RESPONSIBILITIES**

Civilian personnel should not become involved in any law enforcement actions while off-duty except to notify the local law enforcement authority and remain at the scene, if safe and practicable.

### **352.4.4 OTHER CONSIDERATIONS**

When encountering a non-uniformed officer in public, uniformed officers should wait for acknowledgement by the non-uniformed officer in case he/she needs to maintain an undercover capability.

## **352.5 REPORTING**

Any off-duty officer who engages in any law enforcement activity, regardless of jurisdiction, shall notify the Watch Commander as soon as practicable. The Watch Commander shall determine whether a report should be filed by the employee.

Officers should cooperate fully with the agency having jurisdiction in providing statements or reports as requested or as appropriate.

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## Gun Violence Restraining Orders

### 353.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for petitioning and serving gun violence restraining orders and accounting for the firearms obtained pursuant to those orders (Penal Code § 18108).

#### 353.1.1 DEFINITIONS

Definitions related to this policy include:

**Gun violence restraining order** - Civil restraining order prohibiting a named person from controlling, owning, purchasing, possessing, receiving, or otherwise having custody of any firearms or ammunition, including an ammunition magazine (Penal Code § 18100).

### 353.2 POLICY

It is the policy of the Walnut Creek Police Department to petition and serve gun violence restraining orders in compliance with state law and to properly account for firearms and ammunition obtained by the Department pursuant to such orders.

### 353.3 GUN VIOLENCE RESTRAINING ORDERS

An officer who reasonably believes a person is a present danger to him/herself or another person by controlling, owning, purchasing, possessing, receiving, or otherwise having custody of a firearm may request permission from his/her supervisor to petition the court for a gun violence restraining order.

Officers petitioning the court should use the forms established by the Judicial Council (Penal Code § 18105). The petition should describe the number, types, and locations of any firearms and ammunition that the officer believes to be possessed or controlled by the person (Penal Code § 18107). The petition should also describe why less-restrictive alternatives are ineffective or inadequate for the circumstances (Penal Code § 18125; Penal Code § 18150; Penal Code § 18175).

If it is not practical under the circumstances to submit a written petition, an officer may orally request an order, and then prepare and sign a declaration under penalty of perjury that recites the oral statements provided to the judicial officer and memorialize the order of the court on the appropriate Judicial Council form (Penal Code § 18140).

#### 353.3.1 ADDITIONAL CONSIDERATIONS

Officers should also consider requesting permission to petition the court for a gun violence restraining order (Penal Code § 18108):

- (a) When responding to a domestic disturbance where the residence is associated with a firearm registration or record.
- (b) When responding to any call or incident when a firearm is present or when one of the involved parties owns or possesses a firearm.



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- (c) During a contact with a person exhibiting mental health issues, including suicidal thoughts, statements, or actions if that person owns or possesses a firearm.

Officers should consider obtaining a mental health evaluation if the encounter involves a situation where there is a reasonable cause to believe that the person poses an immediate and present danger of causing personal injury to themselves or another person by having custody or control of a firearm (see the Mental Illness Commitments Policy) (Penal Code § 18108).

### **353.4 SERVICE OF GUN VIOLENCE RESTRAINING ORDERS**

An officer serving any gun violence restraining order shall:

- (a) Verbally ask the subject of the order if he/she has any firearm, ammunition, or magazine in his/her possession or under his/her custody or control (Penal Code § 18160).
- (b) Request that any firearms or ammunition be immediately surrendered and issue a receipt for the surrendered items (Penal Code § 18120).
- (c) Take into temporary custody any firearm or other deadly weapon discovered in plain view or pursuant to consent or other lawful search (Penal Code § 18250).
- (d) Inform the restrained person of any scheduled hearing regarding the order (Penal Code § 18160).
- (e) Transmit the original proof of service form to the issuing court as soon as practicable but within one business day (Penal Code § 18115).
- (f) As soon as practicable, but by the end of his/her shift, submit proof of service to the Records Manager for prompt entry into the California Restraining and Protective Order System (Penal Code § 18115).

The officer should also inform the restrained person that he/she is required, within 24 hours, to surrender to a law enforcement agency any other firearms and ammunition he/she owns or that are in his/her custody or control or sell them to a firearms dealer. This notification should be documented.

All firearms and ammunition collected shall be handled and booked in accordance with the Property and Evidence Policy.

#### **353.4.1 SERVICE OF ORAL GUN VIOLENCE RESTRAINING ORDERS**

If a gun violence restraining order is obtained orally, the officer shall (Penal Code § 18140):

- (a) Serve the order on the restrained person in the manner outlined above, if the restrained person can reasonably be located.
- (b) File a copy of the order with the court as soon as practicable after issuance.
- (c) Ensure the order is provided to the Records Bureau for entry into the computer database system for protective and restraining orders maintained by the Department of Justice.

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### **353.5 SEARCH WARRANTS**

If a person who has been served with a gun violence restraining order refuses to surrender any firearm or ammunition, the officer should consider whether to seek a search warrant. If a search warrant is to be obtained, the preparation and service of the search warrant shall be done in accordance with the Warrant Service Policy. Additionally, (Penal Code § 1542.5):

- (a) The officer serving the warrant shall take custody of any firearm or ammunition that is controlled, possessed or owned by the person who is the subject of the gun violence restraining order, including any discovered pursuant to the warrant, a consensual search or other lawful search.
- (b) If the location being searched is jointly occupied and the firearm or ammunition is owned by a person other than the restrained person, the firearm or ammunition should not be seized if the following conditions are met:
  - 1. The firearm or ammunition can be stored in a manner that does not allow the restrained person to have control or access.
  - 2. There is no evidence that the owner unlawfully possesses the firearm or ammunition.
- (c) If a locked gun safe belonging to someone other than the subject of a gun violence restraining order is discovered, the officer shall not search the contents of the safe unless the owner consents or there is a valid search warrant for the safe. Any search of the safe must be done in the owner's presence.

### **353.6 RECORDS MANAGER RESPONSIBILITIES**

The Records Manager is responsible for ensuring:

- (a) Proof of service of any gun violence restraining order served by an officer or received from the clerk of the court is entered in the computer database system for protective and restraining orders maintained by the Department of Justice within one business day of service if served by an officer, or within one business day of receipt of proof of service if served by a person other than a law enforcement officer (Penal Code § 18115).
- (b) Oral orders are entered into the California Restraining and Protective Order System (Penal Code § 18140).
- (c) Copies of receipts of surrendered firearms or ammunition issued by other agencies for gun violence restraining orders issued by the Department are properly maintained (Penal Code § 18120).
- (d) Any relinquishment of firearm rights form received from the court is entered into the California Restraining and Protective Order System within one business day of receipt (Penal Code § 18115).

### **353.7 COURT-ORDERED FIREARMS AND AMMUNITION SURRENDERS**

Authorized members shall accept firearms and ammunition from any individual who is the subject of a gun violence restraining order. The member receiving any firearm or ammunition shall:

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- (a) Record the individual's name, address and telephone number.
- (b) Record the serial number of the firearm.
- (c) Prepare an incident report and property report.
- (d) Provide a property receipt to the individual who surrendered the firearms and ammunition.
- (e) Package and submit the firearms and ammunition in accordance with the Property and Evidence Policy.

### **353.8 RELEASE OF FIREARMS AND AMMUNITION**

Firearms and ammunition that were taken into temporary custody or surrendered pursuant to a gun violence restraining order shall be returned to the restrained person upon the expiration of the order and in accordance with Penal Code § 18120 and the Property and Evidence Policy.

### **353.9 GUN VIOLENCE RESTRAINING ORDER COORDINATOR**

The Detective Sergeant assigned to the Crimes Against Persons Unit is the designated gun violence restraining order coordinator. The responsibilities of the coordinator include:

- (a) Developing and maintaining procedures for the filing of a petition for an order or a renewal of an order by department members, also including procedures for requesting and serving (Penal Code § 18108):
  - 1. A temporary emergency gun violence restraining order.
  - 2. An ex parte gun violence restraining order.
  - 3. A gun violence restraining order issued after notice and hearing.
- (b) Developing and maintaining factors to consider when assessing the need to seek an order, including:
  - 1. Whether threats have been made, and if so, whether the threats are credible and specific.
  - 2. Whether the potential victim is within close proximity.
  - 3. Whether the person has expressed suicidal tendencies.
  - 4. Whether the person has access to firearms.
  - 5. The criminal history of the person, in particular any history of criminal violence, including whether the person is currently on parole, probation, or monitored release.
  - 6. The mental health history of the person, in particular whether the person has any history of mental illness or has ever been detained for being a danger to themselves or others.
  - 7. Any upcoming holidays, anniversaries, or other dates of significance that may serve as a trigger for the person, such as the death of a family member.
  - 8. Whether the person has any history of drug or alcohol abuse.

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- (c) Developing and maintaining procedures for the receipt and service of orders consistent with the requirements of Penal Code § 18115; Penal Code § 18120; Penal Code § 18135; Penal Code § 18140; and Penal Code § 18160. Procedures should include:
  - 1. Evaluation of an order to determine appropriate service and necessary precautions (see the Warrant Service Policy and the Operations Planning and Deconfliction Policy).
  - 2. Forwarding orders to the Records Manager for recording in appropriate databases and required notice to the court, as applicable.
  - 3. Preparing or obtaining a search warrant prior to attempting service of an order, when appropriate (Penal Code § 18108).
  - 4. Seizure procedures of firearms and ammunition at the time of issuance of a temporary emergency gun violence restraining order.
  - 5. Verification procedures for the removal of firearms and ammunition from the subject of a gun violence restraining order.
- (d) Coordinating with the Training Manager to provide officers who may be involved in petitioning for or serving orders with training on such orders. Training should include determining when a petition is appropriate, the process for seeking an order, and the service of such orders.
- (e) Reviewing each petition and any associated court documents for an order prepared by members, for compliance with this policy, department procedures, and state law.
- (f) Developing and maintaining procedures for members to accept voluntarily surrendered prohibited items at times other than when an order is being served by the Department.
  - 1. Procedures should include preparing and providing a receipt identifying all prohibited items to the person surrendering the items.
- (g) Coordinating review of notices of court hearings and providing notice to the appropriate officer of the hearing date and the responsibility to appear (Penal Code § 18108).

### **353.10 RENEWAL OF GUN VIOLENCE RESTRAINING ORDERS**

The Detective Bureau supervisor is responsible for the review of a gun violence restraining order obtained by the Department to determine if renewal should be requested within the time prescribed by law (Penal Code § 18190).

### **353.11 POLICY AVAILABILITY**

The Chief of Police or the authorized designee shall be responsible for making this policy available to the public upon request (Penal Code § 18108).

### **353.12 TRAINING**

The Training Manager should ensure that members receive periodic training on the requirements of this policy (Penal Code § 18108).

# Native American Graves Protection and Repatriation

## 354.1 PURPOSE AND SCOPE

This policy is intended ensure the protection and security of ancient or historic grave sites, including notification of personnel responsible for cultural items, in compliance with the Native American Graves Protection and Repatriation Act (NAGPRA) (25 USC § 3001 et seq.).

### 354.1.1 DEFINITIONS

Definitions related to this policy include (43 CFR 10.2):

**Funerary objects and associated funerary objects** - Objects that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed intentionally at the time of death or later with or near individual human remains, or that were made exclusively for burial purposes or to contain human remains.

**Native American human remains** - The physical remains of the body of a person of Native American ancestry.

**Objects of cultural patrimony** - Objects having ongoing historical, traditional or cultural importance that is central to the Native American group or culture itself and therefore cannot be appropriated or conveyed by any individual, including members of the Native American group or Native Hawaiian organization. Such objects must have been considered inalienable by the Native American group at the time the object was separated from the group.

**Sacred objects** - Specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions.

## 354.2 POLICY

It is the policy of the Walnut Creek Police Department that the protection of Native American human remains, funerary objects, associated funerary objects, sacred objects or objects of cultural patrimony is the responsibility of all members. Such protection includes minimizing destruction, contamination, inadvertent disruption or complicated custody transfer processes.

## 354.3 COMPLIANCE WITH THE NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT

Upon discovery or arrival upon a scene where it reasonably appears that a Native American grave, human remains, funerary objects, associated funerary objects, sacred objects or objects of cultural patrimony are exposed or otherwise unsecured, members shall secure the site in the same manner as a crime scene. All activity at the scene other than scene preservation activity must cease (43 CFR 10.4).

No photography or video recording may be permitted by the media or any group or individual who may wish to exhibit the remains.

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Without delay, the appropriate agency or group shall be notified to respond and take control of the scene. These include the following (43 CFR 10.4):

- Federal land - Appropriate agency at the U.S. Department of the Interior or U.S. Department of Agriculture
- State land/Private land - Coroner, when appropriate (Health and Safety Code § 7050.5)
- Tribal land - Responsible Indian tribal official

### **354.4 EVIDENCE AND PROPERTY**

If the location has been investigated as a possible homicide scene prior to identification as a NAGPRA site, investigators shall work with other appropriate agencies and individuals to ensure the proper transfer and repatriation of any material collected. Members shall ensure that any remains or artifacts located at the site are expediently processed (43 CFR 10.6).

## Department Use of Social Media

### 355.1 PURPOSE AND SCOPE

This policy provides guidelines to ensure that any use of social media on behalf of the Department is consistent with the department mission.

This policy does not address all aspects of social media use. Specifically, it does not address:

- Personal use of social media by department members (see the Employee Speech, Expression and Social Networking Policy).
- Use of social media in personnel processes (see the Recruitment and Selection Policy).
- Use of social media as part of a criminal investigation, other than disseminating information to the public on behalf of this department (see the Investigation and Prosecution Policy).

#### 355.1.1 DEFINITIONS

Definitions related to this policy include:

**Social media** - Any of a wide array of Internet-based tools and platforms that allow for the sharing of information, such as the department website or social networking services

### 355.2 POLICY

The Walnut Creek Police Department may use social media as a method of effectively informing the public about department services, issues, investigations and other relevant events.

Department members shall ensure that the use or access of social media is done in a manner that protects the constitutional rights of all.

### 355.3 AUTHORIZED USERS

Only members authorized by the Chief of Police or the authorized designee may utilize social media on behalf of the Department. Authorized members shall use only department-approved equipment during the normal course of duties to post and monitor department-related social media, unless they are specifically authorized to do otherwise by their supervisors.

The Chief of Police may develop specific guidelines identifying the type of content that may be posted. Any content that does not strictly conform to the guidelines should be approved by a supervisor prior to posting.

Requests to post information over department social media by members who are not authorized to post should be made through the member's chain of command.

### 355.4 AUTHORIZED CONTENT

Only content that is appropriate for public release, that supports the department mission and conforms to all department policies regarding the release of information may be posted.

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Examples of appropriate content include:

- (a) Announcements.
- (b) Tips and information related to crime prevention.
- (c) Investigative requests for information.
- (d) Requests that ask the community to engage in projects that are relevant to the department mission.
- (e) Real-time safety information that is related to in-progress crimes, geographical warnings or disaster information.
- (f) Traffic information.
- (g) Press releases.
- (h) Recruitment of personnel.

### **355.4.1 INCIDENT-SPECIFIC USE**

In instances of active incidents where speed, accuracy and frequent updates are paramount (e.g., crime alerts, public safety information, traffic issues), the Press Information Officer or the authorized designee will be responsible for the compilation of information to be released, subject to the approval of the Incident Commander.

### **355.5 PROHIBITED CONTENT**

Content that is prohibited from posting includes, but is not limited to:

- (a) Content that is abusive, discriminatory, inflammatory or sexually explicit.
- (b) Any information that violates individual rights, including confidentiality and/or privacy rights and those provided under state, federal or local laws.
- (c) Any information that could compromise an ongoing investigation.
- (d) Any information that could tend to compromise or damage the mission, function, reputation or professionalism of the Walnut Creek Police Department or its members.
- (e) Any information that could compromise the safety and security of department operations, members of the Department, victims, suspects or the public.
- (f) Any content posted for personal use.
- (g) Any content that has not been properly authorized by this policy or a supervisor.

Any member who becomes aware of content on this department's social media site that he/she believes is unauthorized or inappropriate should promptly report such content to a supervisor. The supervisor will ensure its removal from public view and investigate the cause of the entry.

### **355.5.1 PUBLIC POSTING PROHIBITED**

Department social media sites shall be designed and maintained to prevent posting of content by the public.



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## *Department Use of Social Media*

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The Department may provide a method for members of the public to contact department members directly.

### **355.6 MONITORING CONTENT**

The Chief of Police will appoint a supervisor to review, at least annually, the use of department social media and report back on, at a minimum, the resources being used, the effectiveness of the content, any unauthorized or inappropriate content and the resolution of any issues.

### **355.7 RETENTION OF RECORDS**

The Administration Bureau Commander should work with the Custodian of Records to establish a method of ensuring that public records generated in the process of social media use are retained in accordance with established records retention schedules.

### **355.8 TRAINING**

Authorized members should receive training that, at a minimum, addresses legal issues concerning the appropriate use of social media sites, as well as privacy, civil rights, dissemination and retention of information posted on department sites.

## First Responder Naloxone (NARCAN) Program

### 356.1 PURPOSE

To establish guidelines and regulations governing utilization of Naloxone (Narcan) administration by the Walnut Creek Police Department. The objective is to treat and reduce fatalities associated with opiate overdoses and exposure to officers.

### 356.2 POLICY

It is the policy of the Walnut Creek Police Department that all officers are required to be trained in the use and administration of Naloxone (Narcan) in accordance with Contra Costa County EMS and POST Standards to include the recommendations set forth by the Contra Costa County Health Services Department.

### 356.3 TRAINING

A. Initial Training-All Officers will receive initial training that will include: an overview of California Civil Code 1714.22 which permits law enforcement administration of Naloxone (Narcan), patient assessment (eg. signs/symptoms of overdose), universal precautions, rescue breathing, seeking medical attention, and the use of intra-nasal Naloxone (Narcan) as detailed by the Contra Costa County Health Services Department and the Contra Costa County EMS.

B. Continuing Education and Training-Walnut Creek Police Department employees who have been trained to administer Naloxone (Narcan) will receive refresher training every two years.

### 356.4 DEPLOYMENT

Walnut Creek Police Department Officers should deploy Naloxone (Narcan) Kits at the beginning of each shift. There are 18 patrol assigned Naloxone (Narcan) Kits that are to be used by properly trained patrol Officers. At the end of each shift, it will be the Officer's responsibility to return the Naloxone (Narcan) Kit to the proper storage area. The Naloxone Kits will be stored in the following locations:

A) One assigned to the Property/Evidence room. This Kit shall not be removed from the Property/Evidence Room.

B) One in each Supervisor vehicle

C) One in each Patrol Vehicle only during an officer's assigned shift.

D) All Kits will be stored in the marked NARCAN File cabinet located next to the Patrol PAS devices.

### 356.5 NALOXONE USE

When deploying Naloxone (Narcan):

1. Maintain universal precautions as with any medical aid and response consistent with Lexipol Policy # 438 (Medical Aid and Response).

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## *First Responder Naloxone (NARCAN) Program*

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2. Perform initial patient assessment

3. Determine unresponsiveness, absence of breathing and/or lack of pulse.

4. If a suspected overdose is indicated, administer Naloxone as outlined by the Contra Costa County EMS.

Upon administering Naloxone, monitor the patient's vital signs until FIRE/EMS personnel arrive on scene. If the initial dose of Naloxone is ineffective, officers can consider administering a second dose. Continue to monitor vital signs and assess the patient.

5. Update Dispatch that the patient was in a potential overdose state and NARCAN was deployed. When practical, notify the on-duty supervisor.

6. Document the deployment in a case report under the classification "Sick and Cared For" unless criminal charges will be sought for HS11550-Under the Influence.

7. Complete the CC County EMS Narcan Deployment report found on the T-Drive/Forms/First Aid AED NARCAN and include this with the offense report.

### **356.6 MAINTENANCE/REPLACEMENT**

A. An inspection of the Naloxone shall be the responsibility of the officer and should be done at the beginning of each shift.

B. Missing, Damaged, or Expired Naloxone shall be immediately reported to their supervisor or a member of the Walnut Creek Police Department's First Aid Team.

C. In the event Naloxone is administered, the officer should receive a replacement Kit as soon as practical.

## Chapter 4 - Patrol Operations

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## Patrol Function

### 400.1 PURPOSE AND SCOPE

The purpose of this policy is to define the functions of the patrol unit of the Department to ensure intra-department cooperation and information sharing.

#### 400.1.1 FUNCTION

Officers will generally patrol in clearly marked vehicles, patrol assigned jurisdictional areas of Walnut Creek, respond to calls for assistance, act as a deterrent to crime, enforce state and local laws and respond to emergencies 24 hours per day seven days per week.

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 bureau 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

#### 400.1.2 TERRORISM

It is the goal of the Walnut Creek 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 or Field Interview (FI). The supervisor should ensure that all terrorism related reports and FIs are forwarded to the Detective Bureau Supervisor in a timely fashion.

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### **400.2 PATROL INFORMATION SHARING PROCEDURES**

The following guidelines are intended to develop and maintain intra-department cooperation and information flow between the various bureaus of the Walnut Creek Police Department.

#### **400.2.1 CRIME REPORTS**

A crime report may be completed by any patrol officer who receives criminal information. The report will be handled by the officer taking the report unless it is determined necessary to forward to the appropriate bureau for retention or follow-up investigation.

#### **400.2.2 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.

### **400.3 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. 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.

## Security and Premises Alarm Responses

### 401.1 PURPOSE AND SCOPE

More and more businesses and residences as part of crime prevention are using alarm systems. As technology grows, alarm systems are becoming more diverse and complex. In some cases, a crime is still in progress when the alarm is reported to the police. It is for this reason that a safe and efficient procedure be developed to ensure officer as well as citizen safety.

Reports of alarms come from different sources. Private alarm companies most often report alarms to the Police Department. Alarm systems within the City of Walnut Creek are governed by the Walnut Creek Municipal Code Alarm Ordinance (Sec 3-9.01 through 3-9.14WCMC).

#### 401.1.1 PROCEDURE

Procedures A through C will occur only if the premises have an active alarm permit with Walnut Creek Police Department.

##### (a) Hold Up Alarms

- Hold up alarm users are instructed to activate the alarm only when a robbery is in progress or has just occurred. When a hold up alarm is received, the police dispatcher shall handle the alarm as a "priority 1 detail".
- A minimum of two officers shall be assigned to a hold up alarm. Dispatchers will telephone the premises upon the direction of responding police officers or at a supervisor's direction. The police dispatcher shall ask for the manager or person in charge to determine the validity of the alarm. The police dispatcher will then determine the name, title and clothing description of the business manager or employee who will make contact with the officers on the scene. After receiving this information from dispatch, the officers at the scene will direct dispatch to have the employee exit from a specific door and make contact with the officers. The officers on the scene will confirm with the manager or employee of the business that the alarm is indeed false.
- Dispatch may cancel officer response only if the cancellation is from the reporting alarm company.
- Uniformed officers responding to a hold up alarm are not to enter the building unless there is an immediate threat of violence which, in their judgment, requires they do so. If there is a question in the officer's mind concerning activity in the building, it is recommended that plainclothes officers respond and enter the building first.
- If it is necessary to enter the building, appropriate, proper officer safety tactics should be utilized.

##### (b) Manually Activated Alarms

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- Manually activated alarms are to be used only when using a telephone to report an emergency is not possible. This also applies to "panic" alarms. The procedure for this type of alarm shall be the same as for a hold up alarm.
- (c) Burglar Alarms
- A burglar alarm indicates that the alarm security perimeter has been violated and that someone may be in the process of entering or leaving a building. Burglar alarms may be reported by alarm companies or by citizens and may be silent or audible. Police dispatchers should ask alarm companies if the alarm is silent or audible, interior or perimeter and the point of activation. Responding officers should be advised accordingly.
- (d) Non-Response Alarms
- Walnut Creek city ordinance requires that all premises with an alarm have an active permit in order to receive police response. Those premises that do not desire police response to alarms; do not obtain a permit or; do not pay fines associated with false alarm dispatches are placed on the non-response status, for alarm activations only. Alarm companies will be advised by dispatch that officers will not be responding due to the premises being on non-response.



## Bias-Based Policing

### 401.1 PURPOSE AND SCOPE

This policy provides guidance to department members that affirms the Walnut Creek 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).

#### 401.1.1 DEFINITIONS

Definitions related to this policy include:

**Bias-based policing** - An inappropriate reliance on 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).

### 401.2 POLICY

The Walnut Creek 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.

### 401.3 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.

#### 401.3.1 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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## *Bias-Based Policing*

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### **401.4 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.

#### **401.4.1 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.

### **401.5 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 Digital Terminal (MDT) 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.
  - 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.

### **401.6 ADMINISTRATION**

Each year, the Patrol Bureau Commander should review the efforts of the Department to provide fair and objective policing and submit an annual report, including public concerns and complaints, to the Chief of Police.

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## *Bias-Based Policing*

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The annual report should not contain any identifying information about any specific complaint, member of the public or officers. It should be reviewed by the Chief of Police to identify any changes in training or operations that should be made to improve service.

Supervisors should review the annual report and discuss the results with those they are assigned to supervise.

### **401.7 TRAINING**

Training on fair and objective policing and review of this policy should be conducted as directed by the Training Section.

- (a) All sworn members of this department will be scheduled to attend Peace Officer Standards and Training (POST)-approved training on the subject of bias-based policing.
- (b) Pending participation in such POST-approved training and at all times, all members of this department are encouraged to familiarize themselves with and consider racial and cultural differences among members of this community.
- (c) Each sworn member of this department who received initial bias-based policing training will thereafter be required to complete an approved refresher course every five years, or sooner if deemed necessary, in order to keep current with changing racial, identity and cultural trends (Penal Code § 13519.4(i)).

### **401.8 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE**

The Administrative Captain or the authorized designee shall ensure that all data required by the California Department of Justice (DOJ) regarding complaints of racial bias against officers is collected and reported annually to DOJ (Penal Code § 13012; Penal Code § 13020).

## LINE-UP Training

### 402.1 PURPOSE AND SCOPE

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

LINE-UP 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

### 402.2 PREPARATION OF MATERIALS

The supervisor conducting LINE-UP 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.

## Crime and Disaster Scene Integrity

### 403.1 PURPOSE AND SCOPE

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

### 403.2 POLICY

It is the policy of the Walnut Creek 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.

### 403.3 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.

### 403.4 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.

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## *Crime and Disaster Scene Integrity*

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### **403.5 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.

#### **403.5.1 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.

### **403.6 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).

## Automatic Vehicle Locator (AVL)

### 404.1 PURPOSE AND SCOPE

This policy provides guidelines on the use of the Automatic Vehicle Locator system (AVL). AVL allows the Walnut Creek Police Department to allocate resources to maximize efficiency in delivering public service and to enhance the safety of the public and our officers in the field. This policy outlines the procedures by which department personnel will use and access the AVL system.

### 404.2 POLICY

- (a) AVL will be used in both emergency and non-emergency situations to assist officers, supervisors and dispatchers with resource management and allocation.
- (b) The AVL system allows the mobile user to view his/her vehicle location and the locations of other mobile users in the field.
- (c) The AVL system and its playback feature may be used to assist in training, criminal investigations and administrative investigations. Access to historical data will require approval by the Chief of Police or by his/her designee.
- (d) PRIORITY ONE CALLS FOR SERVICE: Dispatch will send the closest available units based on AVL information. In addition to patrol units, this can include other sworn uniformed personnel including K-9, Motors, SET, and SRO's.
- (e) PRIORITY TWO AND THREE CALLS FOR SERVICE: AVL will not be used for these calls (see current dispatch policy regarding Priority Two and Three calls for service).
- (f) OFFICER INITIATED REQUEST FOR ASSISTANCE: Any time an officer requests an emergency response from an additional unit or units, AVL will be used in order to send the closest available unit or units.

### 404.3 RECEIVING AND RESPONDING TO CALLS IN WHICH AVL IS USED

With the use of AVL, officers are not relieved of their responsibility to use required communication practices to report their location and status. AVL dispatching may be used in any situation where it is believed that the safety of the officer(s) will be enhanced by the use of AVL.

In the event that an officer disagrees with an assigned call or the method of dispatch, the officer is expected to properly handle the call and discuss the situation with his/her supervisor at the conclusion of the call.

### 404.4 TAMPERING WITH AVL

Officers shall not tamper with or modify the system, signal or antenna in any manner. If a user becomes aware of a malfunction with the AVL system, or suspects it has been tampered with, he or she shall notify a supervisor as soon as practical.

## Ride-Along Policy

### 405.1 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.

#### 405.1.1 ELIGIBILITY

The Walnut Creek 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 13 years of age
- Prior criminal history
- Pending criminal action
- Pending lawsuit against the Department
- Denial by any supervisor

#### 405.1.2 AVAILABILITY

The Ride-Along Program is available on most days of the week, with certain exceptions. The ride-along times are from 10:00 a.m. to 11:00 p.m. Exceptions to this schedule may be made as approved by the Chief of Police, Bureau Commander, Watch Commander or field supervisor.

### 405.2 PROCEDURE TO REQUEST A RIDE-ALONG

The participant will complete a ride-along waiver form. Information requested will include a valid picture ID, address, and telephone number. If the participant is under 18 years of age, a parent/guardian must be present to complete and sign the Ride-Along Form.

The completed ride-along form will be forwarded to the person handling the background checks (currently the Records Supervisor). Family members of PD employees will be excluded from the background check. The form will then be forwarded to the Supervisor of the shift that the ride-along is requested on. That Supervisor will make the determination whether to grant the ride-along based on the findings in the background check. The supervisor should arrange for an officer to provide the ride-along. The officer will then contact the person to arrange the ride-along. Once the ride-along is completed, the officer will place the form in the Cadets mailbox and the Cadets will maintain records of all ride-along participants for one year.

If the ride-along is denied after the request has been made, a representative of the Department will contact the applicant and advise him/her of the denial.



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## *Ride-Along Policy*

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### 405.2.1 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: Cadets, Chaplains, Reserves, police applicants, VIPS and all others with approval of the Watch Commander.

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. Ride-alongs should be limited to two hours, unless the officer extends the time.

Ride-along requirements for police cadets are covered in Policy Manual § 1048, "Police Cadet Program."

### 405.2.2 SUITABLE ATTIRE

Any person approved to ride along is required to be suitably dressed in business casual attire. Sandals, tank tops, shorts and ripped or torn blue jeans will not be permitted. Hats and ball caps will not be worn in the police vehicle. The Watch Commander or field supervisor may refuse a ride along to anyone not properly dressed.

### 405.2.3 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 or supervisor. 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.

Off-duty peace officers riding with on-duty officers must seek authorization from the Watch Commander to carry concealable firearms. The Watch Commander will determine if the concealable firearm carried by the ride along is appropriate to be carried.

### 405.2.4 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 Walnut Creek Police Department) (CLETS Policies, Practices and Procedures Manual § 1.6.1.F.2.).

## **405.3 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.

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## *Ride-Along Policy*

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The Watch Commander is responsible for maintaining and scheduling ride-alongs. Upon completion of the ride-along, the yellow form shall be returned to the Watch Commander with any comments which may be offered by the officer.

### **405.4 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
- (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

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## Hazardous Material Response

### 406.1 PURPOSE AND SCOPE

Hazardous materials present a potential harm to employees resulting from their exposure, as well as the lives and health of the populace, public and private property, and living and natural resources from damage. To comply with Title 8, California Code of Regulations, § 5194, the following is to be the policy of this department.

#### 406.1.1 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. Hazardous materials include over 14,000 different chemicals that can be toxic, flammable, or explosive. Some are herbicides, pesticides, radioactive materials, oil derivatives, and toxic chemical compounds.

### 406.2 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, depending on the substance. Voluntary evacuation should be considered; however, depending on the substance, mandatory evacuation may be necessary.
- (e) Notify the local health authority. Such notification is mandatory when a spilled or released item is a pesticide (Health and Safety Code § 105215).
- (f) Notify the Department of Toxic Substances Control. This is mandatory when an officer comes in contact with, or is aware of, the presence of a suspected hazardous substance at a site where an illegal controlled substance is or was manufactured (Health and Safety § 25354.5).

### 406.3 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

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## *Hazardous Material Response*

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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.

### 406.3.1 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.

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.

## Hostage and Barricade Incidents

### 407.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for situations where officers have legal cause to contact, detain or arrest a person, and the person refuses to submit to the lawful requests of the officers by remaining in a structure or vehicle and/or by taking a hostage.

The scope of this policy is not intended to address all variables that officers encounter during their initial response or when a hostage or barricade situation has developed. This policy does not require or purport to recommend specific strategies or tactics for resolution as each incident is a dynamic and rapidly evolving event.

#### 407.1.1 DEFINITIONS

Definitions related to this policy include:

**Barricade situation** - An incident where a person maintains a position of cover or concealment and ignores or resists law enforcement personnel, and it is reasonable to believe the subject is armed with a dangerous or deadly weapon.

**Hostage situation** - An incident where it is reasonable to believe a person is:

- (a) Unlawfully held by a hostage-taker as security so that specified terms or conditions will be met.
- (b) Unlawfully held against his/her will under threat or actual use of force.

### 407.2 POLICY

It is the policy of the Walnut Creek Police Department to address hostage and barricade situations with due regard for the preservation of life and balancing the risk of injury, while obtaining the safe release of hostages, apprehending offenders and securing available evidence.

### 407.3 COMMUNICATION

When circumstances permit, initial responding officers should try to establish and maintain lines of communication with a barricaded person or hostage-taker. Officers should attempt to identify any additional subjects, inquire about victims and injuries, seek the release of hostages, gather intelligence information, identify time-sensitive demands or conditions and obtain the suspect's surrender.

When available, department-authorized negotiators should respond to the scene as soon as practicable and assume communication responsibilities. Negotiators are permitted to exercise flexibility in each situation based upon their training, the circumstances presented, suspect actions or demands and the available resources.

#### 407.3.1 EMERGENCY COMMUNICATIONS

Only an officer who has been designated by the District Attorney or Attorney General may use or authorize the use of an electronic amplifying or recording device to eavesdrop on or record,

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## *Hostage and Barricade Incidents*

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or both, oral communication in response to an emergency situation involving a hostage or the barricading of a location, and only when (Penal Code § 633.8(b)):

- (a) The officer reasonably determines an emergency situation exists that involves the immediate danger of death or serious physical injury to any person within the meaning of 18 USC § 2518(7)(a)(i),
- (b) The officer reasonably determines that the emergency situation requires that eavesdropping on oral communication occur immediately, and
- (c) There are grounds upon which an order could be obtained pursuant to 18 USC § 2516(2).
- (d) An application for an order approving the eavesdropping and complying with the requirements of Penal Code § 629.50 is made within 48 hours of the beginning of the eavesdropping.
- (e) The contents of any oral communications overheard are recorded on tape or other comparable device.

### **407.4 FIRST RESPONDER CONSIDERATIONS**

First responding officers should promptly and carefully evaluate all available information to determine whether an incident involves, or may later develop into, a hostage or barricade situation.

The first responding officer should immediately request a supervisor's response as soon as it is determined that a hostage or barricade situation exists. The first responding officer shall assume the duties of the supervisor until relieved by a supervisor or a more qualified responder. The officer shall continually evaluate the situation, including the level of risk to officers, to the persons involved and to bystanders, and the resources currently available.

The handling officer should brief the arriving supervisor of the incident, including information about suspects and victims, the extent of any injuries, additional resources or equipment that may be needed, and current perimeters and evacuation areas.



## *Hostage and Barricade Incidents*

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### **407.5 SUPERVISOR RESPONSIBILITIES**

Upon being notified that a hostage or barricade situation exists, the supervisor should immediately respond to the scene, assess the risk level of the situation, establish a proper chain of command and assume the role of Incident Commander until properly relieved. This includes requesting a Special Weapons and Tactics Team (SWAT) response if appropriate and apprising the SWAT Commander of the circumstances. In addition, the following options should be considered:

- (a) Ensure injured persons are evacuated and treated by medical personnel.
- (b) Ensure the completion of necessary first responder responsibilities or assignments.
- (c) Request crisis negotiators, specialized units, additional personnel, resources or equipment as appropriate.
- (d) Establish a command post location as resources and circumstances permit.
- (e) Designate assistants who can help with intelligence information and documentation of the incident.
- (f) If it is practicable to do so, arrange for video documentation of the operation.



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## *Hostage and Barricade Incidents*

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- (h) Ensure adequate law enforcement coverage for the remainder of the City during the incident. The supervisor should direct non-essential personnel away from the scene unless they have been summoned by the supervisor or Dispatch.
- (i) Identify a media staging area outside the outer perimeter and have the department Press Information Officer or a designated temporary media representative provide media access in accordance with the Media Relations Policy.
- (j) Identify the need for mutual aid and the transition or relief of personnel for incidents of extended duration.
- (k) Debrief personnel and review documentation as appropriate.

### **407.6 SWAT RESPONSIBILITIES**

The Incident Commander will decide, with input from the SWAT Commander, whether to deploy the SWAT during a hostage or barricade situation. Once the Incident Commander authorizes deployment, the SWAT Commander or the authorized designee will be responsible for the tactical portion of the operation. The Incident Commander shall continue supervision of the command post operation, outer perimeter security and evacuation, media access and support for the SWAT. The Incident Commander and the SWAT Commander or the authorized designee shall maintain communications at all times.

### **407.7 REPORTING**

Unless otherwise relieved by a supervisor or Incident Commander, the handling officer at the scene is responsible for completion and/or coordination of incident reports.

## SWAT (Special Weapons and Tactics) Team

### 408.1 PURPOSE AND SCOPE

The SWAT Team is comprised of specialized teams: the Crisis Negotiation Team (CNT), Tactical Dispatch, Snipers and the Tactical Team. The SWAT Team has been established to provide specialized support in handling critical field operations where intense negotiations and/or special tactical deployment methods beyond the capacity of field officers appear to be necessary. This policy is written to comply with the guidelines established in the Attorney General's Commission on Special Weapons and Tactics Report (September 2002) and the POST 2005 SWAT Operational Guidelines and Standardized Training Recommendations (Penal Code § 13514.1). The SWAT team is made of officers and professional employes from Walnut Creek, San Ramon, Martinez, Pleasant Hill and BART police departments. The teams name is The Central County SWAT Team.

#### 408.1.1 OPERATIONAL AND ADMINISTRATIVE POLICY

The Policy Manual sections pertaining to the SWAT Team are divided into Administrative and Operational Policy and Procedures. Since situations that necessitate the need for such a police response vary greatly from incident to incident and such events often demand on-the-scene evaluation, the Operational Policy outlined in this manual section serves as a guideline to department personnel allowing for appropriate on scene decision making as required. The Administrative Procedures, however, are more restrictive and few exceptions should be taken.

#### 408.1.2 SWAT TEAM DEFINED

A SWAT team is a designated unit of law enforcement officers that is specifically trained and equipped to work as a coordinated team to resolve critical incidents that are so hazardous, complex, or unusual that they may exceed the capabilities of first responders or investigative units including, but not limited to, hostage taking, barricaded suspects, snipers, terrorist acts and other high-risk incidents. As a matter of department policy, such a unit may also be used to serve high-risk warrants, both search and arrest, where public and officer safety issues warrant the use of such a unit.

### 408.3 POLICY

It shall be the policy of this department to maintain a SWAT team and to provide the equipment, manpower, and training necessary to maintain a SWAT team. The SWAT team should develop sufficient resources to perform three basic operational functions:

- (a) Command and Control
- (b) Containment
- (c) Entry/Apprehension/Rescue

It is understood it is difficult to categorize specific capabilities for critical incidents. Training needs may vary based on the experience level of the team personnel, team administrators and potential incident commanders. Nothing in this policy shall prohibit individual teams from responding to

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## *SWAT (Special Weapons and Tactics) Team*

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a situation that exceeds their training levels due to the exigency of the circumstances. The preservation of innocent human life is paramount.

### 408.3.1 POLICY CONSIDERATIONS

A needs assessment should be conducted to determine the type and extent of SWAT missions and operations appropriate to this department. The assessment should consider the team's capabilities and limitations and should be reviewed annually by the SWAT Commander or his/her designee.

### 408.3.2 ORGANIZATIONAL PROCEDURES

This policy contains an addendum which addresses, the following:

- (a) Locally identified specific missions the team is capable of performing.
- (b) Team organization and function.
- (c) Personnel selection and retention criteria.
- (d) Training and required competencies.
- (e) Procedures for activation and deployment.
- (f) Command and control issues, including a clearly defined command structure.
- (g) Multi-agency response.

## **408.4 TRAINING NEEDS ASSESSMENT**

The SWAT Commander shall conduct an annual SWAT Training needs assessment to ensure that training is conducted within team capabilities, department policy and the training guidelines as established by POST (11 C.C.R. § 1084).

### 408.4.1 INITIAL TRAINING

SWAT team operators and SWAT supervisors/team leaders should not be deployed until successful completion of the POST-certified Basic SWAT Course or its equivalent.

- (a) To avoid unnecessary or redundant training, previous training completed by members may be considered equivalent when the hours and content (topics) meet or exceed department requirements or POST standardized training recommendations.

### 408.4.2 UPDATED TRAINING

Appropriate team training for the specialized SWAT functions and other supporting resources should be completed prior to full deployment of the team.

SWAT team operators and SWAT supervisors/team leaders should complete update or refresher training as certified by POST, or its equivalent, every 24 months.

### 408.4.3 SUPERVISION AND MANAGEMENT TRAINING

Command and executive personnel are encouraged to attend training for managing the SWAT function at the organizational level to ensure personnel who provide active oversight at the scene

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## *SWAT (Special Weapons and Tactics) Team*

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of SWAT operations understand the purpose and capabilities of the teams. Command personnel who may assume incident command responsibilities should attend SWAT or Critical Incident Commander course or its equivalent. SWAT command personnel should attend a POST-certified SWAT commander or tactical commander course, or its equivalent.

### 408.4.4 SWAT ONGOING TRAINING

Training shall be coordinated by the SWAT Team Commander. The SWAT Team Commander may conduct monthly training exercises that include a review and critique of personnel and their performance in the exercise in addition to specialized training. Training shall consist of the following:

- (a) Each Tactical Team member shall perform a physical fitness test twice each year. A minimum qualifying score must be attained by each team member.
- (b) Any Tactical Team member failing to attain the minimum physical fitness qualification score will be notified of the requirement to retest and attain a qualifying score. Within 45 days of the previous physical fitness test date, the member required to qualify shall report to a team supervisor and complete the entire physical fitness test. Failure to qualify after a second attempt may result in dismissal from the team.
- (c) Those members who are on vacation, ill, or are on light duty status with a doctor's note of approval on the test date, shall be responsible for reporting to a team supervisor and taking the test within 45 days of their return to regular duty. Any member, who fails to arrange for and perform the physical fitness test within the 45-day period, shall be considered as having failed to attain a qualifying score for that test period.
- (d) Quarterly, each Tactical Team member shall perform the mandatory SWAT handgun/ rifle qualification course. The qualification course shall consist of the SWAT Basic Drill for the weapons. Failure to qualify will require that officer to seek remedial training from a team range master approved by the SWAT Team Commander. Team members who fail to qualify must retest within 30 days. Failure to qualify within 30 days with or without remedial training may result in dismissal from the team.
- (e) Repeated failures to qualify physically or with an assigned weapon, that requires a retest; may result in dismissal from the team.

### 408.4.5 TRAINING SAFETY

Use of a designated safety officer should be considered for all tactical training.

### 408.4.6 SCENARIO BASED TRAINING

SWAT teams should participate in scenario-based training that simulates the tactical operational environment. Such training is an established method of improving performance during an actual deployment.

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## *SWAT (Special Weapons and Tactics) Team*

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### 408.4.7 TRAINING DOCUMENTATION

Individual and team training shall be documented and records maintained by the Team Commander. A separate agency SWAT training file shall be maintained with documentation and records of all team training.

## **408.5 UNIFORMS, EQUIPMENT, AND FIREARMS**

### 408.5.1 UNIFORMS

SWAT teams from this agency should wear uniforms that clearly identify team members as law enforcement officers. It is recognized that certain tactical conditions may require covert movement. Attire may be selected appropriate to the specific mission.

### 408.5.2 EQUIPMENT

The SWAT team should be adequately equipped to meet the specific mission(s) identified by the SWAT Team Commander.

### 408.5.3 FIREARMS

Weapons and equipment used by SWAT, the specialized units, and the supporting resources should be agency-issued or approved, including any modifications, additions, or attachments.

## **408.6 MANAGEMENT/SUPERVISION OF SWAT**

The Commander of SWAT shall be selected by the Chief of Police upon recommendation of staff.

### 408.6.1 PRIMARY UNIT MANAGER

Under the direction of the Chief of Police, the SWAT Team shall be managed by a lieutenant.

### 408.6.2 TEAM SUPERVISORS

The Negotiation Team and Tactical Teams will be supervised by officers of the rank of sergeant or above, if possible. The team supervisors shall be selected by the Chief of Police upon specific recommendation by staff and the SWAT Team Commander. The following represent the supervisor responsibilities for the SWAT Team.

- (a) The Negotiation Team supervisor's primary responsibility is to supervise the operations of the Negotiation Team which will include deployment, training, first line participation, and other duties as directed by the SWAT Team Commander.
- (b) The Tactical Team supervisor's primary responsibility is to supervise the operations of their assigned tactical unit, which will include deployment, training, first line participation, and other duties as directed by the SWAT Team Commander.

## **408.7 CRISIS NEGOTIATION TEAM ADMINISTRATIVE PROCEDURES**

The Crisis Negotiation Team has been established to provide skilled verbal communicators who may be utilized to attempt to de-escalate and effect surrender in critical situations where suspects have taken hostages, barricaded themselves, or have suicidal tendencies.

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The following procedures serve as directives for the administrative operation of the Crisis Negotiation Team.

### 408.7.1 SELECTION OF PERSONNEL

Interested sworn personnel, shall submit an application to the team Commander. Qualified applicants will then be invited to an oral interview. The oral board will minimally consist of the SWAT Team Commander, the Crisis Negotiation Team supervisor, and a third person to be selected by the two. Interested personnel shall be evaluated by the following criteria:

- (a) Recognized competence and ability as evidenced by performance.
- (b) Demonstrated good judgment and understanding of critical role of negotiator and negotiation process.
- (c) Effective communication skills to ensure success as a negotiator.
- (d) Special skills, training, or appropriate education as it pertains to the assignment.
- (e) Commitment to the unit, realizing that the assignment may necessitate unusual working hours, conditions, and training obligations.

The oral board shall submit a list of successful applicants to the Chief for final selection.

### 408.7.2 TRAINING OF NEGOTIATORS

Those officers selected as members of the Negotiation Team should attend the Basic Negotiators Course as approved by the Commission on Peace Officer Standards and Training (POST) prior to primary use in an actual crisis situation. Untrained officers may be used in a support or training capacity. Additional training will be coordinated by the team supervisor.

A minimum of one training day per quarter will be required to provide the opportunity for role playing and situational training necessary to maintain proper skills. This will be coordinated by the team supervisor. Continual evaluation of a team member's performance and efficiency as it relates to the positive operation of the unit shall be conducted by the team supervisor. Performance and efficiency levels, established by the team supervisor, will be met and maintained by all team members. Any member of the Negotiation Team who performs or functions at a level less than satisfactory shall be subject to dismissal from the unit.

## **408.8 SWAT TEAM ADMINISTRATIVE PROCEDURES**

The Tactical Team was established to provide a skilled and trained team which may be deployed during events requiring specialized tactics in such situations as cases where suspects have taken hostages and/or barricaded themselves as well as prolonged or predictable situations in which persons armed or suspected of being armed pose a danger to themselves or others. The following procedures serve as directives for the administrative operation of the SWAT Team's Tactical Team.

### 408.8.1 SELECTION OF PERSONNEL

Interested sworn personnel who are off probation shall submit an application to the team Commander.. Those qualifying applicants will then be invited to participate in the testing process.

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The order of the tests will be given at the discretion of the SWAT Team Commander. The testing process will consist of an oral board, physical agility, SWAT basic handgun, and team evaluation.

- (a) Oral board: The oral board will minimally consist of the SWAT Team Commander, the Entry Team supervisor, and a third person to be selected by the two. Applicants will be evaluated by the following criteria:
  - 1. Recognized competence and ability as evidenced by performance;
  - 2. Demonstrated good judgment and understanding of critical role of SWAT member;
  - 3. Special skills, training, or appropriate education as it pertains to this assignment; and,
  - 4. Commitment to the unit, realizing that the additional assignment may necessitate unusual working hours, conditions, and training obligations.
- (b) Physical agility: The physical agility test is designed to determine the physical capabilities of the applicant as it relates to performance of SWAT-related duties. The test and scoring procedure will be established by the SWAT Team Commander. A minimum qualifying score shall be attained by the applicant to be considered for the position.
- (c) SWAT basic handgun: Candidates will be invited to shoot the SWAT Basic Drill for handgun qualification. A minimum qualifying score must be attained, within the allotted time, to qualify.
- (d) Team evaluation: Current team members will evaluate each candidate on his or her field tactical skills, teamwork, ability to work under stress, communication skills, judgment, and any special skills that could benefit the team.
- (e) A list of successful applicants shall be submitted to the Chief of Police by the SWAT Team Commander, for final selection.

### 408.8.2 TEAM EVALUATION

Continual evaluation of a team member's performance and efficiency as it relates to the positive operation of the unit shall be conducted by the SWAT Team Commander. The performance and efficiency level, as established by the team supervisor, will be met and maintained by all Tactical Team members. Any member of the Tactical Team who performs or functions at a level less than satisfactory shall be subject to dismissal from the team.

### 408.9 OPERATION GUIDELINES FOR SWAT

The following procedures serve as guidelines for the operational deployment of the SWAT Team. Generally, the Tactical Team and the Crisis Negotiation Team will be activated together. It is recognized, however, that a tactical team may be used in a situation not requiring the physical presence of the Crisis Negotiation Team such as warrant service operations. This shall be at the discretion of the SWAT Team Commander.

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### 408.9.1 ON-SCENE DETERMINATION

The Watch Commander in charge at the scene of a particular event will assess whether the SWAT Team would be beneficial in bringing a successful resolution to the situation. The Watch Commander will notify the SWAT Team Commander of the situation, for the final determination on the utilization of the SWAT Team.

### 408.9.2 APPROPRIATE SITUATIONS FOR USE OF SWAT

The following are examples of incidents which may result in the activation of the SWAT Team:

- (a) Barricaded suspects who refuse an order to surrender.
- (b) Incidents where hostages are taken.
- (c) Arrests of dangerous persons.
- (d) Any situation that could enhance the ability to preserve life, maintain social order, and ensure the protection of property.

### 408.9.3 OUTSIDE AGENCY REQUESTS

Requests by field personnel for assistance from outside agency crisis units must be approved by the Watch Commander. Deployment of the Walnut Creek Police Department SWAT Team in response to requests by other agencies must be authorized by a Chief of Police, or his designee.

### 408.9.4 MULTI-JURISDICTIONAL SWAT OPERATIONS

The SWAT team, including relevant specialized units and supporting resources, should develop protocols, agreements, or working relationships to support multi-jurisdictional or regional responses.

- (a) If it is anticipated that multi-jurisdictional SWAT operations will regularly be conducted; SWAT multi-agency and multi-disciplinary joint training exercises are encouraged.
- (b) Members of the Walnut Creek Police Department SWAT team shall operate under the policies, procedures and command of the Walnut Creek Police Department when working in a multi-agency situation.

### 408.9.5 MOBILIZATION OF THE SWAT TEAM

Upon making the determination that the SWAT Team would be beneficial to bringing a successful resolution to the situation; the Watch Commander shall then notify the SWAT Team Commander. If unavailable, a team supervisor shall be notified. A current mobilization list shall be maintained. The Watch Commander will then make the necessary notifications, as soon as practical. The Watch Commander should advise the SWAT Team Commander with as much of the following information which is available at the time:

- (a) The number of suspects, known weapons and resources.
- (b) If the suspect is in control of hostages.
- (c) If the suspect is barricaded.



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- (d) The type of crime involved.
- (e) If the suspect has threatened or attempted suicide.
- (f) The location of the command post and a safe approach to it.
- (g) The extent of any perimeter and the number of officers involved.
- (h) Any other important facts critical to the immediate situation and whether the suspect has refused an order to surrender.

The SWAT Team Commander or supervisor shall then call selected officers to respond.

### 408.9.6 FIELD UNIT RESPONSIBILITIES

While waiting for the SWAT Team, field personnel should, if safe, practical and sufficient resources exist:

- (a) Establish an inner and outer perimeter.
- (b) Establish a command post outside of the inner perimeter.
- (c) Establish an arrest/response team. The team actions may include:
  - 1. Securing any subject or suspect who may surrender.
  - 2. Taking action to mitigate a deadly threat or behavior.
- (d) Evacuate any injured persons or citizens in the zone of danger.
- (e) Attempt to establish preliminary communication with the suspect. Once the SWAT Team has arrived, all negotiations should generally be halted to allow the negotiators and SWAT time to set up.
- (f) Be prepared to brief the SWAT Commander on the situation.
- (g) Plan for, and stage, anticipated resources.

### 408.9.7 ON-SCENE COMMAND RESPONSIBILITIES

Upon arrival of the SWAT Team at the scene, the Incident Commander shall brief the SWAT Team Commander and team supervisors about the situation. Upon review, it will be the Incident Commander's decision, with input from the SWAT Team Commander, whether to deploy the SWAT Team. Once the Incident Commander authorizes deployment, the SWAT Team Commander will be responsible for the tactical portion of the operation. The Incident Commander shall continue supervision of the command post operation, outer perimeter security, and support for the SWAT Team. The Incident Commander and the SWAT Team Commander (or his or her designee) shall maintain communications at all times.

### 408.9.8 COMMUNICATION WITH SWAT PERSONNEL

All of those persons who are not SWAT Team personnel should refrain from any non-emergency contact or interference with any member of the unit during active negotiations. Operations require the utmost in concentration by involved personnel and, as a result, no one should interrupt or

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communicate with SWAT Team personnel directly. All non-emergency communications shall be channeled through the Negotiation Team Supervisor or his or her designee.

### 408.9.9 ADDENDUM

(a) **Critical Incidents may include:**

1. **Hostage Situations:** the holding of any persons(s) against their will by an armed or potentially armed suspect.
2. **Barricade Situations:** the standoff created by an armed or potentially armed suspect in any location, whether fortified or not, who is refusing to comply with police demands for surrender.
3. **Sniper Situations:** the firing upon citizens and/or police by an armed suspect, whether stationary or mobile.
4. **High-Risk Apprehension:** the arrest or apprehension of armed or potentially armed suspects.
5. **High-Risk Warrant Service:** the service of search or arrest warrants where the Risk Analysis Form recommends or requires the use of the SWAT Team.
6. **Personal Protection:** the security of special persons, such as VIP's, witnesses, or suspects, based on threat or potential threat to the well-being of those persons.
7. **Special Assignments:** any assignment or situation where there is a need for personnel trained in special tactics and operations.
8. **Crowd Control and/or Demonstrations.**

(b) **COMPOSITION AND STRUCTURE:** The Walnut Creek Police SWAT Team is comprised of members who have specialized training in the use of special weapons and tactics to deal with special or high-risk situations (see attached organization chart).

1. **Team Commander** - A Police Lieutenant who has the responsibility of coordinating the functional operation of the team.
2. **Team Leaders** - Police Sergeants assigned to the Tactical Team, Sniper Team, Crisis Negotiation Team. The supervisors are responsible for team training and supervising team members during the tactical response to critical incidents.
3. **Entry Team** - A team of police officers who have specialized training in the use of special weapons and tactics to deal with critical incidents.
4. **Sniper Team** - A team of police officers who have specialized training similar to that of the entry team, but with special training in the use of long range weaponry, and intelligence gathering.

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5. **Crisis Negotiation Team** - A team of police officers who have specialized training to negotiate with suspects and/or other involved persons during critical incidents.
  6. **Communications Team** - A team of police assistants who have specialized critical incident dispatch training. The team will report directly to the SWAT Commander.
- (c) **COMMAND AND CONTROL STRUCTURE:** A Police Lieutenant commands the Walnut Creek SWAT Team. When activated for an operation, the SWAT Team Commander, or the Acting SWAT Team Commander (when the SWAT Team Commander is absent) reports directly to the Incident Commander. The Incident Commander has final authority and decision-making capabilities at the scene. The Incident Commander is responsible for deployment of the SWAT Team. The SWAT Team Commander consults with the Incident Commander in terms of when and if the tactical option will be initiated. The SWAT Team Commander will determine how it will be performed. The SWAT Team Commander (or acting SWAT Team Commander) can only relinquish his/her tactical control to the Incident Commander. The Incident Commander, Chief of Police, or Captains have the right to terminate any tactical operation.
- (d) **ACTIVATION PROCESS:** SWAT Team activations may require on-duty personnel to temporarily leave their duty assignment. The department recognizes that SWAT officers have specialized training, and it may be necessary to temporarily cover those duty assignments so SWAT Team members can assist in a tactical operation. SWAT Team members assigned to the Walnut Creek Police SWAT Team report to the SWAT Team Commander until the SWAT Team Commander and/or the Incident Commander determines that the activation is over. Once the tactical operation has ended, SWAT Team members may be required to return to their duty assignment. The Watch Commander has the authority to immediately activate the team for any critical incident within jurisdictional boundaries. The activation will commence when the responsible Watch Commander contacts the SWAT Team Commander, or another supervisor in the chain of command (if the SWAT Team Commander is unavailable), and briefs him/her on the incident. The SWAT Team Commander or Acting SWAT Team Commander will then take responsibility for the conduct of the activation. Whenever the SWAT Team is activated, the Incident Commander will notify the Operations Captain and the Chief of Police. The Walnut Creek Police SWAT Team is available, pursuant to Mutual Aid Protocol and with the approval of the Chief of Police or his/her designee, to any requesting law enforcement agency. When a request for the team is received, it shall be immediately forwarded to the SWAT Team Commander who will consult with the Chief of Police, or his/her designee, to determine if in fact the situation warrants activation of the team. The SWAT Commander or Incident Commander shall then contact the Chief of Police or his/her designee and obtain approval for the

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activation. Any Division or Bureau Supervisor or Manager within the Walnut Creek Police Department, such as Narcotics, or Detectives, may request the assistance of the SWAT Team in planning or conducting appropriate operations. A Walnut Creek Police Department Risk Analysis Form (see attached) will be completed prior to activating the team. The Division or Bureau Commander or his/her representative will contact the SWAT Team Commander with the request and communicate the results of the Risk Analysis. The SWAT Team Commander will follow the above-described procedures prior to team activation.

- (e) **SELECTION PROCESS:** The selection process will follow the guidelines specified in the Policy 1004. Once accepted and assigned to the Walnut Creek Police SWAT Team, all operational team members, regardless of rank or position, must maintain approved standards of performance.
  - 1. **PERFORMANCE STANDARDS:** All entry and sniper team members are required to meet physical fitness standards twice a year.
- (f) **TRAINING STANDARDS:** The Walnut Creek Police SWAT Team will conduct training on a regular basis, which are minimally consistent with POST guidelines. All units will train individually, as well as a team. SWAT Team members will train on appropriate subjects related to the mission of the SWAT Team, and in their specific assignment within the team (entry, sniper, negotiator, and communications). All training will be documented and training records will be maintained.
- (g) **EQUIPMENT STANDARDS:** SWAT Team members are responsible for the care and maintenance of their equipment. Failure to appropriately care for or maintain the equipment in full available/serviceable condition in full mission readiness may be grounds for recommendation of removal from the team. SWAT Team members leaving the team shall return all department issued equipment. Refer to the WCPD Uniform Regulations for specifics on approved uniform/equipment items for SWAT.
- (h) **SPECIAL EQUIPMENT**
  - 1. Recognizing that the missions of the Walnut Creek Police SWAT Team are often performed in a hazardous environment, and recognizing that the safety of innocent citizens, officers, and suspects is of primary concern, the Walnut Creek Police Department SWAT Team maintains an inventory of special equipment, and weapons in an attempt to reduce the risk of injury or death.
  - 2. High caliber rifles: Commonly referred to as counter-sniper rifles, these weapons allow team members to place highly accurate rounds at a distance, to help resolve life-threatening incidents.
  - 3. Less Than Lethal options: Department approved less than lethal force options per Directive 3-09D. May include, but not limited to, impact weapons, electronic control devices, police canines, or ammunition which propel a round or device

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that is not normally lethal in nature. Designed to offer an alternative to the use of deadly force when appropriate.

4. Flash/Sound Diversionary Devices: Device, which utilizes a bright flash of light, followed immediately by a loud noise. These devices are designed to save lives and reduce the potential for shooting situations by providing for a diversion for the entry of SWAT Team members into a hazardous area. .
  5. Breaching Tools and Ammunition: Items, may include, but are not limited to, tools such as 12 gauge breaching shotgun, rams, pry bars, special frangible shotgun rounds, etc. which are designed to force entry into barricaded or secured areas.
  6. Explosives: Tactical explosives used to force entry into barricaded or secure areas, or to create an entry point or port for tactical teams where appropriate speed and surprise can best be accomplished through the use of the explosive. Also used to create large exterior distractions.
  7. Chemical Agents Delivery System: 40mm chemical agents launcher designed to safely deliver chemical agents to a specific location. 8. Communication equipment: Includes telephones (throw phone), cellular phones, radios, bullhorns, PA systems, and other department approved communication equipment assigned to the Crisis Negotiation Team and the Communications Team. Other equipment as authorized and approved by the Chief of Police. Supervisors assigned to the SWAT Team will insure that only those Team members properly trained and certified in the use of the special equipment will utilize the equipment. The department will be responsible for establishing the certification standards and criteria for the team.
- (i) **MISSION PLANNING:** The Walnut Creek Police SWAT Team will utilize a written planning process for all operations that are proactive or anticipatory in nature, such as the service of search/arrest warrants, high-risk surveillance, dignitary protection, riot/crowd control, etc. The written process shall include a Walnut Creek Police Department Risk Analysis Form, which will document how the operation is to be conducted and the command/control/communication, and support that will be required. All operations plans will be attached to a departmental After-Action Report per policy and maintained with that After-Action Report for a period of time that is consistent with Departmental Policies.
- (j) **DOCUMENTATION OF ACTIVATION:** The Walnut Creek Police SWAT Team Commander will insure that an After Action Report will be generated, detailing the activation and use of the team. This report will provide details of the operation and pertinent information required by policy (After-Action Reports, Departmental Directive No. 18-08D) and will be forwarded to the Operations Captain and the Chief of Police.

## Response to Parties and Large Gatherings

### 409.1 PURPOSE AND SCOPE

On occasion, officers respond to parties or gatherings that are causing a neighborhood disturbance. This response is usually necessary because a disturbance in the neighborhood has resulted and a citizen has called to complain. Many times the consumption of alcoholic beverages is occurring at these gatherings. Since these gatherings may involve several hundred people, officers must use care in handling these incidents. Many of these situations occur on weekend evenings; thus, action plans presented in this bulletin are based on the full staffing and the availability of personnel and other resources.

### 409.2 PROCEDURE

#### 409.2.1 INITIAL ACTIONS

Upon receipt of a complaint of an unruly party or gathering, the sector officer will be dispatched to the scene. Dispatch should record the names and addresses of all complaining citizens so that, should police action be necessary, we can substantiate our actions under 415 PC. The assigned sector officer will visually check the situation and report those findings to Dispatch. This report should include the condition of the noise, the number of vehicles in the area, an estimate of the number of persons present, and the demeanor of the crowd when apparent. This information will be relayed to the appropriate field supervisor who will decide on the appropriate tactics to address the problem. The watch commander will be advised of the proposed actions to be taken when time permits.

### 409.3 RESPONSE OPTIONS

#### 409.3.1 NO ACTION NECESSARY

Officers are unable to locate the problem or determine no problem exists.

#### 409.3.2 CONTACT BY SECTOR OFFICER

In all cases where contact is to be made, a cover unit should be dispatched. After waiting for cover the sector officer should contact the person in charge of the gathering or the property where it is occurring and request voluntary compliance by:

- (a) Quieting the crowd to avoid mandatory dispersal
- (b) Agreeing to a voluntary dispersal

### 409.4 ORGANIZED MULTI-UNIT RESPONSE

#### 409.4.1 NUMBER OF UNITS

Number of units needed to respond will be determined by the field supervisor in charge based on the sector officer's report.

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#### 409.4.2 ASSEMBLY AREA

Location will be determined by the field supervisor and should be within two to two blocks of, but out of sight of, the scene. Areas such as church or school parking lots make good assembly areas and cause less of an additional noise disturbance in the surrounding neighborhoods.

#### 409.4.3 SUPERVISORY CONTROL

The field sergeant will respond to the assembly area to direct the tactical response at the target location. When all units assigned arrive at the assembly area, the sergeant and the beat officer will present a short briefing.

#### 409.4.4 NON-ASSIGNED UNIT RESPONSIBILITY

Motorcycle units, if available, will remain assigned to the downtown area and should not be utilized in the initial response, if possible. Walking beats will go mobile and be assigned as necessary by the field sergeant.

Sufficient units will remain unassigned to the initial disturbance response to make certain we have the ability to respond to other calls for emergency service. The watch commander will determine the number of units.

When possible, the field sergeant should assign two perimeter units to remain mobile to take enforcement action as necessary when the crowds are leaving the area.

#### 409.4.5 MOVEMENT TO TARGET LOCATION

The field sergeant will advise Dispatch when the responding units leave the assembly area en route to the target location. Responding units will operate on an alternate tactical channel and a radio check will be done for all units responding. All other units will be advised of a code 33 on the involved channel. One dispatcher will be assigned to the alternate channel traffic. Responding units should proceed to the target location and park in the center of the roadway when possible. Units need to be centered in the roadway to enable parked vehicles to leave the area. Officers should leave their right and left side alley lights on in order to illuminate the area.

#### 409.4.6 ARRIVAL AT THE TARGET LOCATION

Officers will exit their vehicles and assemble in front of the target location. Each officer will possess his/her required equipment.

#### 409.4.7 INITIAL CONTACT

The sector officer and the field sergeant will attempt contact at the target location with the resident, proprietor, or a person in charge of the function. Other officers will remain at their posts. Upon contact with the person in charge, the sector officer will advise them that due to complaint(s) received by the police department, the function should be terminated and all persons not residing at, or properly present at the scene should leave immediately.

**It is extremely important that the officer warn the person in charge of the function to admonish persons leaving that are intoxicated that they should not drive. This is especially critical in terms of juvenile involvement.**

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The sector officer shall obtain identifying information from the person contacted. The sector officer will then advise the person in control of the function that the police will stand by to ensure compliance is gained. The sector officer should also advise the person contacted that if those present do not leave voluntarily the police will clear the gathering and make any arrests necessary to ensure compliance. The sector officer and field sergeant should then return to the location of other officers at the front of the target location.

### 409.4.8 VOLUNTARY COMPLIANCE

If the party appears to break up voluntarily, officers will stand by until only those properly present remain at the scene. Persons should not be permitted to reenter or return to the scene. Once the dispersal is complete, re-contact the person originally contacted. This person should be thanked for the compliance and advised that as the host/hostess, he/she is responsible for the activities of the guests. They should also be warned that future disturbances will not be tolerated. Officers shall then return to service and cancel the code 33 on the affected channel. The responsible beat officer will open a numbered disturbance case. A "party letter" should also be sent to the owner of the property warning them of the future criminal and civil liabilities.

### 409.4.9 INVOLUNTARY COMPLIANCE

If the person in charge of the gathering does not comply or if contact cannot be made, the field sergeant will have Dispatch attempt to locate a telephone number for the residence. Either the officer or the dispatcher should call the number, identify himself/herself, and ask to talk to the person in charge. (This conversation should be recorded for evidence purposes.) If Dispatch is successful in reaching someone, the dispatcher should request that the person contacted meet the sergeant in front of the target location. If no contact is made or if there is no response, the dispatcher shall notify the sergeant immediately.

If contact with the responsible(s) cannot be made and the problem does not voluntarily deescalate, the sergeant should proceed as follows:

- Have the complainant(s) contacted by an officer, confirm that their peace has been disturbed, and attempt to get a handwritten statement from them.
- If there is no complainant, the officers should make contact with the neighbors adjacent to and/or across the street from the target location and ascertain the same information as outlined above.

This procedure will ensure that there is a victim per section 415 PC before further action is taken. The more victims that can be identified, the better case at a later date.

Existing law prohibits the warrant-less entry to a home under party type peace disturbance circumstances. This makes it very difficult to quiet a party that is disturbing the peace of a neighborhood unless we gain voluntary compliance. Under current law officers may not enter a residence to make arrests or even quiet the occupants unless some other exigent circumstances exist. Even the use of Penal Code section 407 cannot be used unless we can show that the crowd gathered "pose(d) a clear and present danger of imminent violence" (In re Bozorg (1973) 108



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Cal.Rptr. 465, 510 p.2d). If 407 PC can be utilized and entry becomes necessary, then force may be used to make that entry as outlined in Penal Code section 844.

When possible, consent should be obtained before entering a residence without a warrant. Any arrests made, once a consent entry is made, will be governed by the current rules of arrest. In those cases where consent cannot be obtained, other lawful alternatives should be sought (e.g., prosecution through the complaint process).

### 409.4.10 CIVIL LIABILITY

When it is necessary to force entry and some damage is done to the resident's property, the reporting officer will document the extent of the damage and the steps taken to re-secure the residence. As long as our actions are lawful, we incur no civil liability (see City Attorney's opinion dated May 30, 1989). At no time should employees state that the city will pay for damages.

### 409.4.11 SPECIAL PARTY RESPONSE PROBLEMS OPEN SPACE

The Walnut Creek Open Space is a very attractive party locale. Responses present some unique policing problems. Traditionally, we have responded with several units and conducted a search for those responsible, only to have most of them run off and never get identified. It has also resulted in officers, getting uniforms dirty or torn, damaging equipment, and at times having officers injured.

Supervisors should only send officers into the Open Space if deemed absolutely necessary. A supervisor should respond to the entrance to the Open Space with enough officers to send in at least two teams of two officers each. Other officers should know where to respond so that they can get to the area as fast as possible if needed.

An alternative to going into the Open Space should be considered. Most of the time the partygoers drive to an entrance location. By simply logging down all of the license plates and running them for registration, we should be able to locate the registered owners. A phone call to the owners should tell us who has the car (and more than likely is partying in the Open Space) and give us the opportunity to let a concerned parent know what his/her son or daughter is doing (even if over 18), since he/she will be operating the car later. In any event, we should have a list of suspects as well as some enlightened parents. We may also be able to wait for subjects to return to their cars and issue citations at that time.

### 409.4.12 SPECIAL CONSIDERATIONS - BILLING FOR POLICE SERVICES

Walnut Creek Municipal Code section 4-10.02 allows the police to charge a fee for police services when those services are the result of a second response to a party or other large gathering of persons that are disturbing the peace of the neighborhood.

#### (a) **Residential Gathering:**

- When officers respond to a reported peace disturbance, they must put the person(s) responsible on notice that a second response will result in their being charged for police services. A Walnut Creek Police Department Loud Party Fee First Response Notice should be completed and the person in charge of the

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gathering presented with a copy of this notice. If officers then respond a second time, the reporting officer will open a number case, document the nature of the disturbance, and again identify the person(s) responsible. The reporting officer will also have to obtain CAD print outs for each officer present and determine the amount of time spent at the scene. This information shall appear in the police report.

(b) **Commercial Gathering:**

- Commercial establishments are also included in this ordinance. These businesses are held to even more stringent requirements in that a second response in a 30 day period will make them in violation of the ordinance. In these cases, officers will have to make a case on the first call if there is a high probability that there will be further responses necessary. When officers respond to disturbances at businesses, they need to have Dispatch check CAD for previous contact cases. The officer should determine from the case if proper notification was given on the prior occasion and to whom. If the officer feels the business is in violation of the ordinance and wishes to pursue billing, the needed information in the case is the same as was covered in a residential gathering.

(c) **Second Response Billing Process:**

- The reporting officer will be responsible for determining which officers were present, how long they were there, what the current hourly pay rate is for the officers, and for filling out the billing request. The billing request will include the person to be billed, the address, the names of the officers present, the amount of time involved at the scene, and a total charge. Included in the amount of time will be an administrative charge for the amount of time needed by the officer to prepare the billing not to exceed \$10.
- Once the case is submitted for review, it will be the sergeant's responsibility to determine if the request for billing is warranted. Once billing is approved, the sergeant will forward the billing request to Finance for preparation of a billing to the involved party.

#### **409.5 OPERATION COMMAND**

The field sergeant will decide upon the type of response initiated. If a multi-unit response is initiated, the watch commander will be advised. It will be up to the watch commander to decide to alert neighboring agencies of a possible mutual aid response. If mutual aid is called, the watch commander will respond to the scene and establish a command post to direct and coordinate operations. A staging area will be established so that responding mutual aid units can be directed to a safe location for briefing and assignment.

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### **409.6 REPORTS**

The sector officer assigned will complete the initial report at the scene. Officers responding to the scene in a multi-unit response situation will submit supplemental reports as to their actions at the scene. Agencies responding in a mutual aid response should complete an outside assist case for us to cover their actions and identify the personnel assisting.

### **409.7 ARRESTS**

Persons arrested should be booked at the Walnut Creek Police Department; however, if the number of those arrested exceeds the capacity of our facilities, in custody subjects may be transported directly to the Martinez Detention Facility for booking. The officer who initiates the arrest will complete arrest information. If several field arrests materialize, the arresting officer should be photographed with the person arrested, at the scene if possible or prior to booking. This is necessary for identification purposes.

### **409.8 COMMUNICATION**

During a multi-unit response situation, responding units will use an alternate radio channel if necessary. Dispatch will provide a dispatcher to monitor this channel. A code 33 will exist on this channel during the operation. All other units will operate on channel 1.

If a mutual aid response occurs, dispatch and the field supervisor will determine the primary channel for radio traffic. Dispatch will provide a dispatcher to monitor this channel and a county wide code 33 will be requested via the Contra Costa County Sheriff's Office. Outside agencies with compatible digital equipment shall be advised to go to a predetermined channel or talk group.

### **409.9 EQUIPMENT**

Officers responding shall have their riot helmet and batons available. If appropriate, they should be worn during the operation. Other equipment such as flex cuffs, evidence equipment, and cameras should also be available. Consideration should be given to making a request for canine units. This resource can be helpful to move large groups of unruly persons or in controlling large groups in the Open Space. Canine units should not be used inside residences.

## Cite and Release Policy

### 410.1 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.

### 410.2 POLICY

It is the policy of the Walnut Creek 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.

### 410.3 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.

#### 410.3.1 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.

#### 410.3.2 JAIL RELEASE

In certain cases, it may be impractical to release a person arrested for misdemeanor offenses in the field. The person arrested may instead be released after booking at the jail, with Watch Commander approval.

Any person arrested for a misdemeanor offense shall be released on his/her written promise to appear after the booking procedure is completed, unless disqualified for reasons listed below.

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### **410.4 NON-RELEASE**

#### **410.4.1 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:

Disqualifying offenses include (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) 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).
- (e) Stalking (Penal Code § 646.9).
- (f) 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).

#### **410.4.2 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 Walnut Creek 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, 40303 and 40305.
- (d) There are one or more outstanding arrest warrants for the person (see Misdemeanor Warrants elsewhere in this policy).
- (e) The person could not provide satisfactory evidence of personal identification.

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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.
  - (f) 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.
  - (g) 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.
  - (h) The person arrested demands to be taken before a magistrate or has refused to sign the notice to appear.
  - (i) 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. Reasons may include:
    - (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

### **410.5 MISDEMEANOR WARRANTS**

An adult arrested on a misdemeanor warrant may be released, subject to Watch Commander approval, unless any of the following conditions exist:

- (a) The misdemeanor cited in the warrant involves violence
- (b) The misdemeanor cited in the warrant involves a firearm
- (c) The misdemeanor cited in the warrant involves resisting arrest
- (d) The misdemeanor cited in the warrant involves giving false information to a peace officer
- (e) The person arrested is a danger to him/herself or others due to intoxication or being under the influence of drugs or narcotics
- (f) The person requires medical examination or medical care or was otherwise unable to care for his/her own safety
- (g) The person has other ineligible charges pending against him/her
- (h) There is reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be immediately endangered by the release of the person
- (i) The person refuses to sign the notice to appear
- (j) The person cannot provide satisfactory evidence of personal identification

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- (k) The warrant of arrest indicates that the person is not eligible to be released on a notice to appear

Release under this section shall be done in accordance with the provisions of this policy.

### **410.6 JUVENILE CITATIONS**

Completion of criminal citations for juveniles is generally not appropriate with the following exceptions:

- Misdemeanor traffic violations of the Vehicle Code
- Violations of the Walnut Creek City codes

All other misdemeanor violations for juveniles shall be documented with a case number and the case should be referred to the Detective Bureau for further action including diversion.

# Foreign Diplomatic and Consular Representatives

## 411.1 PURPOSE AND SCOPE

This policy provides guidelines to ensure that members of the Walnut Creek Police Department extend appropriate privileges and immunities to foreign diplomatic and consular representatives in accordance with international law.

## 411.2 POLICY

The Walnut Creek Police Department respects international laws related to the special privileges and immunities afforded foreign diplomatic and consular representatives assigned to the United States.

All foreign diplomatic and consular representatives shall be treated with respect and courtesy, regardless of any privileges or immunities afforded them.

## 411.3 CLAIMS OF IMMUNITY

If a member comes into contact with a person where law enforcement action may be warranted and the person claims diplomatic or consular privileges and immunities, the member should, without delay:

- (a) Notify a supervisor.
- (b) Advise the person that his/her claim will be investigated and he/she may be released in accordance with the law upon confirmation of the person's status.
- (c) Request the person's identification card, either issued by the U.S. Department of State (DOS), Office of the Chief of Protocol, or in the case of persons accredited to the United Nations, by the U.S. Mission to the United Nations. These are the only reliable documents for purposes of determining privileges and immunities.
- (d) Contact the DOS Diplomatic Security Command Center at 571-345-3146 or toll free at 866-217-2089, or at another current telephone number and inform the center of the circumstances.
- (e) Verify the immunity status with DOS and follow any instructions regarding further detention, arrest, prosecution and/or release, as indicated by the DOS representative. This may require immediate release, even if a crime has been committed.

Identity or immunity status should not be presumed from the type of license plates displayed on a vehicle. If there is a question as to the status or the legitimate possession of a Diplomat or Consul license plate, a query should be run via the National Law Enforcement Telecommunications System (NLETS), designating "US" as the state.



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## *Foreign Diplomatic and Consular Representatives*

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### **411.4 ENFORCEMENT**

If the DOS is not immediately available for consultation regarding law enforcement action, members shall be aware of the following:

- (a) Generally, all persons with diplomatic and consular privileges and immunities may be issued a citation or notice to appear. However, the person may not be compelled to sign the citation.
- (b) All persons, even those with a valid privilege or immunity, may be reasonably restrained in exigent circumstances for purposes of self-defense, public safety or the prevention of serious criminal acts.
- (c) An impaired foreign diplomatic or consular representative may be prevented from driving a vehicle, even if the person may not be arrested due to privileges and immunities.
  1. Investigations, including the request for field sobriety tests, chemical tests and any other tests regarding impaired driving may proceed but they shall not be compelled.
- (d) The following persons may not be detained or arrested, and any property or vehicle owned by these persons may not be searched or seized:
  1. Diplomatic-level staff of missions to international organizations and recognized family members
  2. Diplomatic agents and recognized family members
  3. Members of administrative and technical staff of a diplomatic mission and recognized family members
  4. Career consular officers, unless the person is the subject of a felony warrant
- (e) The following persons may generally be detained and arrested:
  1. International organization staff; however, some senior officers are entitled to the same treatment as diplomatic agents.
  2. Support staff of missions to international organizations
  3. Diplomatic service staff and consular employees; however, special bilateral agreements may exclude employees of certain foreign countries.
  4. Honorary consular officers
  5. Whenever an officer arrests and incarcerates, or detains for investigation for over two hours, a person with diplomatic and consular privileges and immunities, the officer shall promptly advise the person 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.

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## Foreign Diplomatic and Consular Representatives

### 411.5 DOCUMENTATION

All contacts with persons who have claimed privileges and immunities afforded foreign diplomatic and consular representatives should be thoroughly documented and the related reports forwarded to DOS.

### 411.6 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
<b>Diplomatic Agent</b>	No (note (b))	No	Yes	No	No	Same as sponsor (full immunity & inviolability)
<b>Member of Admin and Tech Staff</b>	No (note (b))	No	Yes	No	No	Same as sponsor (full immunity & inviolability)
<b>Service Staff</b>	Yes (note (a))	Yes	Yes	Yes	No for official acts. Yes otherwise (note (a))	No immunity or inviolability (note (a))
<b>Career Consul Officer</b>	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
<b>Honorable Consul Officer</b>	Yes	Yes	Yes	No for official acts Yes otherwise.	No for official acts Yes otherwise	No immunity or inviolability
<b>Consulate Employees</b>	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))
<b>Int'l Org Staff (note (b))</b>	Yes (note (c))	Yes (note (c))	Yes	Yes (note (c))	No for official acts. Yes otherwise (note (c))	No immunity or inviolability

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<b>Diplomatic-Level Staff of Missions to Int'l Org</b>	No (note (b))	No	Yes	No	No	Same as sponsor (full immunity & inviolability)
<b>Support Staff of Missions to Int'l Orgs</b>	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.
- (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.

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## Rapid Response and Deployment

### 412.1 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.

### 412.2 POLICY

The Walnut Creek Police Department will endeavor to plan for rapid response to crisis situations, and to coordinate response planning with other emergency services as well as with those that are responsible for operating sites that may be the target of a critical incident.

Nothing in this policy shall preclude the use of reasonable force, deadly or otherwise, by members of the Department in protecting themselves or others from death or serious injury.

### 412.3 PROCEDURE

If there is a reasonable belief that acts or threats by a suspect are placing lives in imminent danger, first responding officers should consider reasonable options to immediately eliminate the threat. Officers must decide, often under a multitude of difficult and rapidly evolving circumstances, whether to advance on the suspect, take other actions to deal with the threat or wait for additional resources.

When deciding on a course of action officers should consider:

- (a) Whether sufficient personnel are available on-scene to advance on the suspect. Any advance on a suspect should be made using teams of two or more officers whenever reasonably possible.
- (b) Whether individuals who are under imminent threat can be moved out of danger with reasonable safety.
- (c) Whether the officers have the ability to effectively communicate with others in the field.
- (d) Whether planned tactics can be effectively deployed.
- (e) The availability of rifles, shotguns, shields, control devices and any other appropriate tools, and whether the deployment of these tools will provide a tactical advantage.
- (f) In a case of a barricaded suspect with no hostages and no immediate threat to others, officers should consider summoning and waiting for additional assistance (special tactics and/or hostage negotiation team response).
- (g) If a suspect is actively engaged in the infliction of serious bodily harm or other life-threatening activity toward others, the officer should take immediate action, if

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reasonably possible, to stop the threat presented by the suspect while calling for additional assistance.

### 412.3.1 424.3.1 DECISION TO ADVANCE ON SUSPECT

The decision to advance on the suspect(s) is a decision that the on-scene first responders must make. The multitude of variables in such a circumstance requires a rapid assessment of the situation, a decision as to the best tactics to implement and the timely action necessary to resolve the incident. The following are some examples:

- (a) Barricaded suspect wait for additional assistance - probable SWAT response unless timely resolved
- (b) Barricaded suspect with hostages and no harm done to the hostages - wait for additional assistance or SWAT response
- (c) Suspect actively shooting hostages or others in the area - take immediate action, if possible, to neutralize the threat presented by the suspect while calling for assistance

### **412.4 CONSIDERATIONS**

When dealing with a crisis situation members should:

- (a) Assess the immediate situation and take reasonable steps to maintain operative control of the incident.
- (b) Obtain, explore and analyze sources of intelligence and known information regarding the circumstances, location and suspect involved in the incident.
- (c) Attempt to attain a tactical advantage over the suspect by reducing, preventing or eliminating any known or perceived threat.
- (d) Attempt, if feasible and based upon the suspect's actions and danger to others, a negotiated surrender of the suspect and release of the hostages.

### **412.5 PLANNING**

The Patrol Bureau Commander should coordinate critical incident planning. Planning efforts should consider:

- (a) Identification of likely critical incident target sites, such as schools, shopping centers, entertainment and sporting event venues.
- (b) Availability of building plans and venue schematics of likely critical incident target sites.
- (c) Communications interoperability with other law enforcement and emergency service agencies.
- (d) Training opportunities in critical incident target sites, including joint training with site occupants.
- (e) Evacuation routes in critical incident target sites.
- (f) Patrol first-response training.
- (g) Response coordination and resources of emergency medical and fire services.

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- (h) Equipment needs.
- (i) Mutual aid agreements with other agencies.
- (j) Coordination with private security providers in critical incident target sites.

### **412.6 TRAINING**

The Training Manager should include rapid response to critical incidents in the training plan. This training should address:

- (a) Orientation to likely critical incident target sites, such as schools, shopping centers, entertainment and sporting event venues.
- (b) Communications interoperability with other law enforcement and emergency service agencies.
- (c) Patrol first-response training, including patrol rifle, shotgun, breaching tool and control device training.
  - 1. This should include the POST terrorism incident training required for officers assigned to field duties (Penal Code § 13519.12).
- (d) First aid, including gunshot trauma.
- (e) Reality-based scenario training (e.g., active shooter, disgruntled violent worker).

## Reporting Police Activity Outside of Jurisdiction

### 414.1 PURPOSE AND SCOPE

This policy provides general guidelines for reporting police activity while on or off-duty and occurring outside the jurisdiction of the Walnut Creek Police Department.

#### 414.1.1 ASSISTANCE TO AGENCIES OUTSIDE THE CITY

When an officer is on-duty and is requested by an allied agency to participate in law enforcement activity in another jurisdiction, he/she shall obtain prior approval from their immediate supervisor or the Watch Commander. If the request is of an emergency nature, the officer shall notify Dispatch before responding and thereafter notify a supervisor as soon as practical.

#### 414.1.2 LAW ENFORCEMENT ACTIVITY OUTSIDE THE CITY

Any on-duty officer, who engages in law enforcement activities of any type outside the immediate jurisdiction of Walnut Creek shall notify his or her supervisor or the Watch Commander at the earliest possible opportunity. Any off-duty officer who engages in any law enforcement activities, regardless of jurisdiction shall notify the Watch Commander as soon as practical.

The Watch Commander shall determine if a case report or other documentation of the officer's activity is required. The report or other documentation shall be forwarded to the officer's Bureau Commander.

## Response to Bomb Calls

### 414.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to assist members of the Walnut Creek Police Department in their initial response to incidents involving explosives, explosive devices, explosion/bombing incidents or threats of such incidents. Under no circumstances should these guidelines be interpreted as compromising the safety of first responders or the public. When confronted with an incident involving explosives, safety should always be the primary consideration.

### 414.2 POLICY

It is the policy of the Walnut Creek Police Department to place a higher priority on the safety of persons and the public over damage or destruction to public or private property.

### 414.3 RECEIPT OF BOMB THREAT

Department members receiving a bomb threat should obtain as much information from the individual as reasonably possible, including the type, placement and alleged detonation time of the device.

If the bomb threat is received on a recorded line, reasonable steps should be taken to ensure that the recording is preserved in accordance with established department evidence procedures.

The member receiving the bomb threat should ensure that the Watch Commander is immediately advised and informed of the details. This will enable the Watch Commander to ensure that the appropriate personnel are dispatched, and, as appropriate, the threatened location is given an advance warning.

### 414.4 GOVERNMENT FACILITY OR PROPERTY

A bomb threat targeting a government facility may require a different response based on the government agency.

#### 414.4.1 WALNUT CREEK POLICE DEPARTMENT FACILITY

If the bomb threat is against the Walnut Creek Police Department facility, the Watch Commander will direct and assign officers as required for coordinating a general building search or evacuation of the police department, as he/she deems appropriate.

#### 414.4.2 OTHER COUNTY OR MUNICIPAL FACILITY OR PROPERTY

If the bomb threat is against a county or municipal facility within the jurisdiction of the Walnut Creek Police Department that is not the property of this department, the appropriate agency will be promptly informed of the threat. Assistance to the other entity may be provided as the Watch Commander deems appropriate.

#### 414.4.3 BOMB SQUAD DUTIES

The following are the duties of the Bomb Squad:



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- Render safe and/or remove suspected improvised explosive devices, incendiary devices, explosives, explosive chemicals, pyrotechnics and ammunition.
- Provide for legal, proper and safe transportation, disposal and/or storage of explosives and other items referred to above.
- Conduct post bomb crime scene investigations.
- Collect and preserve bomb scene evidence.
- Prepare and provide courtroom testimony.
- Store, maintain, and inventory bomb squad equipment.
- Provide technical support to special operations.
- Provide dignitary protection.
- Prepare and participate in explosive related training programs.
- Maintain and be familiar with a technical library of Bomb Data Center publications and other explosive related materials.
- Maintain professional liaison with other state and local bomb squads, military EOD units, federal agencies and professional associations.
- Compile and report technical data on explosive devices and incidents.
- Develop agency emergency response plans for a bomb threat, actual improvised explosive device and bomb crime scene.
- Develop and promulgate bomb threat awareness and safety programs for public and private organizations.
- Report found or recovered military ordnance to military EOD units.
- Provide support and advice to local tactical teams and allied agencies

### 414.4.4 INVENTORY

The bomb squad commander shall be responsible for ensuring that all of the bomb squad's specialized, valuable, and non-consumable equipment be inventoried once per year. Usually, the inventory report should be completed by the end of the calendar year, in either November or December. The inventory report should include:

- Item description
- Item serial or unique identifier
- Item deployment or storage location
- Item's original cost (close approximation if not known)
- Item's current value or worth (estimation)
- Item's source of procurement (grant name / year, budget, donation) if known

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- Item's mandatory retention status

Inventory will be retained as long as it is useful, not redundant, still considered safe to use / deploy by current best practices or otherwise require to be retained by MOU or grant agreement.

Inventory that falls into disrepair while retention is mandatory should be repaired to useful condition. Inventory that does not fall into the "mandatory retention" category may be disposed of appropriately.

The inventory report will also be updated upon receipt of new specialized, valuable and non-consumable equipment.

### **414.4.5 FEDERAL BUILDING OR PROPERTY**

If the bomb threat is against a federal building or property, the Federal Protective Service should be immediately notified. The Federal Protective Service provides a uniformed law enforcement response for most facilities, which may include use of its Explosive Detector Dog teams.

If the bomb threat is against a federal government property where the Federal Protective Service is unable to provide a timely response, the appropriate facility's security or command staff should be notified.

Bomb threats against a military installation should be reported to the military police or other military security responsible for the installation.

### **414.5 PRIVATE FACILITY OR PROPERTY**

When a member of this department receives notification of a bomb threat at a location in the City of Walnut Creek, the member receiving the notification should obtain as much information as reasonably possible from the notifying individual, including:

- (a) The location of the facility.
- (b) The nature of the threat.
- (c) Whether the type and detonation time of the device is known.
- (d) Whether the facility is occupied and, if so, the number of occupants currently on-scene.
- (e) Whether the individual is requesting police assistance at the facility.
- (f) Whether there are any internal facility procedures regarding bomb threats in place, such as:
  1. No evacuation of personnel and no search for a device.
  2. Search for a device without evacuation of personnel.
  3. Evacuation of personnel without a search for a device.
  4. Evacuation of personnel and a search for a device.

The member receiving the bomb threat information should ensure that the Watch Commander is immediately notified so that he/she can communicate with the person in charge of the threatened facility.

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### 414.5.1 ASSISTANCE

The Watch Commander should be notified when police assistance is requested. The Watch Commander will make the decision whether the Department will render assistance and at what level. Information and circumstances that indicate a reasonably apparent, imminent threat to the safety of either the facility or the public may require a more active approach, including police control over the facility.

Should the Watch Commander determine that the Department will assist or control such an incident, he/she will determine:

- (a) The appropriate level of assistance.
- (b) The plan for assistance.
- (c) Whether to evacuate and/or search the facility.
- (d) Whether to involve facility staff in the search or evacuation of the building.
  1. The person in charge of the facility should be made aware of the possibility of damage to the facility as a result of a search.
  2. The safety of all participants is the paramount concern.
- (e) The need for additional resources, including:
  1. Notification and response, or standby notice, for fire and emergency medical services.

Even though a facility does not request police assistance to clear the interior of a building, based upon the circumstances and known threat, officers may be sent to the scene to evacuate other areas that could be affected by the type of threat, or for traffic and pedestrian control.

### **414.6 FOUND DEVICE**

When handling an incident involving a suspected explosive device, the following guidelines, while not all inclusive, should be followed:

- (a) No known or suspected explosive item should be considered safe regardless of its size or apparent packaging.
- (b) The device should not be touched or moved except by the bomb squad or military explosive ordnance disposal team.
- (c) Personnel should not transmit on any equipment that is capable of producing radio frequency energy within the evacuation area around the suspected device. This includes the following:
  1. Two-way radios
  2. Cell phones
  3. Other personal communication devices
- (d) The appropriate bomb squad or military explosive ordnance disposal team should be summoned for assistance.

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- (e) The largest perimeter reasonably possible should initially be established around the device based upon available personnel and the anticipated danger zone.
- (f) A safe access route should be provided for support personnel and equipment.
- (g) Search the area for secondary devices as appropriate and based upon available resources.
- (h) Consider evacuation of buildings and personnel near the device or inside the danger zone and the safest exit route.
- (i) Promptly relay available information to the Watch Commander including:
  - 1. The time of discovery.
  - 2. The exact location of the device.
  - 3. A full description of the device (e.g., size, shape, markings, construction).
  - 4. The anticipated danger zone and perimeter.
  - 5. The areas to be evacuated or cleared.

### **414.7 EXPLOSION/BOMBING INCIDENTS**

When an explosion has occurred, there are multitudes of considerations which may confront the responding officers. As in other catastrophic events, a rapid response may help to minimize injury to victims, minimize contamination of the scene by gathering crowds, or minimize any additional damage from fires or unstable structures.

#### **414.7.1 CONSIDERATIONS**

Officers responding to explosions, whether accidental or a criminal act, should consider the following actions:

- (a) Assess the scope of the incident, including the number of victims and extent of injuries.
- (b) Request additional personnel and resources, as appropriate.
- (c) Assist with first aid.
- (d) Identify and take appropriate precautions to mitigate scene hazards, such as collapsed structures, bloodborne pathogens and hazardous materials.
- (e) Assist with the safe evacuation of victims, if possible.
- (f) Establish an inner perimeter to include entry points and evacuation routes. Search for additional or secondary devices.
- (g) Preserve evidence.
- (h) Establish an outer perimeter and evacuate if necessary.
- (i) Identify witnesses.

#### **414.7.2 NOTIFICATIONS**

When an explosion has occurred, the following people should be notified as appropriate:

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- Fire department
- Bomb squad
- Additional department personnel, such as investigators and forensic services
- Field supervisor
- Watch Commander
- Other law enforcement agencies, including local, state or federal agencies, such as the FBI and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)
- Other government agencies, as appropriate

### 414.7.3 CROWD CONTROL

Only authorized members with a legitimate need should be permitted access to the scene. Spectators and other unauthorized individuals should be restricted to a safe distance as is reasonably practicable given the available resources and personnel.

### 414.7.4 PRESERVATION OF EVIDENCE

As in any other crime scene, steps should immediately be taken to preserve the scene. The Watch Commander should assign officers to protect the crime scene area, which could extend over a long distance. Consideration should be given to the fact that evidence may be imbedded in nearby structures or hanging in trees and bushes.

## Immigration Violations

### 415.1 PURPOSE AND SCOPE

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

#### 415.1.1 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.

### 415.2 POLICY

It is the policy of the Walnut Creek 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.

### 415.3 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 without regard to race, ethnicity, or national origin in any way that would violate the United States or California constitutions.

#### 415.3.1 BASIS FOR CONTACT

Unless immigration status is relevant to another criminal offense or investigation (e.g., harboring, smuggling, terrorism), the fact that an individual is suspected of being an undocumented alien shall not be the sole basis for contact, detention, or arrest.

#### 415.3.2 SWEEPS

The Walnut Creek Police Department does not independently conduct sweeps or other concentrated efforts to detain suspected undocumented aliens.

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When enforcement efforts are increased in a particular area, equal consideration should be given to all suspected violations and not just those affecting a particular race, ethnicity, age, gender, sexual orientation, religion, socioeconomic status or other group.

The disposition of each contact (e.g., warning, citation, arrest), while discretionary in each case, should not be affected by such factors as race, ethnicity, age, gender, sexual orientation, religion or socioeconomic status.

#### 415.3.3 ICE REQUEST FOR ASSISTANCE

If a specific request is made by ICE or any other federal agency, this department will provide available support services, such as traffic control or peacekeeping efforts, during the federal operation.

Members of this department should not participate in such federal operations as part of any detention team unless it is in direct response to a request for assistance on a temporary basis or for officer safety. Any detention by a member of this department should be based upon the reasonable belief that an individual is involved in criminal activity.

#### 415.3.4 IDENTIFICATION

Whenever any individual is reasonably suspected of a criminal violation (infraction, misdemeanor or felony), the investigating officer should take reasonable steps to determine the person's identity through valid identification or other reliable sources.

If an individual would have otherwise been released for an infraction or misdemeanor on a citation, the person should be taken to the station and given a reasonable opportunity to verify his/her true identity (e.g., telephone calls). If the person's identity is thereafter reasonably established, the original citation release should be completed without consideration of immigration status.

#### 415.3.5 ARREST

If the officer intends to take enforcement action and the individual is unable to reasonably establish his/her true identity, the officer may take the person into custody on the suspected criminal violation (see Vehicle Code § 40302(a) and Penal Code § 836, if pertinent to the circumstances). A field supervisor shall approve all such arrests.

#### 415.3.6 BOOKING

If the officer is unable to reasonably establish an arrestee's identity, the individual may, upon approval of a supervisor, be booked into jail for the suspected criminal violation and held for bail.

A person detained exclusively pursuant to the authority of Vehicle Code § 40302(a) for any Vehicle Code infraction or misdemeanor shall not be detained beyond two hours for the purpose of establishing his/her true identity. Regardless of the status of that person's identity at the expiration of two hours, he/she shall be released on his/her signature with a promise to appear in court for the Vehicle Code infraction or misdemeanor involved.

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### 415.3.7 NOTIFICATION OF IMMIGRATION AND CUSTOMS ENFORCEMENT

Whenever an officer has reason to believe that any person arrested for any offense listed in Health & Safety Code §11369 or any other felony may not be a citizen of the United States and the individual is not going to be booked into county jail, the arresting officer shall cause ICE to be notified for consideration of an immigration hold.

If an officer has an articulable belief that an individual taken into custody for any misdemeanor is an undocumented alien, and after he/she is formally booked there is no intention to transport to the county jail, ICE may be informed by the arresting officer so that ICE may consider placing an immigration hold on the individual.

In making the determination whether to notify ICE in such circumstances, the officer should, in consultation with a supervisor, consider the totality of circumstances of each case, including, but not limited to:

- (a) Seriousness of the offense
- (b) Community safety
- (c) Potential burden on ICE
- (d) Impact on the immigrant community

Generally, officers will not need to notify ICE when booking arrestees at the county jail. Immigration officials routinely interview suspected undocumented aliens who are booked into the county jail on criminal charges and notification will be handled according to jail operation procedures.

### **415.4 IMMIGRATION INQUIRIES PROHIBITED**

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

#### 415.4.1 IMMIGRATION CHECKS

Immigration status may be determined through any of the following sources:

- (a) A law enforcement officer who is authorized by the federal government under 8 USC § 1357 to verify or ascertain an alien's immigration status (sometimes referred to as a 287(g) certified officer)
- (b) Immigration and Customs Enforcement (ICE)
- (c) U.S. Customs and Border Protection (CBP)

An officer shall verify from a 287(g) certified officer, ICE or CBP whether a person's presence in the United States relates to a federal civil violation or a criminal violation.

If the officer has facts that establish probable cause to believe that a person already lawfully detained has committed a criminal immigration offense, he/she may continue the detention and may request ICE or CBP to respond to the location to take custody of the detained person. In addition, the officer should notify a supervisor as soon as practicable. No individual who is



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otherwise ready to be released should continue to be detained only because questions about the individual's status are unresolved.

An officer is encouraged to forgo detentions made solely on the basis of a misdemeanor offense when time limitations, availability of personnel, issues of officer safety, communication capabilities or the potential to obstruct a separate investigation outweigh the need for the detention.

**415.4.2 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).

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).

#### **415.5 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).

#### **415.5.1 SUPERVISOR RESPONSIBILITIES**

When notified that an officer has arrested an individual for violation of 8 USC § 1326(a) or under the authority of a judicial warrant, the supervisor should determine whether it is appropriate to:

- (a) Transfer the person to federal authorities.
- (b) Transfer the person to jail.

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### **415.6 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.).

### **415.7 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

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

#### **415.7.1 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.

#### **415.7.2 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 Walnut Creek Police Department intends to comply with the request (Government Code § 7283.1).

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If the Walnut Creek 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).

### **415.7.3 ICE INTERVIEWS**

Before any interview regarding civil immigration violations takes place between ICE personnel and an individual in custody, the Walnut Creek 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.

### **415.7.4 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.

### **415.7.5 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE**

The Detective Bureau supervisor 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 Manager for required reporting to the DOJ (Government Code § 7284.6(c)(2)(see the Records Bureau Policy).

### **415.8 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 supervisor assigned to oversee the handling of any related case. The Detective Bureau supervisor should:

- (a) Consult with the assigned investigator to determine the current status of any related case and whether further documentation is warranted.

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- (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.

### **415.8.1 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.

### **415.8.2 REPORTING TO LEGISLATURE**

The Detective Bureau supervisor or the 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).

### **415.8.3 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).

## **415.9 TRAINING**

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

Training should include:

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- (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

### 416.1 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.

#### 416.1.1 BROKEN WATER LINES

The Special District water supplier'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. The Special District can only turn off the valve at the meter. The citizen can normally accomplish this.

If a break occurs on the Special Districts' side of the meter, emergency personnel should be called as soon as practical by Dispatch.

#### 416.1.2 ELECTRICAL LINES

City Public Works does not maintain electrical lines. 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 Electric Company should be promptly notified, as appropriate.

#### 416.1.3 RESERVOIRS, PUMPS, WELLS, ETC.

Public Works maintains a reservoir at Heather Farm Park and public water equipment, as well as several underpass and other street drainage systems. In the event of flooding or equipment malfunctions, emergency personnel should be contacted as soon as possible.

#### 416.1.4 EMERGENCY NUMBERS

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

### 416.2 TRAFFIC SIGNAL MAINTENANCE

The City of Walnut Creek maintains all traffic signals within the City. Officers should contact Public Services regarding malfunctioning or damaged traffic signals.

#### 416.2.1 OFFICER'S RESPONSIBILITY

Upon observing a damaged or malfunctioning signal, the officer will advise the Dispatch of the location and problem with the signal. The dispatcher should make the necessary notification to the proper maintenance agency.

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## 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 Walnut Creek Police Department to protect the public and individuals through legal and appropriate use of the 72-hour treatment and evaluation commitment (5150 commitment) process.

#### 418.2.1 HOSPITAL EMERGENCY ROOMS

The county mental health director has designated emergency room physicians at both John Muir and Kaiser hospitals in Walnut Creek as authorized to place patients in their respective emergency rooms on a 5150 commitment hold. This authorization does not apply to persons not being treated in the emergency room.

#### 418.2.2 OTHER HOSPITAL PATIENTS

Occasionally an officer may be called to a non-emergency hospital room on a request to take a person into custody for psychiatric evaluation and treatment. In such cases, the officer may rely upon information provided by the hospital staff or upon his or her own observations and/or interview of the patient. A 5150 should not be completed for a patient to be released on some future date. The evaluation should be made on the date of transfer to a mental health evaluation and treatment facility.

### 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

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## *Mental Illness Commitments*

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### 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) Arrange for ambulance transportation 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.

### 418.4 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.

### 418.4.1 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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### **418.5 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.

### **418.6 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).

#### **418.6.1 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 shall be forwarded to the Detective Bureau, which shall be 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.

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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 Department 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.

### **418.7 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.

## Response to Emergencies in the Canal/Creeks

### 419.1 POLICY

It is the policy of this department to assist the CFD swift water rescue team and other appropriate agencies in the rescue of persons who have become trapped in or are being swept away in one of the canals and/or creeks in our city.

#### 419.1.1 LIMITATION OF POLICY

This policy is for internal use only and does not enlarge an officer's civil or criminal liability in any way. It shall not be construed as the creation of a higher standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this policy, except those of a criminal nature, can only form the basis of complaint and/or disciplinary action by this department and then only in an administrative setting.

### 419.2 PURPOSE

Occasionally emergencies arise where people find themselves in one of the city's many canals or creeks and are unable to get out. These waters can be swift and cold and present unique hazards. This training bulletin is to provide officers with potential response procedures in the event of such an emergency to assist in rescuing individuals without putting officers in undo risk. The primary role of rescue remains with CFD's swift water rescue team.

Prior to any event, officers should know where to locate maps detailing the many creeks and canals in our city. The maps are located on all MDTs.

### 419.3 PROCEDURES

In the event that an individual or individuals end up in the canal/creek, officers should first assess the hazard level and potential for successfully assisting in a rescue. During the rainy season the water is extremely fast moving and cold and rescues may have to be planned miles downstream from where the subject(s) entered the water.

Entering the water to attempt a rescue should be avoided if at all possible. This is a very dangerous activity and requires extensive training and equipment, which officers do not have. Additionally, an officer's utility belt, ballistic vest and other equipment present additional hazards to any officer that enters the water while wearing them. Broadcasting the location of victims without attempting a rescue may be the best course of action in some circumstances.

CFD should be notified immediately so they can initiate their swift water rescue response. The Watch Commander will also consider requesting other resources such as an air unit and Search and Rescue.

Officers should determine where the subject was last seen and possible contact points downstream. Good locations to attempt a rescue include:

- Broadway just north of Newell, near the entrance to Newell Promenade off of Broadway.

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## *Response to Emergencies in the Canal/Creeks*

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- 925 Ygnacio Valley Road: Parking lot runs over the canal and gives at least two locations to attempt a rescue.
- WCI canal bridges.
- Walnut Blvd near Walden.
- Bancroft road near the BART overcrossing. Of note-there is a substantial water hazard a short distance downstream from this location.

If it is appropriate for an officer to assist in a rescue, the officer should attempt to utilize the "throw bags" consisting of a bright orange float bag, carabineer and long yellow rope, which are located in the Sergeant's vehicles as well as the Watch Commander's vehicle. The carabineer serves to affix one end of the rope to a fixed object. The other end can either be tossed to the victim or strung across the canal for the victim to grab. Again, entering the water to attempt a rescue should be avoided if at all possible to avoid undue risk to the officer.

## Obtaining Air Support

### 420.1 PURPOSE AND SCOPE

The use of a police helicopter can be invaluable in certain situations. This policy specifies potential situations where the use of a helicopter may be requested and the responsibilities for making a request.

### 420.2 REQUEST FOR HELICOPTER ASSISTANCE

If a supervisor or officer in charge of an incident determines that the use of a helicopter would be beneficial, a request to obtain helicopter assistance may be made.

#### 420.2.1 REQUEST FOR ASSISTANCE FROM ANOTHER AGENCY

After consideration and approval of the request for a helicopter, by the supervisor or Watch Commander, dispatch will call the closest agency having helicopter support available. The dispatcher on duty will apprise that agency of the specific details of the incident prompting the request.

#### 420.2.2 CIRCUMSTANCES UNDER WHICH AID MAY BE REQUESTED

Police helicopters may be requested under any of the following conditions:

- (a) When the helicopter is activated under existing mutual aid agreements
- (b) Whenever the safety of law enforcement personnel is in jeopardy and the presence of the helicopters may reduce such hazard
- (c) When the use of the helicopters will aid in the capture of a suspected fleeing felon whose continued freedom represents an ongoing threat to the community
- (d) When a helicopter is needed to locate a person who has strayed or is lost and whose continued absence constitutes a serious health or safety hazard
- (e) Vehicle pursuits

While it is recognized that the availability of helicopter support will generally provide valuable assistance to ground personnel, the presence of a helicopter will rarely replace the need for officers on the ground.

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## Detentions And Photographing Detainees

### 421.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for conducting field interviews (FI) and pat-down searches, and the taking and retention of photographs of persons detained in the field but not arrested. Due to a variety of situations confronting the officer, the decision to FI or photograph a field detainee shall be left to the discretion of the involved officer based on the totality of the circumstances available to them at the time of the detention.

### 421.2 DEFINITIONS

**Detention** - Occurs when an officer intentionally, through words, actions or physical force causes an individual to reasonably believe he/she is being required to restrict his/her movement. Detentions also occur when an officer actually restrains a person's freedom of movement.

**Consensual Encounter** - Occurs 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 purposes of determining the individual's identity and resolving the officer's suspicions.

**Field Photographs** - Field photographs are defined as posed photographs taken of a person during a contact, 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 when persons are not posed for the purpose of photographing are not considered field photographs.

**Pat-Down Search** - This type of search is used by officers in the field to check an individual for 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** - Occurs 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.

### 421.3 FIELD INTERVIEWS

Officers may stop individuals for the purpose of conducting an FI where reasonable suspicion is present. In justifying the stop, the officer should be able to point to specific facts which, when taken together with rational inferences, reasonably warrant the stop. Such facts include, but are not limited to, the following:

- (a) The appearance or demeanor of an individual suggests that he/she is part of a criminal enterprise or is engaged in a criminal act.

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- (b) The actions of the suspect suggest that he/she is engaged in a criminal activity.
- (c) The hour of day or night is inappropriate for the suspect's presence in the area.
- (d) The suspect's presence in the particular area is suspicious.
- (e) The suspect is carrying a suspicious object.
- (f) The suspect's clothing bulges in a manner that suggests he/she is carrying a weapon.
- (g) The suspect is located in proximate time and place to an alleged crime.
- (h) The officer has knowledge of the suspect's prior criminal record or involvement in criminal activity.

### 421.3.1 INITIATING A FIELD INTERVIEW

An officer may initiate the stop of a person when there is articulable, reasonable suspicion to do so. A person however, should not be detained longer than is reasonably necessary to resolve the officer's suspicions.

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

### 421.3.2 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 investigators to utilize available personnel for the following:

- (a) Identify all persons present at the scene and in the immediate area.
  - 1. When feasible, a recorded statement should be obtained from those persons who claim not to have witnessed the incident but who were present at the time it occurred.
  - 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 department personnel.
  - 1. A written, verbal or recorded statement of consent should be obtained prior to transporting a witness in a department vehicle. When the witness is a minor,

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consent should be obtained from the parent or guardian, if available, prior to transportation.

### **421.4 PAT-DOWN SEARCHES**

A pat-down search of a detained subject may be conducted whenever an officer reasonably believes that the person may possess an object that can be utilized as an offensive weapon or whenever the officer has a reasonable fear for his/her own safety or the safety of others. Circumstances that may establish justification for performing a pat-down search include, but are not limited to the following:

- (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 deadly weapons.
- (e) The appearance and demeanor of the suspect.
- (f) Visual indications which suggest that the suspect is carrying a firearm or other weapon.
- (g) The age and gender of the suspect.

Whenever possible, pat-down searches should be performed by officers of the same gender.

### **421.5 FIELD PHOTOGRAPHS**

Before photographing any field detainee, the officer shall carefully consider, among other things, the factors listed below.

#### **421.5.1 FIELD PHOTOGRAPHS TAKEN WITH CONSENT**

Field photographs may be taken when the subject of the photograph knowingly and voluntarily gives consent.

#### **421.5.2 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. Mere knowledge or suspicion of gang membership or affiliation is not a sufficient justification for taking a photograph without consent. 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.

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.



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### **421.6 SUPERVISOR RESPONSIBILITY**

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. Access to field photographs shall be strictly limited to law enforcement purposes.

## Criminal Organizations

### 422.1 PURPOSE AND SCOPE

The purpose of this policy is to ensure that the Walnut Creek Police Department appropriately utilizes criminal intelligence systems and temporary information files to support investigations of criminal organizations and enterprises.

#### 422.1.1 DEFINITIONS

Definitions related to this policy include:

**Criminal intelligence system** - Any record system that receives, stores, exchanges or disseminates information that has been evaluated and determined to be relevant to the identification of a criminal organization or enterprise, its members or affiliates. This does not include temporary information files.

### 422.2 POLICY

The Walnut Creek Police Department recognizes that certain criminal activities, including but not limited to gang crimes and drug trafficking, often involve some degree of regular coordination and may involve a large number of participants over a broad geographical area.

It is the policy of this department to collect and share relevant information while respecting the privacy and legal rights of the public.

### 422.3 CRIMINAL INTELLIGENCE SYSTEMS

No department member may create, submit to or obtain information from a criminal intelligence system unless the Chief of Police has approved the system for department use.

Any criminal intelligence system approved for department use should meet or exceed the standards of 28 CFR 23.20.

A designated supervisor will be responsible for maintaining each criminal intelligence system that has been approved for department use. The supervisor or the authorized designee should ensure the following:

- (a) Members using any such system are appropriately selected and trained.
- (b) Use of every criminal intelligence system is appropriately reviewed and audited.
- (c) Any system security issues are reasonably addressed.

#### 422.3.1 SYSTEM ENTRIES

It is the designated supervisor's responsibility to approve the entry of any information from a report, field interview (FI), photo or other relevant document into an authorized criminal intelligence system. If entries are made based upon information that is not on file with this department, such as open or public source documents or documents that are on file at another agency, the designated supervisor should ensure copies of those documents are retained by the Records Bureau. Any

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supporting documentation for an entry shall be retained by the Records Bureau in accordance with the established records retention schedule and for at least as long as the entry is maintained in the system.

The designated supervisor should ensure that any documents retained by the Records Bureau are appropriately marked as intelligence information. The Records Manager may not purge such documents without the approval of the designated supervisor.

### 422.3.2 GANG DATABASES

The Chief of Police may approve participation by the gang unit in a shared criminal gang intelligence database, such as CALGANG®. Members must obtain the requisite training before accessing any such database.

It is the gang unit supervisor's responsibility to determine whether any report or FI contains information that would qualify for entry into the database. Prior to designating any person as a suspected gang member, associate or affiliate in a shared gang database; or submitting a document to the Attorney General's office for the purpose of designating a person in a shared gang database; or otherwise identifying the person in a shared gang database, the gang unit supervisor shall provide written notice to the person and, if the person is under the age of 18, to his/her parent or guardian of the designation and the basis for the designation, unless providing that notification would compromise an active criminal investigation or compromise the health or safety of a minor. Notice shall also describe the process to contest the designation (Penal Code § 186.34).

The person, an attorney working on his/her behalf or his/her parent or guardian (if the person is under 18 years of age) may request, in writing, information as to whether the person is designated as a suspected gang member, associate or affiliate in a shared gang database accessible by the department, the basis for that designation and the name of the agency that made the designation. The department shall respond to a valid request in writing within 30 days, and shall provide the information requested unless doing so would compromise an active investigation or compromise the health and safety of the person if he/she is under 18 years of age (Penal Code § 186.34).

The person, or his/her parent or guardian if the person is under 18 years of age, may contest the designation by submitting written documentation which shall be reviewed by the gang unit supervisor. If it is determined that the person is not a suspected gang member, associate or affiliate, the person shall be removed from the database. The person and the parent or guardian shall be provided written verification of the department's decision within 30 days of receipt of the written documentation contesting the designation and shall include the reason for a denial when applicable (Penal Code § 186.34).

The gang unit supervisor should forward reports or FIs to the Records Bureau after appropriate database entries are made. The supervisor should clearly mark the report/FI as gang intelligence information.

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It is the responsibility of the Records Bureau supervisor to retain reports and FIs in compliance with the database rules and any applicable end user agreement.

Records contained in a shared gang database shall not be disclosed for employment or military screening purposes, and shall not be disclosed for the purpose of enforcing federal immigration law unless required by state or federal statute or regulation (Penal Code § 186.36).

### **422.3.3 REPORT TO THE CALIFORNIA DEPARTMENT OF JUSTICE**

The Investigation Bureau Commander or the authorized designee shall ensure that the annual report of information submitted to a shared gang database as required by Penal Code § 186.34 is submitted to the California Department of Justice.

### **422.4 TEMPORARY INFORMATION FILE**

No member may create or keep files on individuals that are separate from the approved criminal intelligence system. However, members may maintain temporary information that is necessary to actively investigate whether a person or group qualifies for entry into the department-approved criminal intelligence system only as provided in this section. Once information qualifies for inclusion, it should be submitted to the supervisor responsible for consideration of criminal intelligence system entries.

#### **422.4.1 FILE CONTENTS**

A temporary information file may only contain information and documents that, within one year, will have a reasonable likelihood to meet the criteria for entry into an authorized criminal intelligence system.

Information and documents contained in a temporary information file:

- (a) Must only be included upon documented authorization of the responsible department supervisor.
- (b) Should not be originals that would ordinarily be retained by the Records Bureau or Property and Evidence Section, but should be copies of, or references to, retained documents such as copies of reports, FI forms, Dispatch records or booking forms.
- (c) Shall not include opinions. No person, organization or enterprise shall be labeled as being involved in crime beyond what is already in the document or information.
- (d) May include information collected from publicly available sources or references to documents on file with another government agency. Attribution identifying the source should be retained with the information.

### **422.5 INFORMATION RECOGNITION**

Department members should document facts that suggest an individual, organization or enterprise is involved in criminal activity and should forward that information appropriately. Examples include, but are not limited to:

- (a) Gang indicia associated with a person or residence.
- (b) Information related to a drug-trafficking operation.

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- (c) Vandalism indicating an animus for a particular group.
- (d) Information related to an illegal gambling operation.

Department supervisors who utilize an authorized criminal intelligence system should work with the Training Manager to train members to identify information that may be particularly relevant for inclusion.

### **422.6 RELEASE OF INFORMATION**

Department members shall comply with the rules of an authorized criminal intelligence system regarding inquiries and release of information.

Information from a temporary information file may only be furnished to department members and other law enforcement agencies on a need-to-know basis and consistent with the Records Maintenance and Release Policy.

When an inquiry is made by the parent or guardian of a juvenile as to whether that juvenile's name is in a temporary information file, such information should be provided by the supervisor responsible for the temporary information file, unless there is good cause to believe that the release of such information might jeopardize an ongoing criminal investigation.

### **422.7 CRIMINAL STREET GANGS**

The Detective Bureau supervisor should ensure that there are an appropriate number of department members who can:

- (a) Testify as experts on matters related to criminal street gangs, and maintain an above average familiarity with:
  1. Any organization, associate or group of three or more persons that meets the definition of a criminal street gang under Penal Code § 186.22(f).
  2. Identification of a person as a criminal street gang member and criminal street gang-related crimes.
  3. The California Street Terrorism Enforcement and Prevention Act (Penal Code § 186.21 et seq.), associated crimes and what defines a criminal street gang (Penal Code § 186.22).
- (b) Coordinate with other agencies in the region regarding criminal street gang-related crimes and information.
- (c) Train other members to identify gang indicia and investigate criminal street gang-related crimes.

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### **422.8 TRAINING**

The Training Manager should provide training on best practices in the use of each authorized criminal intelligence system to those tasked with investigating criminal organizations and enterprises. Training should include:

- (a) The protection of civil liberties.
- (b) Participation in a multiagency criminal intelligence system.
- (c) Submission of information into a multiagency criminal intelligence system or the receipt of information from such a system, including any governing federal and state rules and statutes.
- (d) The type of information appropriate for entry into a criminal intelligence system or temporary information file.
- (e) The review and purging of temporary information files.

## Watch Commanders

### **423.1 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.

### **423.2 DESIGNATION AS ACTING WATCH COMMANDER**

When a Lieutenant is unavailable for duty as Watch Commander, in most instances a sergeant should be designated as Watch Commander.

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## Mobile Digital Terminal Use

### 424.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for the proper access, use and application of the Mobile Digital Terminal (MDT) system in order to ensure appropriate access to confidential records from local, state and national law enforcement databases, and to ensure effective electronic communications between department members and Dispatch.

### 424.2 PRIVACY EXPECTATION

Members forfeit any expectation of privacy with regard to messages accessed, transmitted, received or reviewed on any department technology system (see the Information Technology Use Policy for additional guidance).

### 424.3 POLICY

Walnut Creek Police Department members using the MDT shall comply with all appropriate federal and state rules and regulations and shall use the MDT in a professional manner, in accordance with this policy.

### 424.4 RESTRICTED ACCESS AND USE

MDT use is subject to the Information Technology Use and Protected Information policies.

Members shall not access the MDT system if they have not received prior authorization and the required training. Members shall immediately report unauthorized access or use of the MDT by another member to their supervisors or Watch Commanders.

Use of the MDT system to access law enforcement databases or transmit messages is restricted to official activities, business-related tasks and communications that are directly related to the business, administration or practices of the Department. In the event that a member has questions about sending a particular message or accessing a particular database, the member should seek prior approval from his/her supervisor.

Sending derogatory, defamatory, obscene, disrespectful, sexually suggestive, harassing or any other inappropriate messages on the MDT system is prohibited and may result in discipline.

It is a violation of this policy to transmit a message or access a law enforcement database under another member's name or to use the password of another member to log in to the MDT system unless directed to do so by a supervisor. Members are required to log off the MDT or secure the MDT when it is unattended. This added security measure will minimize the potential for unauthorized access or misuse.

#### 424.4.1 USE WHILE DRIVING

Use of the MDT by the vehicle operator should be limited to times when the vehicle is stopped. Information that is required for immediate enforcement, investigative, tactical or safety needs should be transmitted over the radio.



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Short transmissions, such as a license plate check, are permitted if it reasonably appears that it can be done safely. In no case shall an operator attempt to send or review lengthy messages while the vehicle is in motion.

### **424.5 DOCUMENTATION OF ACTIVITY**

Except as otherwise directed by the Watch Commander or other department-established protocol, all calls for service assigned by a dispatcher should be communicated by voice over the police radio and electronically via the MDT unless security or confidentiality prevents such broadcasting.

MDT and voice transmissions are used to document the member's daily activity. To ensure accuracy:

- (a) All contacts or activity shall be documented at the time of the contact.
- (b) Whenever the activity or contact is initiated by voice, it should be documented by a dispatcher.
- (c) Whenever the activity or contact is not initiated by voice, the member shall document it via the MDT.

#### **424.5.1 STATUS CHANGES**

All changes in status (e.g., arrival at scene, meal periods, in service) will be transmitted over the police radio or through the MDT system.

Members responding to in-progress calls should advise changes in status over the radio to assist other members responding to the same incident. Other changes in status can be made on the MDT.

#### **424.5.2 EMERGENCY ACTIVATION**

If there is an emergency activation and the member does not respond to a request for confirmation of the need for emergency assistance or confirms the need, available resources will be sent to assist in locating the member. If the location is known, the nearest available officer should respond in accordance with the Officer Response to Calls Policy.

Members should ensure a field supervisor and the Watch Commander are notified of the incident without delay.

Officers not responding to the emergency shall refrain from transmitting on the police radio until a no-further-assistance broadcast is made or if they are also handling an emergency.

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## Use of Audio/Video Recorders

### 425.1 PURPOSE AND SCOPE

The Walnut Creek Police Department has provided each of its sworn members with access to audio recorders for use while on-duty. These recorders are intended to assist officers in the performance of their duties by providing an unbiased audio record of a contact.

### 425.2 UNIFORMED OFFICER RESPONSIBILITIES

Each officer shall be responsible for maintaining his/her own recordings until the media is either full or placed into evidence/safekeeping.

### 425.3 NON-UNIFORMED OFFICER RESPONSIBILITIES

Any officer assigned to non-uniformed positions may carry a departmentally issued audio recorder at any time the officer believes that such a device may be beneficial to the situation.

Each officer shall be responsible for maintaining his/her own recordings until the media is either full or placed into evidence/safekeeping.

### 425.4 ACTIVATION OF THE AUDIO RECORDER

Penal Code § 632 prohibits any individual from surreptitiously recording any conversation in which any party to the conversation has a reasonable belief that the conversation was private or confidential, however Penal Code § 633 expressly exempts law enforcement from this prohibition during the course of a criminal investigation.

- (a) No member of this department may surreptitiously record a conversation of any other member of this department without the expressed knowledge and consent of all parties. Nothing in this section is intended to interfere with an officer's right to openly record any interrogation pursuant to Government Code § 3303(g).
- (b) Any member of this department may surreptitiously record any conversation during the course of a criminal investigation in which the officer reasonably believes that such a recording will be beneficial to the investigation.
  - 1. For the purpose of this policy, any officer contacting an individual suspected of violating any law or during the course of any official law enforcement related activity shall be presumed to be engaged in a criminal investigation. This presumption shall not apply to contacts with other employees conducted solely for administrative purposes.
  - 2. For the purpose of this policy, it shall further be presumed that any individual contacted by a uniformed officer wearing a conspicuously mounted audio recorder will have knowledge that such a contact is being recorded.

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- (c) Members of the Department are encouraged to activate their recorders at any time that the officer reasonably believes that a recording of an on-duty contact with a member of the public may be of future benefit.
  - 1. At no time should an officer jeopardize his/her safety in order to activate a recorder or change the recording media.
  - 2. Officers are prohibited from utilizing department recorders and recording media for personal use.

### **425.5 RETENTION OF RECORDING MEDIA**

At any time that an officer records any portion of a contact which the officer reasonably believes constitutes evidence in a criminal case; the officer shall record the related case number and book the recording media into evidence or download the file in accordance with current procedure for storing digital files.

- (a) The officer shall further note in any related report that the recording has been placed into evidence.
- (b) Recording media placed into evidence shall be retained through the final disposition of the related criminal case.

#### **425.5.1 NON-CRIMINAL MATTER**

At any time that an officer reasonably believes that a recorded contact may be of benefit in a non-criminal matter (e.g., a hostile contact), the officer may book the recording media into safekeeping or download the file in accordance with current procedure for storing digital files.

- (a) Under such circumstances, the officer shall notify a supervisor of the existence of the recording as soon as practicable.
- (b) Recording media which have been placed into safekeeping shall be retained for a period of no less than 180 days or until the related matter has been closed (e.g., internal investigation, civil litigation).

Once any recording medium has been filled, the officer shall place it into safekeeping or download the file in accordance with current procedure for storing digital files where it shall be retained for a period of no less than 180 days unless utilized in a specific case.

### **425.6 REVIEW OF RECORDED MEDIA FILES**

Recorded files may be reviewed in any of the following situations:

- (a) By a supervisor investigating a specific act of officer conduct
- (b) Upon approval by a supervisor, any member of the Department who is participating in an official investigation such as a personnel complaint, administrative investigation or criminal investigation
- (c) By the personnel who originally recorded the incident

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- (d) Pursuant to lawful process or by court personnel otherwise authorized to review evidence in a related case
- (e) By media personnel with permission of the Chief of Police or authorized designee

### **425.7 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.

### **425.8 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.

### **425.9 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.

## Medical Marijuana

### 426.1 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.

#### 426.1.1 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).

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### **426.2 POLICY**

It is the policy of the Walnut Creek 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 Walnut Creek Police Department will exercise discretion to ensure laws are appropriately enforced without unreasonably burdening both those individuals protected under California law and public resources.

### **426.3 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.

#### **426.3.1 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.

#### **426.3.2 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.

### 426.3.3 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.
- (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).

### 426.3.4 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).

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### 426.4 MEDICINAL USE CLAIMS

In order to qualify for a medicinal marijuana defense, any individual making such a claim must affirmatively establish the following information. If the individual cannot or will not provide all of the required information, the officer should note such fact in any related report and proceed with appropriate enforcement action.

#### 426.4.1 PATIENTS

- (a) An individual may establish his/her status as a qualified patient by presenting a current and valid state issued identification card issued by the Department of Health (Health & Safety Code § 11362.735). Such identification cards shall contain the following information:
  - 1. A unique serial number.
  - 2. An expiration date.
  - 3. The name and telephone number of the county health department approving the application.
  - 4. A 24-hour toll-free number for law enforcement to verify the validity of the card (Verification can be checked at [www.calmmp.ca.gov](http://www.calmmp.ca.gov)).
  - 5. A photograph of the cardholder.
- (b) No officer shall refuse to accept a properly issued identification card unless the officer has reasonable cause to believe that the information contained in the card is false or that the card is being used fraudulently (Health & Safety Code § 11362.78).
- (c) If the individual does not possess a valid state issued identification card, the individual claiming status as a qualified patient must minimally provide the following information:
  - 1. Satisfactory identification establishing current residency in California.
  - 2. A current and valid medical marijuana ID card from a local governmental agency (e.g., county) or a current and verifiable, written recommendation for marijuana from a California licensed physician.
  - 3. In the absence of a valid identification card, the handling officer should also obtain a written waiver from the involved individual authorizing the release of all related medical records.

#### 426.4.2 PRIMARY CAREGIVERS

Primary caregivers are subject to the following requirements (Health & Safety Code 11362.765):

- (a) A primary caregiver is not authorized to use, sell, or possess marijuana for sale.
- (b) A primary caregiver must provide sufficient proof that he/she is responsible for the patient's housing, health and/or safety.



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- (c) A primary caregiver must provide sufficient proof of personal knowledge of the patient's medical needs and the details of the attending physician's recommendation.
- (d) While qualified patients and primary caregivers may be permitted to collectively or cooperatively associate to cultivate medical marijuana, such individuals must strictly adhere to all non-profit and local business requirements (Health & Safety Code § 11362.775).
- (e) If the person claims to be a primary caregiver, ask the following questions:
  - How many patients do you have?
  - What are their medical conditions that require medical marijuana usage?
  - Do you have a doctor's recommendation to use marijuana in addition to being a caregiver? (if yes, ask the questions from Policy 452.3.2).
  - What are the names of your patients?
  - How much marijuana do you supply each patient and what do you charge him or her?
  - How long have you been a caregiver?
  - How do you ensure all your patients have a doctor's recommendation?
  - Can I contact your patients to verify what you are telling me?
    - (No permission needed because no "doctor/patient" relationship exists).
  - What are their addresses and phone numbers?
  - Do you have a medical marijuana card or a caregivers card from a specific county and if so which county?
- (f) In addition to these questions, determine if the patient/primary caregivers violating the terms of probation or parole.
- (g) If the information from a person claiming to be a primary caregiver is **confirmed and appears legitimate**, that person is entitled to possess the previously stated amounts of marijuana for **each** of their patients.
  1. If a person is acting as primary caregiver to more than one patient under section 11362.7(d) (2), he or she may aggregate the possession and cultivation limits **for each patient**. For example, if a caregiver is responsible for three patients, he or she may possess up to 24 oz. of marijuana (8 oz. per patient) and may grow 18 mature or 36 immature plants.
  2. **Officers should not seize any marijuana (dried or in plant form) found at or under these amounts.** In addition, the subject should not be arrested unless there are other charges that apply. Possession of marijuana, which complies with SB 420 and Prop. 215 will not supply probable cause to search.

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### 426.4.3 PATIENT/CAREGIVER CASES

The officer should determine if the suspect is a "**patient/caregiver**" by following the recommended steps listed under Possession for Sales Cases. If the officer determines the suspect does not meet the criteria for "patient/caregiver", the officer will proceed with the investigation and appropriate enforcement action should be taken.

### 426.4.4 CLAIM REQUIREMENTS MET

Once the handling officer is satisfied that the individual making a medicinal marijuana use claim meets the above requirements, the officer should proceed as follows:

- (a) A small sample of the involved marijuana should be seized and booked into evidence.
- (b) Any allowable amount of marijuana left in possession of a qualified individual for the limited purpose of medicinal use should be described and noted in the related report.
- (c) If the handling officer has already taken the individual into custody (vs. detention only) prior to establishing qualification for a potential medicinal use defense and there are no other criminal charges pending or being investigated, the individual should be released pursuant to Penal Code § 849(b).
- (d) If the individual remains in custody on any charge(s), the individual will not be permitted to use marijuana while being detained or held in jail or other law enforcement facility (Health & Safety Code § 11362.785(c)).
- (e) The handling officer shall complete a timely report which will be submitted to the District Attorney with all of the aforementioned documentation for a determination of whether the medicinal marijuana defense will apply.

### 426.5 SEIZURE OF MARIJUANA

**Collection:** A safe approach is to sample the plants randomly and to photograph the marijuana grow. When in doubt, officers should contact a Supervisor, Narcotics Detective or the District Attorney's Office for advice. Officers should be particularly cautious when the seizure of growing marijuana plants is involved. Once a plant is removed from a pot or cut down it is essentially destroyed. If it is later determined a subject had a right to possess those plants, the city and/or the officer may incur civil liability.

### 426.6 DISPOSITION OF SEIZED MARIJUANA BY WCPD PROPERTY

- (a) **Return of Seized Medical Marijuana:** If a person whose marijuana is seized by law enforcement successfully establishes a medical marijuana defense in court, or the case is not prosecuted, he or she may file a motion for return of the marijuana. If a court grants the motion and orders the return of marijuana seized incident to an arrest, the individual or entity subject to the order must return the property. State law enforcement officers who handle controlled substances in the course of their official duties are immune from liability under the CSA. (21 U.S.C. § 885(d).) Once the marijuana is returned, federal authorities are free to exercise jurisdiction over it. (21

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U.S.C. §§ 812(c) (10), 844(a); City of Garden Grove v. Superior Court (Kha) (2007) 157 Cal.App.4th 355, 369, 386, 391.)

- (b) After this case is adjudicated, this marijuana seized then changes from "Evidence," to property for "Safekeeping." WCPD Property will then notify the owner that s/he has 60 days to **obtain a court order** establishing his/her legal right to possess this marijuana. If this order is obtained, then this marijuana will be returned to the owner. If this order is NOT obtained, then this marijuana will be destroyed 60 days after notification.
- (c) If the marijuana is seized as evidence, and there is **NO** medical marijuana (Prop 215 / SB 420) defense, then the seized marijuana will be destroyed when the case is adjudicated.

### **426.7 RETURN OF MARIJUANA**

Regardless of the prosecution status or disposition of any related criminal case, this department will not be responsible for the return of any marijuana seized as evidence except as may be required by a valid court order (Cal. Health and Safety Code § 11473.5 and 21 U.S.C. § 885(d)).

### **426.8 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.

### **426.9 PROPERTY AND EVIDENCE SECTION SUPERVISOR RESPONSIBILITIES**

The Property and Evidence Section 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 and Evidence Section 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 and Evidence Section 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 and Evidence Section 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.

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## Graffiti Abatement

### 427.1 POLICY

Graffiti is offensive, detrimental to property values, degrading to the community, and associated with the increase in crime. The speedy removal of graffiti from public and private property reduces the frequency of additional acts of graffiti and related vandalism and enhances the quality of life within the City.

It shall be the policy of this department, in partnership with the community, to identify and initiate action for removal of graffiti or tagging from the public and private property within the City limits of Walnut Creek.

### 427.2 PURPOSE

The purpose of this bulletin is to outline the procedures for initiating the removal of graffiti from City property, private property, and other property within Walnut Creek, which is owned or maintained by other governmental agencies.

#### 427.2.1 DEFINITIONS

**Graffiti/Tagging:** drawing, defacing, writing, marring, inscribing, scratching, painting, or affixing of markings on any real or personal property without consent of the owner.

**Property Owner:** any person owning the property as shown on the last tax assessment roll for the city or leasing, renting, occupying, managing, or having charge of any real property or structure.

**Removal:** to repair, replace, remove, destroy, or otherwise remedy the graffiti by such means and in such a manner and to such an extent that the graffiti is no longer visible.

### 427.3 PROCEDURE FOR GRAFFITI REMOVAL

#### 427.3.1 CITY-OWNED/MAINTAINED PROPERTY

When an officer identifies or is made aware of graffiti on City property, the officer shall open a numbered vandalism case and document the incident. A Miscellaneous Service Request (MSR) should be completed by the officer and forwarded to the Community Development Department (CDD) with special attention to Code Enforcement. Or the reporting officer should send an email to the CDD with a request to have the graffiti removed. Code Enforcement will coordinate Graffiti Removal. A copy of the MSR or email should be placed in the case report.

When repair/removal is completed, the Public Services Department should return a completed copy of the MSR to the reporting officer. This copy should be forwarded to the case report.

#### 427.3.2 PROPERTY OWNED/MAINTAINED BY OTHER GOVERNMENTAL AGENCIES

When an officer identifies or is made aware of graffiti on property owned/maintained by another governmental agency, the officer may initiate an "Assist to Outside Agency" report; or the officer or dispatcher may refer the reporting party to the appropriate agency. If a report is completed, an approved copy of that report including an accurate location and description of the graffiti should be

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forwarded to the responsible agency. A listing of agency personnel and fax number is located near the fax machine in the Records Bureau. Allied agency addresses and phone numbers are also listed under the notepad topics in the patrol cars MDT's. It is the responsibility of the other agencies victimized by graffiti to initiate graffiti removal. Most agencies have an aggressive removal policy regarding identified graffiti.

### **427.3.3 PRIVATE PROPERTY**

City Municipal Code section 4-6.601 designates graffiti as a nuisance and provides for graffiti removal on private property per California Government Code 38773.5. The Municipal Code section provides that upon notification, a property owner/agent shall abate the graffiti within 15 days. An appeals process and removal/cost recovery process by the City is also contained in this section.

When an officer identifies or is made aware of graffiti on private property, the officer shall contact an owner or person in charge of the property. The goal of the contact shall be to gain the voluntary compliance and cooperation of the property owners/agent in removing the graffiti. Property owners are victims of vandalism. An MSR should be completed and routed as listed in 453.3.1.

The officer shall open a vandalism case and place a copy of the MSR with the case. Code Enforcement will coordinate graffiti removal on private property.

### **427.4 OFFICER RESPONSIBILITY**

When an officer opens a graffiti-related vandalism investigation, the officer shall, whenever practical, take photos of the graffiti damage and book the photos into evidence. Photos may relate cases and aid in the identification of those responsible.

When a suspect is arrested in association with graffiti vandalism a copy of the case and all associated cases shall be forwarded to the city's attorney's office for review. The city attorney will file appropriate civil action against the suspect or the suspect's legal guardians, if the suspect is a juvenile. These civil actions are codified under the Penal Code sub sections of 594 and allow for civil remedies for reimbursement of costs to the city for the clean up of graffiti.

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## Bicycle Patrol

### 428.1 PURPOSE AND SCOPE

The Walnut Creek Police Department has established the Patrol Bicycle Program (PBP) 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.

### 428.2 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 a supervisor or the Watch Commander.

### 428.3 SELECTION OF PERSONNEL

Interested sworn personnel, including reserve officers who are off probation, shall advise their Supervisor of their interest in participating in the Program. Interested personnel shall be evaluated by the following criteria:

- (a) Recognized competence and ability as evidenced by performance.
- (b) Special skills or training as it pertains to the assignment.
- (c) Good physical condition.
- (d) Willingness to perform duties using the bicycle as a mode of transportation.

#### 428.3.1 BICYCLE PATROL COORDINATOR

The Bicycle Patrol Coordinator will be selected from the rank of Master Officer by the Patrol Bureau Commander or his/her designee.

The Bicycle Patrol Coordinator 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) Coordinating activities with the Patrol Bureau.
- (e) Other activities as required to maintain the efficient operation of the Bicycle Patrol Program.

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### **428.4 TRAINING**

Participants in the program must complete an initial Department approved bicycle-training course after acceptance into the program. The initial training shall minimally include the following:

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

Bicycle patrol officers will be required to qualify with their duty firearm while wearing bicycle safety equipment including the helmet and riding gloves.

### **428.5 UNIFORMS AND EQUIPMENT**

Officers shall wear the department-approved uniform and safety equipment while operating the department bicycle. Safety equipment includes department-approved helmet, riding gloves, protective eyewear and approved footwear.

The bicycle patrol unit uniform consists of the standard short-sleeve uniform shirt or other department-approved shirt with department badge and patches, and department-approved bicycle patrol pants or shorts.

Optional equipment includes a radio head set and microphone, and jackets in colder weather. Turtleneck shirts or sweaters are permitted when worn under the uniform shirt.

Bicycle patrol 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 the necessary forms, citation books and other department equipment needed while on bicycle patrol.

### **428.6 CARE AND USE OF PATROL BICYCLES**

Officers will be assigned a specially marked and equipped patrol bicycle, attached gear bag, two batteries and a charger.

Bicycles utilized for uniformed bicycle patrol shall be primarily black or white in with 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)

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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, a repair work order will be completed and forwarded to the program supervisor for repair by an approved technician.

Each bicycle will have scheduled maintenance once a year to be 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.

Electric patrol bicycle batteries shall be rotated on the assigned charger at the end of each tour of duty. During prolonged periods of non-use, each officer assigned an electric bicycle shall periodically rotate the batteries on the respective charges to increase battery life.

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.

### **428.7 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.



## Off-Road Motorcycle Use

### 429.1 POLICY

The Walnut Creek Police will operate off-road motorcycles. The members of the Walnut Creek Police Reserve Division will be the primary users of this special equipment. The primary focus of the off-road motorcycles will be to patrol the open space and trails.

#### 429.1.1 PURPOSE

The purpose of this policy is to establish rules and guidelines for the selection of off-road motorcycle riders, minimum training standards and the conditions for safe operation of the off-road motorcycles.

#### 429.1.2 DEFINITION

##### **Certified for off-road operation:**

This means that the operator and vehicle have the necessary equipment and/or training for operation in an off-road capacity as outlined in this policy.

### 429.2 PROGRAM STRUCTURE

The Reserve All Terrain Team (RATT) may have up to six reserve officers. The primary use of the off-road motorcycles will be to patrol the bike trails, open space and special events such as Movie Under the Stars, school sporting events, Walnut Festival and the Walnut Festival Parade. With the expressed authorization of the on-duty watch commander or sergeant, the off-road motorcycles may be used on the street. The primary users of the off-road motorcycles are members of the Reserve Division who are certified for off-road use.

### 429.3 SELECTION PROCESS

The Reserve Staff will post the off-road motorcycle position and notify the reserve officers when an opening is available. Reserve officers (only) may submit a letter of interest for the position to the Administrative Reserve Captain. The selection process will follow the guidelines set in the Reserve Rules and Regulations for special assignment selections.

The announcement of an opening shall include the number of anticipated openings, the date and time applications are due, and the minimum requirements. The application period shall be a minimum of two weeks. Appointment to the team is indefinite, but contingent upon maintaining the required hours and training. The hours logged during any collateral or special assignment should NOT supplant the hours one is responsible for such as weekends, or special events like the Walnut Festival.

The minimum qualifications for the position are:

- Must be a Level I or Level II Walnut Creek PD Reserve Officer and the Level II must be certified as a solo officer.
- The applicant must be current with training and minimum hours.

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- Must have or obtain a M1 license from California DMV.
- Must be able to meet all of the requirements in the vehicle code for motorcycle operation.
- Must successfully complete the 20-hour, off-road motorcycle training course developed and instructed by an instructor from the Traffic Team. An officer successfully completing this course will be certified to use the off-road motorcycles.

### **429.4 OFF-ROAD MOTORCYCLE USE**

Reserve Officers shall notify the on-duty watch commander or sergeant before going on-duty and let them know of the planned activity. The Reserve Roster located in the watch commander's office must be completed before leaving the PD.

- (a) Officers riding alone will be restricted to the bike trails and parks. A solo rider may patrol the open space if all of the following conditions are met:
  - The officer has identified a specific area of the open space that they will be patrolling and notifies dispatch.
  - The officer has made personal contact with the Open Space Ranger for the area to be patrolled before entering the open space.
  - The officer will make personal contact with the open space ranger when leaving the open space area to notify them that they will be checking out of his/her region of the open space.
  - The officer may carry a GPS device that works in the open space and can be monitored by dispatch.
- (b) A watch commander or sergeant may modify these conditions or require that an officer only patrol the open space in pairs. Cell phones may be carried and used to communicate to dispatch and the Open Space Rangers but are not a substitute to the conditions above.
- (c) All off-road riders will comply with the current laws and policies associated with vehicle use. While operating in the open space, the officers should comply with the following:
  - Patrol speeds should not exceed 15 miles per hour.
  - Stay on the roads and trails authorized for motor vehicle use during routine patrol. True off-road use in the open space should be avoided and only done in exigent circumstances.
  - Follow the requests of the rangers to stay clear of areas where operation could cause damage to flora or fauna.

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### **429.5 TRAINING**

All riders of the off-road motorcycles shall satisfactorily complete the off-road motorcycle training course developed by the Traffic Team. The 20-hour training is a comprehensive program to include all aspects of motorcycle operations on and off of the road. The training is offered in sections/modules to facilitate the reserve officer's schedules. One formal session of remedial training will be offered to those who do not successfully complete the course.

Remedial training will consist of one-on-one training with an instructor of a duration determined by the instructor. If one is still unable to satisfactorily complete the training, the officer must wait until the next full course is offered and there is space available. Reserve officers may not operate the off-road motorcycles until they have been appointed to the team and have satisfactorily completed the 20-hour training course. Regular traffic officers should complete the off-road motorcycle training before operating the off-road motorcycles in an off-road capacity.

Once an officer is certified for off-road motorcycle operations, the officer will be required to maintain their certification by satisfactorily completing the biannual recertification class. The recertification will be a review of riding techniques taught in the primary course and a check ride. The instructor will determine the content and duration of the recertification process.

If a certified team member has not operated an off-road motorcycle for a period of six months, then they shall complete a check ride with a certified off-road motorcycle instructor or the sergeant of the traffic team before using the off-road motorcycles in a patrol capacity. A log of the off-road hours and dates will be maintained by the reserve division.

A certified rider will be trained on and required to meet standards using the Kawasaki 650 cc motorcycle. The 250cc Kawasaki motorcycles may be used in training, but qualifications will be done on the 650cc motorcycles.

All regular traffic team members will complete the off-road training sometime after their appointment to the traffic team.

## Automated License Plate Readers (ALPRs)

### 430.1 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.

### 430.2 ADMINISTRATION

The ALPR technology, also known as License Plate Recognition (LPR), allows for the automated detection of license plates. It is used by the Walnut Creek 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, homeland security, electronic surveillance, 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 Administration Bureau Commander. The Administration Bureau Commander will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data.

#### 430.2.1 ALPR ADMINISTRATOR

The Administration Bureau Commander shall be responsible for developing guidelines and procedures to comply 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.
- (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.

### 430.3 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.

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- (b) 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.
- (c) 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.
- (d) No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.
- (e) No ALPR operator may access department, state or federal data unless otherwise authorized to do so.
- (f) If practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert.

### **430.4 DATA COLLECTION AND RETENTION**

The Administration Bureau Commander is responsible for ensuring systems and processes are in place for the proper collection and retention of ALPR data. Data will be transferred from vehicles to the designated storage 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 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.

### **430.5 ACCOUNTABILITY**

All data will be closely safeguarded and protected by both procedural and technological means. The Walnut Creek 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 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.

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## *Automated License Plate Readers (ALPRs)*

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- (c) ALPR system audits should be conducted on a regular basis.

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

### **430.6 POLICY**

The policy of the Walnut Creek 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.

### **430.7 TRAINING**

The Training Manager 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).

### **430.8 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. Administration Bureau Commander.

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).

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## Homeless Persons

### 431.1 PURPOSE AND SCOPE

The purpose of this policy is to ensure that personnel understand the needs and rights of the homeless and to establish procedures to guide officers during all contacts with the homeless, whether consensual or for enforcement purposes. The Walnut Creek Police Department recognizes that members of the homeless community are often in need of special protection and services. The Walnut Creek Police Department will address these needs in balance with the overall mission of this department. Therefore, officers will consider the following when serving the homeless community.

#### 431.1.1 POLICY

It is the policy of the Walnut Creek Police Department to provide law enforcement services to all members of the community, while protecting the rights, dignity and private property of the homeless. Homelessness is not a crime and members of this department will not use homelessness solely as a basis for detention or law enforcement action.

### 431.2 HOMELESS COMMUNITY LIAISON

The Chief of Police will designate a member of this department to act as the Homeless Liaison Officer. The responsibilities of the Homeless Liaison Officer include the following:

- (a) Maintain and make available to all department employees a list of assistance programs and other resources that are available to the homeless.
- (b) Meet with social services and representatives of other organizations that render assistance to the homeless.
- (c) Maintain a list of the areas within and near this jurisdiction that are used as frequent homeless encampments.
- (d) Remain abreast of laws dealing with the removal and/or destruction of the personal property of the homeless. This will include:
  1. Proper posting of notices of trespass and clean-up operations.
  2. Proper retention of property after clean-up, to include procedures for owners to reclaim their property in accordance with the Property and Evidence Policy and other established procedures.
- (e) Be present during any clean-up operation conducted by this department involving the removal of personal property of the homeless to ensure that the rights of the homeless are not violated.
- (f) Develop training to assist officers in understanding current legal and social issues relating to the homeless.

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### **431.3 FIELD CONTACTS**

Officers are encouraged to contact the homeless for purposes of rendering aid, support and for community-oriented policing purposes. Nothing in this policy is meant to dissuade an officer from taking reasonable enforcement action when facts support a reasonable suspicion of criminal activity. However, when encountering a homeless person who has committed a non-violent misdemeanor and continued freedom is not likely to result in a continuation of the offense or a breach of the peace, officers are encouraged to consider long-term solutions to problems that may relate to the homeless, such as shelter referrals and counseling in lieu of physical arrest.

Officers should provide homeless persons with resource and assistance information whenever it is reasonably apparent that such services may be appropriate.

#### **431.3.1 OTHER CONSIDERATIONS**

Homeless members of the community will receive the same level and quality of service provided to other members of the community. The fact that a victim or witness is homeless can, however, require special considerations for a successful investigation and prosecution. Officers should consider the following when handling investigations involving homeless victims, witnesses or suspects:

- (a) Document alternate contact information. This may include obtaining addresses and phone numbers of relatives and friends.
- (b) Document places the homeless person may frequent.
- (c) Provide homeless victims with victim/witness resources when appropriate.
- (d) Obtain statements from all available witnesses in the event that a homeless victim is unavailable for a court appearance.
- (e) Consider whether the person may be a dependent adult or elder, and if so, proceed in accordance with the Adult Abuse Policy.
- (f) Arrange for transportation for investigation-related matters, such as medical exams and court appearances.
- (g) Consider whether a crime should be reported and submitted for prosecution, even when a homeless victim indicates that he/she does not desire prosecution.

### **431.4 PERSONAL PROPERTY**

The personal property of homeless persons must not be treated differently than the property of other members of the public. Officers should use reasonable care when handling, collecting and retaining the personal property of homeless persons and should not destroy or discard the personal property of a homeless person.

When a homeless person is arrested or otherwise removed from a public place, officers should make reasonable accommodations to permit the person to lawfully secure his/her personal property. Otherwise, the personal property should be collected for safekeeping. If the arrestee has more personal property than can reasonably be collected and transported by the officer, a



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supervisor should be consulted. The property should be photographed and measures should be taken to remove or secure the property. It will be the supervisor's responsibility to coordinate the removal and safekeeping of the property.

Officers should not conduct or assist in clean-up operations of belongings that reasonably appear to be the property of homeless persons without the prior authorization of a supervisor or the department Homeless Liaison Officer. When practicable, requests by the public for clean-up of a homeless encampment should be referred to the Homeless Liaison Officer.

Officers who encounter unattended encampments, bedding or other personal property in public areas that reasonably appears to belong to a homeless person should not remove or destroy such property and should inform the department Homeless Liaison Officer if such property appears to involve a trespass, blight to the community or is the subject of a complaint. It will be the responsibility of the Homeless Liaison Officer to address the matter in a timely fashion.

### **431.5 MENTAL ILLNESS AND MENTAL IMPAIRMENT**

Some homeless persons may suffer from a mental illness or a mental impairment. Officers shall not detain a homeless person under a mental illness commitment unless facts and circumstances warrant such a detention (see the Crisis Intervention Incidents Policy).

When a mental illness hold is not warranted, the contacting officer should provide the homeless person with contact information for mental health assistance as appropriate. In these circumstances, officers may provide transportation to a mental health specialist if requested by the person and approved by a supervisor.

### **431.6 ECOLOGICAL ISSUES**

Sometimes homeless encampments can impact the ecology and natural resources of the community and may involve criminal offenses beyond mere littering. Officers are encouraged to notify other appropriate agencies or departments when a significant impact to the environment has or is likely to occur. Significant impacts to the environment may warrant a crime report, investigation, supporting photographs and supervisor notification.

## Electronic Satellite Pursuit System

### 432.1 PURPOSE AND SCOPE

The purpose of this bulletin is to establish guidelines for the handling of the "3SI", Electronic Satellite Pursuit (ESP) system by the Walnut Creek Police Department when dealing with robberies at banks and other financial institutions.

### 432.2 BACKGROUND

The Electronic Satellite Pursuit (ESP) System is a satellite-supported global positioning system used to track money stolen from banks or other financial institutions. The ESP system provides web-based global positioning information about the location of a tracking device included with money stolen from participating institutions. The information is updated every six seconds by up to eight satellites. Alarm activation occurs approximately 30 seconds after the ESP device has been removed from its magnetic base. Information displayed on the web site includes direction of travel, speed, accuracy of location, time lag, contact information, and the type of activation. The system maintains a record of the information obtained so that it can be used for follow-up investigations.

Although the system interprets data and provides the address closest to the actual device, this address is just a reference point; the system is **not** reporting that the device is at that particular location. A handheld detector is available to pinpoint the location of the device. The expected battery life of the device is approximately four hours; however, this can be extended by contacting 3SI and requesting the electronic transitions be adjusted.

### 432.3 DEFINITIONS

10-33E/Edward	Designation for activation of ESP device
211E/Edward	Designation for a robbery in which an ESP device has been activated.
"Source"	Code word for Electronic Satellite Pursuit (ESP) bait money intended to keep source of ESP device information confidential.
Mobile Source	Designation that an activated ESP device has gone mobile. I.E. "The mobile source is S/B 680 at 75 MPH".
Stationary Source	Designation that an ESP device remains at the named Institution. I.E. "The stationary source is at 123 Main St."
Handheld Detector	Portable handheld tracking receiver

### 432.4 PROCEDURE

To ensure a safe and coordinated implementation of the ESP device, the following guidelines will be followed:

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### 432.4.1 RESPONSES - DISPATCH

#### (a) LOG IN

1. Dispatchers will log onto the 3SI website at the individual stations at the beginning of their shifts. A web link to the site (3si/geotrax.com/tracker/) will be listed in the Internet Favorites menu /// A shortcut to the web link (3si/geotrax.com/tracker/) will be on each computer desktop. Once logged in, the session must remain open. The page can be reduced, but not minimized to the bottom of the desktop or the audible alarm will not sound. A second session of Internet Explorer may be opened to do other approved internet functions.

#### (b) ESP ACTIVATION

1. An audible alarm will sound at all computer stations logged onto the 3SI website when an ESP device is activated. The website will also display a white exclamation point inside a red circle when an ESP device has been activated.
2. Upon receiving an ESP activation dispatch will create a CAD bank alarm event and enter the information from the 3SI tracking website. The following information will be included in the CAD dispatch event:

##### (a) Address

##### (b) Bank name

##### (c) Type of activation

1. Teller
2. Vault
3. ATM

##### (d) Status of GPS pack

##### 1. Mobile Source

##### (a) If mobile, the following information will be included:

- Current location
- Direction of travel
- Speed
- Age (time lag between satellite updates)
- Accuracy (estimated accuracy of location in feet)
- Nearest reported address if available

##### 2. Stationary Source

#### (c) Dispatch broadcast procedure will include:

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- (a) Broadcast a two beep tone
- (b) Broadcast bank alarm
  - (a) Distinguish as a 10-33E/Edward
- (c) Name and address of the bank
- (d) Location of ESP Source
  - (a) Information updates will include:
    - (a) Location, direction of travel, speed, age, accuracy, nearest reported address, other information as appropriate
- (e) Contact neighboring jurisdictions as soon as possible and appropriate

### 432.4.2 RESPONSES - PATROL

#### (a) RESPONDING OFFICERS

1. Primary or nearest officers will safely respond to the bank and stage outside from a position of cover/concealment. Responses will be consistent with Policy 401, Security and Premises Alarm Responses.
2. If necessary, officers will request dispatch to phone inside the bank to determine the nature of the activation.
3. When appropriate, dispatch will request a bank employee (whose description will be provided by dispatch) to exit the bank and contact responding officers
4. Officers at the scene will broadcast all pertinent information as soon as possible

#### (b) ASSISTING OFFICERS

1. Assisting officers will wait for updates regarding the ESP device ("Source") and track the unit ("Source") and suspect(s) as appropriate
2. Multiple units including K9's and air units should be used when possible
3. Officers and dispatch will coordinate with neighboring jurisdictions depending on the location and/or direction of the ESP device ("Source")
4. If the ESP device ("Source") is stationary, officers will set up a perimeter using safest tactics available.
  - (a) Officers will be aware of and try to mitigate the possibility of creating a hostage situation.

### 432.5 HANDHELD BEACON

- (a) To be used for refining search
- (b) Stored in Sergeant's vehicle

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- (c) Set-up procedures
  1. Unfold four antennas
  2. Turn "Attenuator" switch off
  3. Set "Gain" knob to 12 o'clock position
  4. Set "Tune" knob to the 10 o'clock position
  5. Set "CH" switch to B
  6. Turn "PWR" (power) switch to on
- (d) Handheld tracking device procedures
  1. Hold device in front of you
  2. Slowly turn in a complete circle. The signal strength will increase in one direction and decrease in another
  3. Move toward the strongest signal as this is where the device ("Source") is located
  4. Once a beacon signal is established adjust the "Gain" knob so that the beacon pulse registers between 3 and 8 on the Signal Strength Meter
  5. As you get closer to the device ("Source") reduce the Gain knob accordingly to keep the signal strength between 3 and 8
  6. Once the Gain is reduced to the 9 o'clock position turn the "Attenuator" switch to the "On" position and re-adjust the Gain knob as necessary
- (e) Searching with the handheld device
  1. Officer using the handheld device must always have at least one cover officer with them

### **432.6 DEVICE TRAVELING OUTSIDE CITY LIMITS**

- (a) The supervisor in charge of the call will decide if Walnut Creek officers will follow the device outside the city limits.
  1. Factors affecting this decision may include:
    - (a) Location and speed of device
    - (b) Likelihood of finding the device
    - (c) Availability of officers and other personnel
    - (d) Safety of those involved
  2. Dispatch will notify outside agencies of the robbery and provide updated information on the robbery, suspects and location of the device.

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3. If the device is tracked to a stationary location outside the city the WCPD supervisor in charge of the call will decide if WCPD officers will take over the investigation.

### **432.7 OUTSIDE AGENCY DEVICE ENTERING CITY LIMITS**

- (a) Other local agencies will be utilizing the same Electronic Satellite Pursuit technology.
  1. Many of the agencies will be encompassed in the same notification group - meaning that WCPD dispatch will be notified when a device is activated in a participating neighboring jurisdictions
  2. When this occurs dispatch will monitor the device on the 3SI website and wait to be contacted by the responsible agency when it appears that a mobile device is headed into Walnut Creek
  3. Notification by another jurisdiction that they are pursuing a 3SI GPS device ("Source") into Walnut Creek city limits shall not be construed as a request to join the pursuit. Officers shall not assist the outside jurisdiction unless:
    - They are specifically requested to do so and authorized by a supervisor
    - It is clearly demonstrated that the outside agency is unable to request assistance
    - The emergency nature of the situation dictates the need for assistance by the department
- (b) When an allied agency assumes pursuit of a 3SI GPS device ("Source"):
  - The investigating officer or a WCPD representative should proceed to the location where the pursuit terminates to provide information required for an arrest. If the distance makes this impractical, the officer should go to the location where the suspect will be confined.
  - The initiating agency is responsible for handling the prosecution of the suspect.
  - WCPD will take custody of the violator unless more serious crimes subsequently occurred or are determined. This provision would not apply if the initiating agency had previously terminated the pursuit and an allied agency began a pursuit.

### **432.8 CONFIDENTIALITY**

The effectiveness of the Electronic Satellite Pursuit System is dependent upon its confidentiality. Employees should not discuss or divulge any aspect of the ESP system or its operation with non-law enforcement personnel. Confidentiality must also be maintained during radio communications as to not alert either a frequency monitoring suspect, the public at large or the press.

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## Field Training Officer Program

### 433.1 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 Walnut Creek 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.

### 433.2 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.

#### 433.2.1 SELECTION PROCESS

FTOs will be selected based on the following requirements:

- (a) Desire to be an FTO
- (b) Off probation with a minimum of three years patrol experience (combined experience between WCPD and another police agency).
- (c) Demonstrated ability as a positive role model
- (d) Participate and pass an internal oral interview selection process
- (e) Evaluation by supervisors and current FTOs
- (f) Possess a POST Basic certificate
- (g) Have "meet" or exceeds" ratings in all performance dimensions for the past 18 months prior to being appointed to the position
- (h) Meet the requirements set forth in the special assignment directive

FTOs must be assigned to patrol. FTOs may remain in the work assignment for up to three years. FTOs continuing to meet the requirements are welcome to re-apply for the position at the end of their three year assignment. If an FTO leaves patrol, they are no longer an FTO and must reapply for the position when eligible.

#### 433.2.2 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.

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All FTOs must complete a 24-hour Field Training Officer update course every three years while assigned to the position of FTO (11 CCR 1004).

All FTOs must meet any training mandate regarding crisis intervention behavioral health training pursuant to Penal Code § 13515.28.

### **433.3 FIELD TRAINING OFFICER PROGRAM SUPERVISOR**

The FTO Program supervisor should be selected from the rank of sergeant or above by the Patrol Bureau Commander or a designee and should possess, or be eligible to receive, a POST Supervisory Certificate.

The responsibilities of the FTO Program supervisor include the following:

- (a) Assignment of trainees to FTOs
- (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) Maintain liaison with FTO coordinators of other agencies
- (h) Maintain liaison with academy staff on recruit performance during the academy
- (i) 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 (11 CCR 1004(c)).

### **433.4 TRAINEE DEFINED**

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

### **433.5 REQUIRED TRAINING**

Entry level officers shall be required to successfully complete the Field Training Program, consisting of a minimum of 10 weeks (11 CCR 1004; 11 CCR 1005).

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.

#### **433.5.1 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



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as an officer with the Walnut Creek 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 Walnut Creek Police Department.

### **433.6 EVALUATIONS**

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

#### **433.6.1 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 program supervisor on a daily basis.
- (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.

#### **433.6.2 IMMEDIATE SUPERVISOR**

The field training program supervisor shall review and approve the Daily Trainee Performance Evaluations and forward them to the Field Training Manager. In addition, the trainee's immediate supervisor shall complete a weekly supervisor's evaluation and have a one-on-one meeting with the trainee to discuss their progress or any noted deficiencies.

#### **433.6.3 FIELD TRAINING ADMINISTRATOR**

The Field Training Administrator will review and approve the Daily Trainee Performance Evaluations submitted by the FTO through his/her immediate supervisor after review by the FTO Program Supervisor. In addition, the Field Training Administrator will ensure all requirements have been met and will recommend that the Field Training Officer is ready to work as a solo officer.

#### **433.6.4 TRAINEE**

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

### **433.7 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 Trainee Performance Evaluations
- (b) End-of-phase evaluations

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- (c) A Certificate of Completion certifying that the trainee has successfully completed the required number of hours of field training

## Public Recording of Law Enforcement Activity

### 434.1 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.

### 434.2 POLICY

The Walnut Creek 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.

### 434.3 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.

### 434.4 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.

### **434.5 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.

### **434.6 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.

# Suspicious Activity Reporting

## 435.1 PURPOSE AND SCOPE

This policy provides guidelines for reporting and investigating suspicious and criminal activity.

### 435.1.1 DEFINITIONS

Definitions related to this policy include:

**Involved party** - An individual who has been observed engaging in suspicious activity, as defined in this policy, when no definitive criminal activity can be identified, thus precluding the person's identification as a suspect.

**Suspicious activity** - Any reported or observed activity that a member reasonably believes may have a nexus to any criminal act or attempted criminal act, or to foreign or domestic terrorism. Race, ethnicity, national origin or religious affiliation should not be considered as factors that create suspicion (although these factors may be used as specific suspect descriptions). Examples of suspicious activity may include, but are not limited to:

- Suspected pre-operational surveillance or intelligence gathering (e.g., photographing security features, asking questions about sensitive security-related subjects).
- Tests of security measures and response to incidents (e.g., "dry run," creating false alarms, attempts to enter secure areas without authorization).
- Suspicious purchases (e.g., purchasing large quantities of otherwise legal items, such as fertilizer, that could be used to create an explosive or other dangerous device).
- An individual in possession of such things as a hoax explosive or dispersal device, sensitive materials (e.g., passwords, access codes, classified government information), or coded or ciphered literature or correspondence.

**Suspicious Activity Report (SAR)** - An incident report used to document suspicious activity.

## 435.2 POLICY

The Walnut Creek Police Department recognizes the need to protect the public from criminal conduct and acts of terrorism and shall lawfully collect, maintain and disseminate information regarding suspicious activities, while safeguarding civil liberties and privacy protections.

## 435.3 RESPONSIBILITIES

The Investigation Bureau Commander and authorized designees will manage SAR activities. Authorized designees should include supervisors who are responsible for department participation in criminal intelligence systems as outlined in the Criminal Organizations Policy.

The responsibilities of the Investigation Bureau Commander include, but are not limited to:

- (a) Remaining familiar with those databases available to the Department that would facilitate the purpose of this policy.

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## *Suspicious Activity Reporting*

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- (b) Maintaining adequate training in the area of intelligence gathering to ensure no information is being maintained that would violate the law or civil rights of any individual.
- (c) Ensuring a process is available that would allow members to report relevant information. The process should be designed to promote efficient and quick reporting, and should not be cumbersome, duplicative or complicated.
- (d) Ensuring that members are made aware of the purpose and value of documenting information regarding suspicious activity, as well as the databases and other information resources that are available to the Department.
- (e) Ensuring that SAR information is appropriately disseminated to members in accordance with their job responsibilities.
- (f) Coordinating investigative follow-up, if appropriate.
- (g) Coordinating with any appropriate agency or fusion center.
- (h) Ensuring that, as resources are available, the Department conducts outreach that is designed to encourage members of the community to report suspicious activity and that outlines what they should look for and how they should report it (e.g., website, public service announcements).

### **435.4 REPORTING AND INVESTIGATION**

Any department member receiving information regarding suspicious activity should take any necessary immediate and appropriate action, including a request for tactical response or immediate notification of specialized entities, when applicable. Any civilian member who receives such information should ensure that it is passed on to an officer in a timely manner.

If the suspicious activity is not directly related to a reportable crime, the member should prepare a SAR and include information about involved parties and the circumstances of the incident. If, during any investigation, an officer becomes aware of suspicious activity that is unrelated to the current investigation, the information should be documented separately in a SAR and not included in the original incident report. The report number of the original incident should be included in the SAR as a cross reference. A SAR should be processed as any other incident report.

### **435.5 HANDLING INFORMATION**

The Records Bureau will forward copies of SARs, in a timely manner, to the following:

- Detective Bureau supervisor
- Crime Analysis Unit
- Other authorized designees

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## Medical Aid and Response

### 436.1 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.

### 436.2 POLICY

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

### 436.3 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 Dispatch 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 Dispatch 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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#### **436.4 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.

#### **436.5 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.

#### **436.6 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.

#### **436.7 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

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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.

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.

### **436.8 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).

#### **436.8.1 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 First Aid Team Supervisor who is responsible for ensuring appropriate maintenance.

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 Dispatch as soon as possible and request response by EMS.

#### **436.8.2 DEPLOYMENT PROCEDURE**

Upon receiving a 911 medical call for service, the Walnut Creek Police Communications Center shall follow their authorized procedure to transfer the medical request to the appropriate agency.

Once the call transfer has occurred, the WCPD dispatcher should remain on the line and listen to the Emergency Medical Dispatch assessment to determine if an AED is needed.

The WCPD Dispatcher shall voice broadcast that medical personnel are responding for a possible cardiac emergency / AED call under the following circumstances:

- CPR instructions are being given

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- Rescue breathing instructions are being given
- Unconscious or unresponsive victims when a cardiac emergency is suspected
- Drowning
- Electrocutions
- Hanging

All officers responding to a cardiac emergency / AED call shall notify Dispatch.

Police personnel may be dispatched to respond to a possible cardiac emergency or any other medical emergency at the request of any EMS agency or a field supervisor. Police personnel may also respond to a possible cardiac emergency at their discretion.

### 436.8.3 POST AED DEPLOYMENT

Following the use of an AED, the operator of the AED shall restock the used equipment from patrol units and complete a WCPD AED Use Report. A copy of the completed report shall be submitted to the AED Program Coordinator before the end of their shift.

Any AED items not restocked on scene should be restocked from the WCPD Patrol CPR/1<sup>st</sup> Aid supply closet.

The Program Coordinator shall forward the required information to the local EMS agency pursuant to local regulations.

The AED Use Form is located on the WCPD Network 'T' drive in the Forms folder labeled, "AED Use Report Form".

### 436.8.4 AED TRAINING AND MAINTENANCE

#### **PERSONNEL TRAINING STANDARDS**

All police personnel shall complete an approved AED training program authorized by the CCC EMS Agency prior to providing emergency care with an AED.

The initial AED training program shall include a lecture, written exam and practical exam in accordance with the policies and procedures issued by the CCC EMS Agency.

Following the initial training program, police personnel shall attend a training update every other year which shall include the most recent AED recommendations made by the American Heart Association.

AED training may occur more often if the WCPD Training Manager or EMS authority deems it necessary.

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AED instructors must be authorized by the CCC EMS Agency to instruct public safety personnel in the use of an AED.

#### **MAINTENANCE AND REPAIR**

The AED is a self-testing device that requires minimal evaluation by the operator prior to deployment.

The AED shall be stored in the trunk of police vehicles.

Personnel shall locate the AED in the trunk and visualize the status window on the front of the AED to ensure the unit displays 'OK' or a check mark and the battery level indicates a minimum of one bar.

Personnel shall also ensure that there are two sets of usable electrodes in the AED case.

Any AED unit that displays a message other than 'OK' shall be taken out of service and replaced with an operational AED. The AED Program Coordinator or the First Aid Team Manager shall then be notified.

All AED units shall be maintained based upon the manufacturer's recommendation.

The Training Manager 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 First Aid Team Manager 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).

#### **436.9 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; 22 CCR 100019):

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

##### **436.9.1 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 the First Aid Team Supervisor.

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

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### 436.9.2 OPIOID OVERDOSE MEDICATION REPORTING

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

The Training Manager will ensure that the Records Manager is provided enough information to meet applicable state reporting requirements.

### 436.9.3 OPIOID OVERDOSE MEDICATION TRAINING

The [trainingManager 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).

### 436.9.4 DESTRUCTION OF OPIOID OVERDOSE MEDICATION

The Training Manager shall ensure the destruction of any expired opioid overdose medication (Business and Professions Code § 4119.9).

### 436.9.5 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).

## **436.10 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.

## **436.11 FIRST AID TRAINING**

The Training Manager 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).

## Crisis Intervention Incidents

### 437.1 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.

#### 437.1.1 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.

### 437.2 POLICY

The Walnut Creek 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.

### 437.3 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.

### **437.4 COORDINATION WITH MENTAL HEALTH PROFESSIONALS**

The Chief of Police should designate an appropriate Bureau Commander to collaborate with mental health professionals to develop an education and response protocol. It should include a list of community resources, to guide department interaction with those who may be suffering from mental illness or who appear to be in a mental health crisis.

### **437.5 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.
- (j) Evaluate any available information that might assist in determining cause or motivation for the person's actions or stated intentions.

## *Crisis Intervention Incidents*

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- (k) If circumstances reasonably permit, consider and employ alternatives to force.

### **437.6 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.

### **437.7 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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### *Crisis Intervention Incidents*

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#### **437.8 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)

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

#### **437.9 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.

##### **437.9.1 DIVERSION**

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

#### **437.10 CIVILIAN INTERACTION WITH PEOPLE IN CRISIS**

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

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## *Crisis Intervention Incidents*

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### **437.11 EVALUATION**

The Bureau Commander designated to coordinate the crisis intervention strategy for this department should ensure that a thorough review and analysis of the department response to these incidents is conducted annually. The report will not include identifying information pertaining to any involved individuals, officers or incidents and will be submitted to the Chief of Police through the chain of command.

### **437.12 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).

## Civil Disputes

### 438.1 PURPOSE AND SCOPE

This policy provides members of the Walnut Creek 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.

### 438.2 POLICY

The Walnut Creek 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.

### 438.3 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*

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### **438.4 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 appropriate prosecutor. The report should also be forwarded to the court issuing the order with a notice that the report was also forwarded to the prosecutor for review.

#### **438.4.1 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.

### **438.5 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.

### **438.6 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*

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## Foot Pursuits

### 439.1 PURPOSE AND SCOPE

This policy provides guidelines to assist officers in making the decision to initiate or continue the pursuit of suspects on foot.

#### 439.1.1 POLICY

It is the policy of this department when deciding to initiate or continue a foot pursuit that officers must continuously balance the objective of apprehending the suspect with the risk and potential for injury to department personnel, the public or the suspect.

Officers are expected to act reasonably, based on the totality of the circumstances. Absent exigent circumstances, the safety of department personnel and the public should be the primary consideration when determining whether a foot pursuit should be initiated or continued. Officers must be mindful that immediate apprehension of a suspect is rarely more important than the safety of the public and department personnel.

### 439.2 DECISION TO PURSUE

The safety of department members and the public should be the primary consideration when determining whether a foot pursuit should be initiated or continued. Officers must be mindful that immediate apprehension of a suspect is rarely more important than the safety of the public and department members.

Officers may be justified in initiating a foot pursuit of any individual the officer reasonably believes is about to engage in, is engaging in or has engaged in criminal activity. The decision to initiate or continue such a foot pursuit, however, must be continuously re-evaluated in light of the circumstances presented at the time.

Mere flight by a person who is not suspected of criminal activity shall not serve as justification for engaging in an extended foot pursuit without the development of reasonable suspicion regarding the individual's involvement in criminal activity or being wanted by law enforcement.

Deciding to initiate or continue a foot pursuit is a decision that an officer must make quickly and under unpredictable and dynamic circumstances. It is recognized that foot pursuits may place department members and the public at significant risk. Therefore, no officer or supervisor shall be criticized or disciplined for deciding not to engage in a foot pursuit because of the perceived risk involved.

If circumstances permit, surveillance and containment are generally the safest tactics for apprehending fleeing persons. In deciding whether to initiate or continue a foot pursuit, an officer should continuously consider reasonable alternatives to a foot pursuit based upon the circumstances and resources available, such as:

- (a) Containment of the area.

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## *Foot Pursuits*

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- (b) Saturation of the area with law enforcement personnel, including assistance from other agencies.
- (c) A canine search.
- (d) Thermal imaging or other sensing technology.
- (e) Air support.
- (f) Apprehension at another time when the identity of the suspect is known or there is information available that would likely allow for later apprehension, and the need to immediately apprehend the suspect does not reasonably appear to outweigh the risk of continuing the foot pursuit.

### **439.3 GENERAL GUIDELINES**

When reasonably practicable, officers should consider alternatives to engaging in or continuing a foot pursuit when:

- (a) Directed by a supervisor to terminate the foot pursuit; such an order shall be considered mandatory
- (b) The officer is acting alone.
- (c) Two or more officers become separated, lose visual contact with one another, or obstacles separate them to the degree that they cannot immediately assist each other should a confrontation take place. In such circumstances, it is generally recommended that a single officer keep the suspect in sight from a safe distance and coordinate the containment effort.
- (d) The officer is unsure of his/her location and direction of travel.
- (e) The officer is pursuing multiple suspects and it is not reasonable to believe that the officer would be able to control the suspect should a confrontation occur.
- (f) The physical condition of the officer renders him/her incapable of controlling the suspect if apprehended.
- (g) The officer loses radio contact with the dispatcher or with assisting or backup officers.
- (h) The suspect enters a building, structure, confined space, isolated area or dense or difficult terrain, and there are insufficient officers to provide backup and containment. The primary officer should consider discontinuing the foot pursuit and coordinating containment pending the arrival of sufficient resources.
- (i) The officer becomes aware of unanticipated or unforeseen circumstances that unreasonably increase the risk to officers or the public.
- (j) The officer reasonably believes that the danger to the pursuing officers or public outweighs the objective of immediate apprehension.
- (k) The officer loses possession of his/her firearm or other essential equipment.

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- (l) The officer or a third party is injured during the pursuit, requiring immediate assistance, and there are no other emergency personnel available to render assistance.
- (m) The suspect's location is no longer definitely known.
- (n) The identity of the suspect is established or other information exists that will allow for the suspect's apprehension at a later time, and it reasonably appears that there is no immediate threat to department members or the public if the suspect is not immediately apprehended.
- (o) The officer's ability to safely continue the pursuit is impaired by inclement weather, darkness or other environmental conditions.

### **439.4 RESPONSIBILITIES IN FOOT PURSUITS**

#### **439.4.1 INITIATING OFFICER RESPONSIBILITIES**

Unless relieved by another officer or a supervisor, the initiating officer shall be responsible for coordinating the progress of the pursuit. When acting alone and when practicable, the initiating officer should not attempt to overtake and confront the suspect but should attempt to keep the suspect in sight until sufficient officers are present to safely apprehend the suspect.

Early communication of available information from the involved officers is essential so that adequate resources can be coordinated and deployed to bring a foot pursuit to a safe conclusion. Officers initiating a foot pursuit should, at a minimum, broadcast the following information as soon as it becomes practicable and available:

- (a) Location and direction of travel
- (b) Call sign identifier
- (c) Reason for the foot pursuit, such as the crime classification
- (d) Number of suspects and description, to include name if known
- (e) Whether the suspect is known or believed to be armed with a dangerous weapon

Officers should be mindful that radio transmissions made while running may be difficult to understand and may need to be repeated.

Absent extenuating circumstances, any officer unable to promptly and effectively broadcast this information should terminate the foot pursuit. If the foot pursuit is discontinued for any reason, immediate efforts for containment should be established and alternatives considered based upon the circumstances and available resources.

When a foot pursuit terminates, the officer will notify the dispatcher of his/her location and the status of the pursuit termination (e.g., suspect in custody, lost sight of suspect), and will direct further actions as reasonably appear necessary, to include requesting medical aid as needed for officers, suspects or members of the public.



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### 439.4.2 ASSISTING OFFICER RESPONSIBILITIES

Whenever any officer announces that he/she is engaged in a foot pursuit, all other officers should minimize non-essential radio traffic to permit the involved officers maximum access to the radio frequency.

### 439.4.3 SUPERVISOR RESPONSIBILITIES

Upon becoming aware of a foot pursuit, the supervisor shall make every reasonable effort to ascertain sufficient information to direct responding resources and to take command, control and coordination of the foot pursuit. The supervisor should respond to the area whenever possible; the supervisor does not, however, need not be physically present to exercise control over the foot pursuit. The supervisor shall continuously assess the situation in order to ensure the foot pursuit is conducted within established department guidelines.

The supervisor shall terminate the foot pursuit when the danger to pursuing officers or the public appears to unreasonably outweigh the objective of immediate apprehension of the suspect.

Upon apprehension of the suspect, the supervisor shall promptly proceed to the termination point to direct the post-foot pursuit activity.

### 439.4.4 DISPATCH RESPONSIBILITIES

Upon notification or becoming aware that a foot pursuit is in progress, the dispatcher is responsible for:

- (a) Clearing the radio channel of non-emergency traffic.
- (b) Coordinating pursuit communications of the involved officers.
- (c) Broadcasting pursuit updates as well as other pertinent information as necessary.
- (d) Ensuring that a field supervisor is notified of the foot pursuit.
- (e) Notifying and coordinating with other involved or affected agencies as practicable.
- (f) Notifying the Watch Commander as soon as practicable.
- (g) Assigning an incident number and logging all pursuit activities.

### 439.5 REPORTING REQUIREMENTS

The initiating officer shall complete appropriate crime/arrest reports documenting, at minimum:

- (a) Date and time of the foot pursuit.
- (b) Initial reason and circumstances surrounding the foot pursuit.
- (c) Course and approximate distance of the foot pursuit.
- (d) Alleged offenses.
- (e) Involved vehicles and officers.
- (f) Whether a suspect was apprehended as well as the means and methods used.

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1. Any use of force shall be reported and documented in compliance with the Use of Force Policy.
  - (g) Arrestee information, if applicable.
  - (h) Any injuries and/or medical treatment.
  - (i) Any property or equipment damage.
  - (j) Name of the supervisor at the scene or who handled the incident.

Assisting officers taking an active role in the apprehension of the suspect shall complete supplemental reports as necessary or as directed.

The supervisor reviewing the report will make a preliminary determination that the pursuit appears to be in compliance with this policy or that additional review and/or follow-up is warranted.

In any case in which a suspect is not apprehended and there is insufficient information to support further investigation, a supervisor may authorize that the initiating officer need not complete a formal report.

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## First Amendment Assemblies

### 440.1 PURPOSE AND SCOPE

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

### 440.2 POLICY

The Walnut Creek 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.

### 440.3 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.

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### 440.3.1 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. Body Worn Camera recordings may be used for this purpose and shall be in compliance with the Body Worn Camera Policy. A Field PSO may be assigned as the videographer in the event that an officer is not available.

criminal conduct.

### **440.4 UNPLANNED EVENTS**

When responding to an unplanned or spontaneous public gathering, the first responding officer(continued by the first supervisor on scene) should conduct an assessment of conditions, including, but not limited to, the following:

- The location of the event and impacted streets/intersections. Communicate with Dispatch.
- Monitor the event and identify the event coordinator/organizer
- Determine if the event is peaceful and work to protect rights to assemble
- Evaluate available and necessary resources
- Communicate all necessary information to Dispatch and the on-duty Sergeant
- Designate a staging area for officers and Mutual Aid Resources, if needed
- Request Mutual Aid if all available resources are exhausted
  
- Mutual Aid requests should include: How many officers are needed, what equipment is requested, location of the staging area. Use WCPD officers for crowd contact and Mutual Aid as support.
- Develop an Incident Action Plan
- Designate Squads, Squad Leaders, and Arrest Teams.
- Utilize a PSO as a scribe and/or videographer
- Communicate the Rules of Engagement: Monitor only or Dispersal orders
- Designate qualified Less Lethal operators. MAMFF Officers should be used if available.
- Designate a Command Post Location and an Incident Commander (on duty supervisor until assumed by another) Use ICS command structure.
- Plan for staffing contingencies if the event is prolonged/extended

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- When the event ends, release Mutual Aid officers first. Utilize a phased release of Walnut Creek Officers by squad.
- Have squad leaders submit Use of Force reports as necessary. Determine if Mutual Aid Officers used force and include those actions..
- Incident Commander will complete an After Action Report
- Notify and update the division commander and use the proper chain of command.

### **440.5 PLANNED EVENT PREPARATION**

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

#### **440.5.1 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.
- 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 the race, ethnicity, national origin or religion of the participants (or any other characteristic that is unrelated to criminal conduct or the identification of a criminal subject).

#### **440.5.2 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).

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- (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.
- (t) Parameters for the use of body-worn cameras and other portable recording devices.
- (u) An analysis of potential threats, and plans to mitigate said threats, to potentially include active shooters, vehicles as weapons, and IED's.

### **440.5.3 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).

### **440.6 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.

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

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event is an unlawful assembly, and should order the dispersal of the participants pursuant to Penal Code Section 409. 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.

Dispersal Order:

"I am (Rank and Name) with the Walnut Creek Police Department. I hereby declare this to be an unlawful assembly, and in the name of the People of the State of California, command all those assembled at (LOCATION) to leave the area immediately. If you do not leave, you are in violation of section 409 of the California Penal Code, and may be arrested or subject to other police action. Other police action may include the use of less lethal projectiles, baton strikes, or use of tear gas, which may pose a risk of serious injury. The following routes of dispersal are available (PROVIDE OPTIONS). You have (STATE TIME EXPECTATIONS) to leave the area."

### **440.7 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 CEWs 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.

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### **440.8 ARRESTS**

The Walnut Creek 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.

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).

### **440.9 MEDIA RELATIONS**

The Press 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 News Media Relations Policy).

### **440.10 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.

### **440.11 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



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- (e) Incident, arrest, use of force, injury and property damage reports
- (f) Photographs, audio/video recordings, Dispatch records/tapes
- (g) Media accounts (print and broadcast media)

### **440.11.1 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.

### **440.12 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.

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## Body Worn Camera Policy

### 442.1 PURPOSE AND SCOPE

The Walnut Creek Police Department (WCPD) recognizes the use of Body Worn Cameras (BWCs) by its officers conveys a sense of law enforcement legitimacy, accountability, and transparency. The WCPD believes video and audio recordings from BWCs will serve as a tool to maintain and enhance the community's trust in the department. The recordings will capture interactions with the public and provide additional means of evidence collection for criminal investigations, administrative investigations, and civil litigation. In addition, BWCs will serve as a valuable training aid for officers.

While BWC recordings can provide an unbiased and objective account of a police contact, there are limitations to BWC video technology. Specifically, there are inherent differences between how human beings see and interpret their surroundings and how BWCs record video. In some cases, an officer may capture information not observed by a BWC just as a BWC may capture information not heard or seen by an officer. Therefore, it is critical to consider BWC footage as one piece of useful information regarding an incident, just as an officer's experience, state of mind, and input gleaned from his or her other senses would be considered useful information. When these varied sources of information are combined, a more complete picture of an incident can be obtained.

### 442.2 POLICY

The Walnut Creek Police Department will issue BWCs to Officers and Supervisors for use during the performance of their duties. This policy is intended to provide users with guidance on when and how to use BWCs so that users may accurately and reliably record their contacts with the public.

### 442.3 DEFINITIONS

**Body Worn Camera (BWC)** – A camera worn on the User's person that records and stores audio and video.

**Buffering Mode** – When the BWC is on but has not been activated to record both sound and video, the camera is in the "buffering" mode. While in the buffering mode, the BWC will continuously record only video (not audio) in 30 second loops.

**BWC Program Administrator** – The department employee responsible for implementing and managing the BWC program and providing training to Users. The BWC Program Administrator will have full access to user rights and sets user access and parameters.

**Digital Evidence** – BWC files, including photographs, audio and video recordings, captured by a BWC and stored digitally.

**Event Mode** – When the "Event" mode button on the BWC is activated, the camera records both audio and video. The buffered video (not audio) captured directly before the event (30 seconds prior to activation) will also be saved and attached to the event in permanent memory.

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**Metadata** – Case numbers, event numbers, and other descriptors used to identify digital evidence via the annotation process.

**Officer** – All regular full-time uniformed Sworn Officers and Reserve part-time volunteer Officers are considered officers for the purposes of this policy. Both Sworn Officers and Reserve Officers will be issued BWCs.

**Public Records Act** – The California Public Records Act gives the public the right to access records that are in the possession of public agencies, subject to certain statutory exemptions from disclosure.

**Supervisor** – Any Sworn department member at the rank of Sergeant or above.

**User** – Any Officer or Supervisor issued a BWC.

### **442.4 CAMERA ADMINISTRATION**

- (a) All WCPD Officers and Supervisors will be issued BWCs. While in uniform and performing duties which will place them in contact with the public, Officers and Supervisors shall wear their department issued BWC.
- (b) Any non-uniformed Officers or Supervisors may wear a department issued BWC if the User believes such a device is useful in the performance of their duties.
- (c) BWCs shall be worn above the midline of the torso.
- (d) When donning their BWC, Officers and Supervisors should utilize their smart phone Bluetooth BWC application to ensure their BWC is mounted in a position where the field of view is effective for recording.
- (e) The BWC equipment and all data, images, video, and metadata captured, recorded, or otherwise produced by the equipment is the sole property of WCPD.
- (f) BWC equipment is the responsibility of individual Users and shall be used with reasonable care to ensure proper functioning. Users shall inspect and test the BWC prior to each shift in order to verify proper functioning. Equipment malfunctions shall be brought to the attention of a Supervisor as soon as possible so that a replacement unit can be issued. Users will complete a maintenance request form (Form 302) for the malfunctioning BWC and deliver the unit and the form to the BWC Program Administrator.
- (g) Users shall not remove, dismantle, or tamper with any hardware or software component or part of the BWC.
- (h) Users should upload all video from their BWC with appropriate metadata annotation daily by the end of their shift. Officers shall obtain Supervisor approval if the BWC upload cannot take place by the end of an Officer's shift.
- (i) Users shall not edit, alter, or erase BWC recordings.

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### **442.5 WHEN TO RECORD**

- (a) Users are not expected to jeopardize their own safety or the safety of the public simply to record an incident via BWC.
- (b) Users should activate their BWC any time they reasonably believe a recording would be of evidentiary value in a criminal investigation or other interaction with the public. This policy is not intended to describe every possible situation in which a BWC should be used, although there are many situations where its use is appropriate. Below are some examples of when a BWC should be activated:
  - 1. All enforcement and investigative contacts including stop and field interview situations.
  - 2. Traffic stops including, but not limited to, traffic violations, stranded motorist assistance, and all crime interdiction stops.
  - 3. Self-initiated activity in which a User would normally notify Dispatch via the radio.
  - 4. Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise warrant recording.

### **442.6 HOW TO RECORD**

- (a) Users shall patrol with their BWC in “buffer” mode. While in buffer mode, the BWC will continuously record in 30 second loops. During that 30 second period, only video is being recorded, not audio.
- (b) When a User decides to activate their BWC, he or she will place the camera in “event” mode to record the incident. In this mode, both video and audio will be recorded.
- (c) When the incident is over or the User stops recording for any other reason set forth in this policy, he or she will return the BWC to “buffer” mode or turn off the BWC entirely.

### **442.7 PROHIBITED RECORDINGS**

All recordings made by Users acting in their official capacity as employees of the department, are the property of WCPD and are not considered private. Due to privacy concerns, Users shall not utilize BWCs to record in the following situations (Note: Users should turn off their BWCs in these situations):

- (a) Strip searches of prisoners.
- (b) In correctional facilities in which audio or video recording is prohibited.
- (c) Conversations with any WCPD personnel without the recorded member’s knowledge or permission.
- (d) Places where a reasonable expectation of privacy exists, such as restrooms and locker rooms.
- (e) Conversations involving confidential informants and undercover officers.
- (f) When Users are on break or otherwise engaged in personal activities.

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### **442.8 OPTIONAL RECORDINGS**

Also due to privacy concerns, Users should not record using BWCs in the following situations (Note: Users should keep their BWCs in buffer mode or turn the BWCs off in these situations):

- (a) Obtaining victim and witness statements in Sexual Assault or Child Abuse cases.
- (b) In a facility whose primary purpose is to provide psychiatric or medical services, unless responding to a call involving a suspect, taking a suspect statement, or addressing an issue which requires police action.
- (c) In order to gain the cooperation of citizens who are reluctant to provide a statement while being recorded.
- (d) Conversations with agency personnel or members of personnel from another agency involving tactics and strategy.

### **442.9 PUBLIC'S EXPECTATION OF PRIVACY**

Users are not required to obtain consent from a private citizen to record an interaction when:

- (a) In a public place, or
- (b) In a location where there is no reasonable expectation of privacy (i.e., inside a building or dwelling where the officer is lawfully present and engaged in the performance of official duties).

Officers are encouraged to advise citizens they are recording if the advisement may assist in gaining compliance, assist in the investigation, and will not otherwise interfere with the investigation or officer safety.

### **442.10 UNINTENTIONAL RECORDINGS**

In the event of an unintentional or inadvertent activation of the BWC in which the resulting recording is not evidence in a criminal case or potential administrative investigation, or when the recording may unreasonably infringe on personal privacy rights, the User who recorded the video may request the recording be deleted. If the recording captured another member of the department, the User shall notify that member of the department of the existence of that video. Either the User or the member of the department who was captured on the BWC recording may submit a written request to his or her Supervisor for the video to be deleted. The request shall contain specific reasons for recommending the deletion of the recording. The Supervisor shall "flag" the video to be deleted and alert the Executive Lieutenant of the request. The Executive Lieutenant or his or her designee will review the video in a timely manner to ensure that it is appropriate for deletion. If the Executive Lieutenant determines the video should be deleted due to personal privacy rights concerns, the BWC Program Administrator will delete the file and document the deletion for audit purposes.

### **442.11 DOCUMENTATION**

- (a) When preparing written reports, Users should review their recordings as a resource.

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- (b) Users shall document in their police reports and citation notes when BWC video exists of a particular incident. However, BWC recordings are not a replacement for written reports and Users shall not substitute “refer to video” for a detailed and thorough report.
- (c) If BWC recordings are interrupted during an incident, Officers shall document in their police reports or CAD Event remarks why they stopped their BWC recording.
- (d) Users shall annotate video with specifics such as case number, event number, type of case, retention category, and other metadata. This information is useful for case retention schedules and for searching for specific video files.

### **442.12 RELEASE OF RECORDED FILES**

BWC files are generally considered to be evidence for investigative purposes and exempt from public disclosure under the Public Records Act. Notwithstanding the existence of such exemption, the Chief of Police reserves the right to release BWC video to the public in specific instances when it is determined that such release will best serve the public interest.

### **442.13 REVIEW OF RECORDED FILES**

Recorded BWC videos may be reviewed in any of the following situations:

- (a) By the User who originally recorded the incident for use in report preparation or courtroom testimony.
- (b) By an Officer or Supervisor directly involved in the incident for use in report preparation or courtroom testimony.
- (c) By a Detective assigned to conduct follow-up investigation related to the incident.
- (d) By a Field Training Officer reviewing the recordings made by their trainees.
- (e) By a Supervisor approving a report in which BWC video exists.
- (f) By a Supervisor ensuring that BWC Users utilize the cameras in accordance with this policy.
- (g) By a Supervisor reviewing a specific incident requiring an After Action report in accordance with Lexipol Policy 1006.
- (h) Any group or team within WCPD as recommended for review by an After Action report disposition, such as the Defensive Tactics or Drive Teams.
- (i) As part of department approved training. In these instances, permission to show the BWC video from the User who made the recording will be sought. However, the Chief of Police will have the ultimate authority in deciding whether the training benefits of the video outweigh the User’s desire for privacy. Note: Users are encouraged to inform their Supervisor of any recordings that may be valuable to other members of the department as a training aid.

### **442.14 REVIEW OF RECORDED FILES – LEIFI PROTOCOL**

In accordance with the Contra Costa County Police Chief’s Association Law Enforcement Involved Fatal Incident protocol (LEIFI), Users should provide an initial statement to investigators prior to

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reviewing BWC videos when the User was involved in a protocol incident. If an investigator shows a BWC recording to an involved User after the initial interview, the investigator should admonish the involved User of the limitations of BWC recordings. Below is an example of such an admonition:

- (a) *In this case, there is recorded evidence that you will have an opportunity to view after you have given your initial statement. Recorded evidence has limitations and may depict the events differently than you recall, and it may not depict all of the events that you saw or heard. Recordings have a limited field of view and may not capture events normally seen by the human eye. The “frame rate” of the recording may limit the camera’s ability to capture movements normally seen by the human eye. Lighting as seen on the recording may be different than that which is seen by the human eye. Recordings are two-dimensional and may not capture depth, distance, or positional orientation as well as the human eye. Remember, the video evidence is intended to assist your memory and your ability to recall and describe the incident.*
- (b) In a LEIFI protocol case, the Supervisor shall take possession of the BWCs which recorded the incident to limit access to the video by involved Users.

#### **442.15 RETENTION OF BWC FILES**

BWC files shall be retained for twenty-six (26) months unless the files have evidentiary value, in which case they may be retained for a longer duration in accordance with the Police Department’s Property/Evidence file retention schedule. BWC files which become part of a citizen complaint or administrative investigation will follow the retention period identified for the complaint/investigation. Some BWC files that do not fall into the above categories may be retained longer than twenty-six (26) months for training purposes. The Executive Lieutenant will determine the retention length of these training videos based on their usefulness.

#### **442.16 TRAINING**

- (a) Users shall complete department training to ensure proper use and operation of BWCs. Additional training may be required at periodic intervals to ensure the continued effective use and operation of the equipment, proper calibration and performance, and to incorporate changes, updates, or other revisions in policy and BWC equipment.
- (b) The BWC Program Administrator is responsible for creating and maintaining a BWC training manual which will serve as an additional reference for Users.

#### **442.17 STORAGE**

- (a) All BWC recordings will be stored via a 3rd party BWC vendor’s cloud storage. The cloud storage service shall comply with Criminal Justice Information Systems (CJIS) requirements for law enforcement digital evidence storage.
- (b) All BWC recordings are considered official WCPD records and shall not be shared with any person not having authorization to access the files as part of his or her official duties.

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- (c) Only the BWC Program Administrator or a designee of the Chief of Police, in accordance with retention schedules and inadvertent recording protocol, shall have the authority and ability to delete BWC files.
- (d) The following WCPD employees are authorized to make duplicate copies of BWC recordings as required by their job responsibilities:
  - 1. BWC Program Administrator
  - 2. Any BWC User
  - 3. Any Investigations Bureau member
  - 4. Property/Evidence personnel

### **442.18 SUPERVISORY RESPONSIBILITIES**

- (a) Supervisors shall review BWC video to ensure that Users are utilizing BWCs in accordance with this policy.
- (b) Supervisors shall not arbitrarily review BWC recordings for the sole purpose of searching for violations of department policy not related to a specific complaint or incident.
- (c) Supervisors will provide Officers with a replacement BWC unit if their assigned BWC is damaged or malfunctioning.
- (d) Supervisors shall take possession of the BWCs of Users involved in a LEIFI protocol case immediately after the incident to limit access to the video by involved Users prior to the initial interview by investigators.

### **442.19 ANNUAL REVIEW OF POLICY**

This policy will be reviewed by the Executive Lieutenant, the Body Worn Camera Administrator, and the City Attorney on an annual basis to ensure its continued compliance with all applicable laws, including those pertaining to the retention of electronic and digital records and the California Public Records Act.



## Chapter 5 - Traffic Operations

## Traffic Function and Responsibility

### 500.1 PURPOSE AND SCOPE

The ultimate goal of traffic law enforcement is to reduce traffic collisions. This may be achieved through the application of such techniques as geographic/temporal assignment of personnel and equipment and the establishment of preventive patrols to deal with specific categories of unlawful driving behavior. Traffic enforcement techniques are based on accident data, enforcement activity records, traffic volume, and traffic conditions. This department provides enforcement efforts toward violations, not only in proportion to the frequency of their occurrence in accident situations, but also in terms of traffic-related needs.

### 500.2 TRAFFIC OFFICER DEPLOYMENT

Several factors are considered in the development of deployment schedules for officers of the Walnut Creek Police Department. Information provided by the California Statewide Integrated Traffic Reporting System (SWITRS) is a valuable resource for traffic accident occurrences and therefore officer deployment. Some of the factors for analysis include:

- Location
- Time
- Day
- Violation factors

All officers assigned to patrol or traffic enforcement functions will emphasize enforcement of accident causing violations during high accident hours and at locations of occurrence. All officers will take directed enforcement action on request, and random enforcement action when appropriate against violators as a matter of routine. All officers shall maintain high visibility while working general enforcement, especially at high accident locations.

Other factors to be considered for deployment are citizen requests, construction zones or special events.

### 500.3 ENFORCEMENT

Enforcement actions are commensurate with applicable laws and take into account the degree and severity of the violation committed. This department does not establish ticket quotas and the number of arrests or citations issued by any officer shall not be used as the sole criterion for evaluating officer overall performance (Vehicle Code § 41603). The visibility and quality of an officer's work effort will be commensurate with the philosophy of this policy. Several methods are effective in the reduction of collisions:

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### 500.3.1 WARNINGS

Warnings or other non-punitive enforcement actions should be considered in each situation and substituted for arrests or citations when circumstances warrant, especially in the case of inadvertent violations.

### 500.3.2 CITATIONS

Citations may be issued when an officer believes it is appropriate. It is essential that officers fully explain the rights and requirements imposed on motorists upon issuance of a citation for a traffic violation. Officers should provide the following information at a minimum:

- (a) Explanation of the violation or charge
- (b) Court appearance procedure including the optional or mandatory appearance by the motorist
- (c) Notice of whether the motorist can enter a plea and pay the fine by mail or at the court

### 500.3.3 PHYSICAL ARREST

Physical arrest can be made on a number of criminal traffic offenses outlined in the Vehicle Code or Penal Code. These physical arrest cases usually deal with, but are not limited to:

- (a) Vehicular manslaughter
- (b) Felony and misdemeanor driving under the influence of alcohol/drugs
- (c) Felony or misdemeanor hit-and-run
- (d) Refusal to sign notice to appear
- (e) Any other misdemeanor at the discretion of the officer, such as reckless driving with extenuating circumstances

## **500.4 SUSPENDED OR REVOKED DRIVERS LICENSES**

If an officer contacts a traffic violator for driving on a suspended or revoked license, the officer may issue a traffic citation pursuant to Vehicle Code § 14601.

If a computer check of a traffic violator's license status reveals a suspended or revoked driver license and the traffic violator still has his or her license in possession, the license shall be seized by the officer. The officer shall verbally advise the traffic violator of the suspension or revocation and issue the citation. The officer will be responsible for filling out the Verbal Notice form (DMV form DL-310) and causing that form and license to be forwarded to the Department of Motor Vehicles.

## Special License Plates

### 500.1 PURPOSE AND SCOPE

This Policy is in place to better acquaint officers with special license plates which may be found on vehicles used by dealers, manufacturers, distributors, transporters, and dismantlers.

### 500.2 PROCEDURE

**Dealers Defined:** For enforcement purposes, a dealer is defined in sections 285 and 426VC as "a person who for commission, money, or other thing of value... sells, exchanges, buys, offers for sale.... a vehicle subject to registration or a motorcycle subject to identification under this code." Under 286VC, "dealers" do not include insurance companies, banks, finance companies, or salespersons regularly employed by dealers.

**License Requirement:** 11700VC requires any person acting as a dealer, manufacturer, distributor, or transporter to acquire a license or temporary permit prior to doing so.

**Special Plate Issuance:** Special license plates containing a distinct number are issued to each licensed dealer. These plates usually consist of four digits with a smaller number and letter in the bottom left corner of the license plate. For example, a dealer may have a plate numbered "5881" with a small "1A" in the bottom left corner. The same dealer's second special plate would be numbered "58812A, and would have a small "2A" in the bottom left corner.

**Special Plate Use:** The special plate may be used on any type vehicle owned or lawfully possessed by the licensee as specified in Section 11715VC.

#### 500.2.1 DEALERS, MANUFACTURERS, DISTRIBUTORS

- (a) **Unregistered Vehicle Movement:** Dealers, manufacturer's representatives or distributors may operate or move, for any purpose, unregistered vehicles owned or possessed by them provided special plates are attached to the vehicle, or special permits are obtained as provided in sections 4002 and 11716 VC. This privilege is not extended to agents or employees. They may operate such vehicles only when the operation falls within the scope of their employment; for example:
1. A secretary could operate a special plated vehicle for transportation to the bank to make a bank deposit for the dealer.
  2. An employee of the dealer may operate a dealer-plated vehicle to transfer vehicles between dealers or dealers' lots, or to a repair shop.
  3. An unregistered vehicle, when operated by an employee, agent or representative, and with special plates, may be used to transport not more than one load of other vehicles, Section 11715(d) VC.
  4. It is permissible for a dealer-owned vehicle bearing special plates to tow any of the following, but not all inclusive list of vehicles, provided that the vehicle

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is driven by a dealer, manufacturer's representative, distributor or distributor representative.

- (a) A house or travel trailer, or any cargo trailer which is privately owned and registered for pleasure or personal use.
  - (b) A boat trailer also privately licensed for pleasure or personal use.
5. A dealer may use a special plated vehicle for personal purposes, such as shopping, transporting family members, etc. This privilege, however, is not extended to employees or family members of such persons.
6. A vehicle may be operated with a manufacturer or distributor license plate for testing purposes, provided a letter plate for testing purposes, provided a letter has been sent to the Department of Motor Vehicles, Division of Compliance, Sacramento, and a copy of that letter is carried in the vehicle. The letter will identify the vehicle, duration of the test, location where the test is to be conducted, and persons authorized to operate the vehicle. The term "persons" may include a testing company; therefore, the term is intended to include operations by bonafide employees of the company who are hired for the purpose other than described will render the authorization invalid, causing registration to become due. Operation of a test vehicle for incidental transportation purposes by persons conducting the test will be permitted. Included will be transportation to restaurants, motels, etc., and from home to the test location and return.
- (b) **Vehicles required to be registered:** The following vehicles are required to be registered:
- (a) Work and service vehicles owned by dealers, including tow cars, parts delivery, and pickup vehicles, and vehicles assigned to "loaner" service.
  - (b) Vehicles owned and leased by dealers, except those vehicles rented and leased to vehicle salesmen in the course of their employment for the purpose of display or demonstration.
  - (c) Vehicles used to transport more than one load of other vehicles for the purpose of sale.
  - (d) Vehicles operated by family members of dealers, manufacturers, manufacturer's representatives, distributors, or distributor's representatives.
  - (e) Vehicles with special plates loaned to a service customer.
  - (f) Commercial vehicles used to transport loads when operated with special plates, except for demonstration purposes.

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### 500.2.2 DISMANTLERS

**Vehicles exempt from registration:** Unregistered vehicles owned or controlled by a dismantler when moved by the dismantler to his place of business are exempt from registration, provided there is displayed on the vehicle special plates issued to the dismantler in addition to other license plates or permits already assigned to the vehicle.

**Vehicles required to be registered:** Vehicles owned or controlled by the dismantler, but operated for general transportation purposes, including work or service vehicles owned by a dismantler, are required to be registered.

(a) Examples of proper use of special plates:

1. The vice president of corporate distributorship (active in the business) takes a fishing trip.
2. A dealer's daughter driving on a trip with her parents as long as licensee is also in the vehicle.
3. The wife of a manufacturer's representative picking her husband (the licensee) up at the airport.
4. Dealer (dealer-plated vehicle) towing a boat trailer that is personally owned by the dealer or an acquaintance and properly registered.

(b) Examples of improper use are:

1. A dealer's son driving himself to and from high school.
2. The wife of a corporate manufacturer's president making shopping trips unrelated to her husband's use of the vehicle.
3. A dealer's son using the father/dealer's vehicle after business hours to attend a football game.

### 500.3 ENFORCEMENT

Enforcement action which would require either the registration or deposit of registration fees on vehicles operated in violation of special plate restrictions should be directed to the licensee as specified for owner responsibility. The misuse of special-plated vehicles by a dealer, manufacturer or transporter is a violation of Section 4000(A) and Section 11713(j) VC. DMV requests reports of special plate violations be forwarded to them. It is important to include the VIN number in the police report.

## Traffic Collision Reporting

### 501.1 PURPOSE AND SCOPE

The Walnut Creek Police Department prepares traffic collision reports in compliance with the California Highway Patrol Collision Investigation Manual (CIM) and as a public service makes traffic collision reports available to the community with some exceptions.

### 501.2 RESPONSIBILITY

The Start Team Manager will be responsible for distribution of the Collision Investigation Manual. The Start Team Manager will receive all changes in the state manual and ensure conformity with this policy.

### 501.3 TRAFFIC COLLISION REPORTING

All traffic collision reports taken by members of this department shall be forwarded to a supervisor for approval and data entry into the Records Management System. The Start Team Manager will be responsible for traffic collision statistics to be forwarded to the Operations Captain, or other persons as required.

### 501.4 REPORTING SITUATIONS

#### 501.4.1 TRAFFIC COLLISIONS INVOLVING CITY VEHICLES

Traffic collision investigation reports shall be taken when a City-owned vehicle is involved in a traffic collision upon a roadway or highway wherein any damage or injury results. A general information report may be taken in lieu of a traffic collision report (CHP 555 form) at the direction of a supervisor when the collision occurs on private property or does not involve another vehicle. Whenever there is damage to a City vehicle, a Vehicle Damage Report shall be completed and forwarded to the appropriate Bureau Commander.

Photographs of the collision scene and vehicle damage shall be taken at the discretion of the traffic investigator or any supervisor.

#### 501.4.2 TRAFFIC COLLISIONS WITH POLICE DEPARTMENT EMPLOYEES

- (a) The on-duty supervisor or watch commander shall be notified of all accidents while the involved employee is still at the accident scene, or as soon as practical, in all police employee vehicle accidents.
- (b) All accidents shall be reported to the appropriate agency while the employee is still at the accident scene.
- (c) Non-injury and very minor injury vehicle accidents involving police employees within the Walnut Creek city limits shall be investigated by the Walnut Creek Police Department.

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- (d) All accidents that occur outside the City limits will be reported as described above to the agency having jurisdiction for the investigation.
- (e) The California Highway Patrol shall be called to investigate collisions involving on-duty police personnel under the following circumstances:
  - 1. All fatal collisions involving on-duty personnel;
  - 2. Any collision resulting in injuries, other than complaint of pain or other minor injury;
  - 3. Collisions that, in the supervisor's judgment, require an outside jurisdiction's investigation.
- (f) A Walnut Creek Police case report will be created in all vehicle accidents involving on-duty police employees. In those cases in which another jurisdiction is investigating, our report shall be classified "Miscellaneous Traffic" and shall include a summary of the accident and the case number and name of the reporting agency.
  - 1. A "Miscellaneous Traffic" case report should also be created to record traffic incidents involving police employees where damage is claimed or possible but none is apparent.
- (g) All such accidents or incidents should have photographs taken of any actual or claimed damage to vehicles or property.
- (h) A "Report of Damage to Police Equipment" (form #302), when such occurs, shall be completed by the employee involved in the accident. When the involved employee is unable to complete the "Report," the bureau or watch commander shall designate an employee to complete the report. The bureau or watch commander shall review the "Report" and be responsible for routing appropriately.
- (i) The bureau or watch commander shall review the collision investigation report to determine whether or not employee error contributed to the accident.
- (j) The bureau or watch commander shall forward to the division commander an after-action report (refer to Policy 1007). The report shall include a finding that the accident was "Avoidable" (that is, driver error contributed to the accident) or "Unavoidable" (that is, employee driver error did not contribute to the accident). On "Avoidable" accidents, the bureau or watch commander should recommend the accident be reviewed by the Driver Training Team which should provide training either to remedy deficient driving habits contributing to the accident or to reinforce those driving skills that will prevent future accidents.
- (k) The division commander shall review after-action reports and note the final dispositions. After final review, the Chief's administrative assistant shall forward copies of all after-action reports and attachments to the City's Risk Management Representative. Risk Management should forward the appropriate paperwork to the



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Corp Yard when the collision damage needs to be repaired. Corp Yard personnel should then make the necessary arrangements to have the vehicle repaired.

- (l) Copies of all "Avoidable" accidents shall be forwarded to the manager of the Driver Training Team who will assign members of the team to review the cause of the accident and provide the appropriate training. Members of the driver training team shall document the accident review and training provided. The manager of the team shall review and approve the documentation, which should then be maintained in the "avoidable" vehicle accident file.
- (m) The manager of the Driver Training Team will keep a log of all avoidable accidents that are forwarded to the driving team for training. Avoidable accidents may be removed from the log after three years. If an employee has a third avoidable accident within a three-year period, the manager of the Driver Training Team will contact the employee. The manager will explain to the employee that any additional avoidable accidents will result in formal documentation in addition to the retraining. If an employee has four avoidable accidents, formal documentation of the accident by the employee's supervisor is required.
- (n) After-action reports and associated documents related to employee accidents, except those involving gross negligence, malice, or blatant disregard for the public's safety or those for repeated accidents resulting in discipline other than training, will be kept in a single file in the Chief's office. The contents of the file will serve as a continuing source of information about employee accidents. After-action reports on accidents will generally be purged after three years; however, if patterns of accidents appear, relevant reports may be retained longer.

When an employee of this department, either on-duty or off-duty, is involved in a traffic collision within the jurisdiction of the Walnut Creek Police Department resulting in a serious injury or fatality, the Start Team Manager or the Watch Commander, may notify the California Highway Patrol for assistance.

The term serious injury is defined as any injury that may result in a fatality.

### 501.4.3 TRAFFIC COLLISIONS WITH OTHER CITY EMPLOYEES OR OFFICIALS

The Traffic Lieutenant or on-duty Watch Commander may request assistance from the California Highway Patrol for the investigation of any traffic collision involving any City official or employee where a serious injury or fatality has occurred.

### 501.4.4 TRAFFIC COLLISIONS ON PRIVATE PROPERTY

In compliance with the Collision Investigation Manual, traffic collision reports shall not be taken for traffic collisions occurring on private property unless there is a death or injury to any person involved, a hit-and-run violation, or Vehicle Code violation. An Incident Report may be taken at the discretion of any supervisor.

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### 501.4.5 TRAFFIC COLLISIONS ON ROADWAYS OR HIGHWAYS

Traffic collision reports shall be taken when they occur on a roadway or highway within the jurisdiction of this department under any of the following circumstances:

- (a) When there is a death or injury to any persons involved in the collision
- (b) When there is an identifiable violation of the Vehicle Code
- (c) When a report is requested by any involved driver

### **501.5 NOTIFICATION OF TRAFFIC BUREAU SUPERVISION**

In the event of a serious injury or death related traffic collision, the Watch Commander shall notify the Traffic Lieutenant to relate the circumstances of the traffic collision and seek assistance from the Traffic Bureau. In the absence of a Traffic Lieutenant, the Watch Commander or any supervisor may assign an accident investigator or motor officer to investigate the traffic collision. In all cases of traffic collisions involving serious injury or death, the Operations Captain and Chief of Police will be notified as soon as is practical.

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## Traffic Signal Outages and Traffic Control

### 502.1 PURPOSE AND SCOPE

The purpose of this training bulletin is to provide general guidelines to be followed during traffic signal outages and safety while directing traffic.

### 502.2 PROCEDURE

When a traffic signal goes out, temporary warning devices or other controls may be useful. The ability to place such devices or controls will be affected by the number of signals out, other police needs, and availability of personnel. While traffic direction is not legally required, any actions taken should be maintained until the signal is restored. Higher priorities may justify early termination.

When an inoperative traffic signal is reported or detected by an employee, the signal shall be reported to dispatch. An officer shall be assigned to respond and make an assessment of the overall situation. Dispatch shall create an event for the situation, and a supervisor or person in charge shall be notified. A plan of action should be devised and that plan should be briefly reflected in the event.

As of January 1, 1989, section 21800(d)(1) CVC requires drivers approaching an inoperative traffic signal to stop at the entrance to the intersection and proceed only when it is safe to do so (as if stop signs were in place). Officers may take additional measures to help alert drivers to the hazard and facilitate traffic movement.

The following are alternatives available to officers when addressing traffic movement during signal outages

- If the intersection does not need additional warning, based on the time of day, traffic volume, and visibility, periodic observations should be made to confirm continuation of those conditions.
- A flare may be placed between approaching traffic lanes, either at or approaching the intersection. The number of locations should be limited in order to maintain the flares until the signals reactivate.
- A temporary stop sign may be placed at one or more sides of the intersection. When used, stop signs should be placed to the right edge of the #1 through lane of traffic at the limit line. This is usually the most effective location for a temporary sign, even with additional lanes of traffic.
- If there is a special need during darkness to alert motorists to its presence, a combination of flares placed directly in front of a stop sign may be useful.
- Traffic direction by one or more officers may be the most expedient course of action, depending upon the availability of officers.

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- Temporary power to activate the signal may be available from the corporation yard.
- Rerouting of traffic away from the intersection may be an alternative, depending on the location and conditions.

The placement of a patrol car, with warning lights, may be used to provide safety to personnel while one of the above alternatives is being implemented. Generally, patrol units should not be left in traffic lanes, unless considered necessary.

Any control or warning devices should be maintained until the signal is restored. An officer need not remain at the scene of an outage if other duties or called for services have a higher priority. Cessation of intersection traffic control by the officer while a signal is still out should be approved by a supervisor.

Depending on the number of signals out at any given time, it may be necessary to leave some unattended. Other policing needs may preclude providing traffic control in some circumstances. It may be necessary to prioritize on which intersections are provided traffic control. This evaluation will normally be done by a supervisor or an assigned officer, and traffic conditions at the intersection should be considered.

Traffic signals may be out for very short periods or for hours. To the extent practical, supervisors should monitor whatever action is taken. It may be appropriate to consider/request other traffic control resources such as portable signs or generators, depending on the scope of the problem. When flares or signs have been placed and the signal has been restored, the flares and signs should be removed from the roadway.

Officers encountering traffic signal outages in the field should advise dispatch of the condition and any action they take in response to that condition. A determination should be made, if possible, as to the cause of the outage. If the cause is other than a power failure, signal repair should be notified and a response time obtained. If a power failure is involved, contact with PG&E may offer information on the anticipated length of the outage. Occasionally, PG&E may plan a signal outage to shut down power for a variety of reasons.

When such plans are known, PG&E should arrange for appropriate alternate traffic control through either signing or contracted traffic direction. The only exception to this is work performed for and at the direction of the City of Walnut Creek. In the latter case, the department may be required to provide traffic direction or signing, depending on the need.

### **502.3 REFLECTIVE TRAFFIC SAFETY VESTS**

Efforts are made to supply each patrol car and PSO vehicle with a retro-reflective traffic safety vest. All employees and volunteers directing traffic shall wear such a vest or a neon yellow rain jacket with reflective panels within a reasonable amount of time after arriving on-scene, and barring any safety concerns. If an employee or volunteer discovers their vehicle does not contain a traffic

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safety vest during a pre-vehicle inspection they shall obtain one or notify a supervisor as soon as possible.

## Vehicle Towing and Release

### 503.1 PURPOSE AND SCOPE

This policy provides the procedures for towing a vehicle by or at the direction of the Walnut Creek Police Department. Nothing in this policy shall require the Department to tow a vehicle.

### 503.2 STORAGE AND IMPOUNDS

When circumstances permit, for example when towing a vehicle for parking or registration violations, the handling employee should, prior to having the vehicle towed, make a good faith effort to notify the owner of the vehicle that it is subject to removal. This may be accomplished by personal contact, telephone or by leaving a notice attached to the vehicle at least 24 hours prior to removal. If a vehicle presents a hazard, such as being abandoned on the roadway, it may be towed immediately.

The responsibilities of those employees towing, storing or impounding a vehicle are listed below.

#### 503.2.1 VEHICLE STORAGE REPORT

Department members requesting towing, storage or impound of a vehicle shall complete CHP Form 180 and accurately record the mileage and a description of property within the vehicle (Vehicle Code § 22850). A copy of the storage report should to be given to the tow truck operator and the original shall be submitted to the Records Bureau as soon as practicable after the vehicle is stored.

#### 503.2.2 REMOVAL FROM TRAFFIC COLLISION SCENES

When a vehicle has been involved in a traffic collision and must be removed from the scene, the officer shall have the driver select a towing company, if possible, and shall relay the request for the specified towing company to the dispatcher. When there is no preferred company requested, a company will be selected from the rotational list of towing companies in Dispatch.

If the owner is incapacitated, or for any reason it is necessary for the Department to assume responsibility for a vehicle involved in a collision, the officer shall request the dispatcher to call the official towing garage for the City of Walnut Creek. The officer will then store the vehicle using a CHP Form 180.

#### 503.2.3 STORAGE AT ARREST SCENES

Whenever a person in charge or in control of a vehicle is arrested, it is the policy of this department to provide reasonable safekeeping by storing the arrestee's vehicle subject to the exceptions described below. The vehicle, however, shall be stored whenever it is needed for the furtherance of the investigation or prosecution of the case, or when the community caretaker doctrine would reasonably suggest that the vehicle should be stored (e.g., traffic hazard, high crime area).

The following are examples of situations where consideration should be given to leaving a vehicle at the scene in lieu of storing, provided the vehicle can be lawfully parked and left in a reasonably secured and safe condition:

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- Traffic related warrant arrest.
- Situations where the vehicle was not used to further the offense for which the driver was arrested.
- Whenever the licensed owner of the vehicle is present, willing, and able to take control of any vehicle not involved in criminal activity.
- Whenever the vehicle otherwise does not need to be stored and the owner requests that it be left at the scene. In such cases the owner shall be informed that the Department will not be responsible for theft or damages.

### 503.2.4 DRIVING A NON-CITY VEHICLE

Vehicles which have been towed by or at the direction of the Department should not be driven by police personnel unless it is necessary to move a vehicle a short distance to eliminate a hazard, prevent the obstruction of a fire hydrant or to comply with posted signs.

### 503.2.5 RECORDS BUREAU RESPONSIBILITY

Approved storage forms shall be promptly placed into the auto-file so that they are immediately available for release or review should inquiries be made.

Within 48 hours, excluding weekends and holidays, of the storage of any such vehicle it shall be the responsibility of the Records Bureau to determine the names and addresses of any individuals having an interest in the vehicle through DMV or CLETS computers. Notice shall be sent to all such individuals by first-class mail (Vehicle Code §§ 22851.3(d), 22852(a), and 14602.6(a)(2)). The notice shall include the following (Vehicle Code § 22852(b)):

- (a) The name, address, and telephone number of this Department.
- (b) The location of the place of storage and description of the vehicle, which shall include, if available, the name or make, the manufacturer, the license plate number, and the mileage.
- (c) The authority and purpose for the removal of the vehicle.
- (d) A statement that, in order to receive their post-storage hearing, the owners, or their agents, shall request the hearing in person, writing, or by telephone within 10 days of the date appearing on the notice.

### 503.3 TOWING SERVICES

The City of Walnut Creek periodically selects a firm to act as the official tow service and awards a contract to that firm. This firm will be used in the following situations:

- (a) When it is necessary to safeguard a vehicle due to the inability of the owner or operator to take the required action.
- (b) When a vehicle is being held as evidence in connection with an investigation.

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- (c) When it is otherwise necessary to store a motor vehicle. This would include situations involving the recovery of stolen or abandoned vehicles, and the removal from the streets of vehicles obstructing traffic in violation of state or local regulations.

### **503.4 VEHICLE INVENTORY**

All property in a stored or impounded vehicle shall be inventoried and listed on the vehicle storage form. This includes the trunk and any compartments or containers, even if closed and/or locked. Members conducting inventory searches should be as thorough and accurate as practical in preparing an itemized inventory. These inventory procedures are for the purpose of protecting an owner's property while in police custody, to provide for the safety of officers, and to protect the Department against fraudulent claims of lost, stolen, or damaged property.

### **503.5 SECURITY OF VEHICLES AND PROPERTY**

Unless it would cause an unreasonable delay in the completion of a vehicle impound/storage or create an issue of officer safety, officers should make reasonable accommodations to permit a driver/owner to retrieve small items of value or personal need (e.g., cash, jewelry, cell phone, prescriptions) which are not considered evidence or contraband.

If a search of a vehicle leaves the vehicle or any property contained therein vulnerable to unauthorized entry, theft or damage, personnel conducting the search shall take such steps as are reasonably necessary to secure and/or preserve the vehicle or property from such hazards.

### **503.6 RELEASE OF VEHICLE**

The Department will maintain a listed, 24-hour telephone number to provide information regarding impoundment of vehicles and the right of the registered owner to request a storage hearing. Releases for towed vehicles will be made available during regular, non-emergency business hours (Vehicle Code § 14602.6).

- (a) Vehicles removed pursuant to Vehicle Code § 22850 shall be released after proof of current registration is provided by the owner or the person in control of the vehicle and after all applicable fees are paid (Vehicle Code § 22850.3; Vehicle Code § 22850.5).
- (b) Vehicles removed that require payment of parking fines or proof of valid driver's license shall only be released upon presentation of proof of compliance, proof of payment, completion of affidavit and payment of applicable fees related to the removal (Vehicle Code § 22651 et seq., Vehicle Code § 22652 et seq., Vehicle Code § 22850.3; Vehicle Code § 22850.5).
- (c) A vehicle removed pursuant to Vehicle Code § 14602.6(a) shall be released to the registered owner or his/her agent with proof of current registration, proof of a valid driver's license and applicable fees paid prior to the end of the 30-day impoundment period under any of the following circumstances:
  - 1. The vehicle was stolen.



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2. If the driver reinstates his/her driver's license or acquires a license and provides proof of proper insurance.
3. Any other circumstance as set forth in Vehicle Code § 14602.6.
4. When there is no remaining community caretaking need to continue impound of the vehicle or the continued impound would not otherwise comply with the Fourth Amendment.

Personnel whose duties include releasing towed vehicles should consult the Vehicle Code under which the vehicle was towed or impounded for any specific requirements prior to release.

Employees who suspect that a vehicle was impounded in error should promptly advise a supervisor. Supervisors should approve, when appropriate, the release of the vehicle without requiring the registered owner or his/her agent to request a hearing, as described in the Vehicle Impound Hearings Policy.

## Vehicle Impound Hearings

### 504.1 PURPOSE AND SCOPE

This policy establishes a procedure for the requirement to provide vehicle storage or impound hearings pursuant to Vehicle Code § 22852.

### 504.2 STORED OR IMPOUND HEARING

When a vehicle is stored or impounded by any member of the Walnut Creek Police Department, a hearing will be conducted upon the request of the registered or legal owner of the vehicle or his/her agent (Vehicle Code § 22650(a); Vehicle Code § 22852(a)).

The hearing shall be conducted within 48 hours of the request, excluding weekends and holidays. The hearing officer must be a person other than the person who directed the storage or impound of the vehicle (Vehicle Code § 22852(c)).

#### 504.2.1 HEARING PROCEDURES

The vehicle storage hearing is an informal process to evaluate the validity of an order to store or impound a vehicle. The employee who caused the storage or removal of the vehicle does not need to be present for this hearing.

All requests for a hearing on a stored or impounded vehicle shall be submitted in person, in writing or by telephone within 10 days of the date appearing on the notice (Vehicle Code § 22852(b)). The on duty watch commander will generally serve as the hearing officer. The person requesting the hearing may record the hearing at his/her own expense.

The failure of either the registered or legal owner or interested person or his/her agent to request a hearing in a timely manner or to attend a scheduled hearing shall be considered a waiver of and satisfaction of the post-storage hearing requirement (Vehicle Code § 22851.3(e)(2); Vehicle Code § 22852(d)).

Any relevant evidence may be submitted and reviewed by the hearing officer to determine if reasonable grounds have been established for the storage or impound of the vehicle. The initial burden of proof established by a preponderance of the evidence that the storage/impound was based on probable cause rests with the Department.

After consideration of all information, the hearing officer shall determine the validity of the storage or impound of the vehicle in question and then render a decision. The hearing officer shall also consider any mitigating circumstances attendant to the storage that reasonably would warrant the release of the vehicle or a modification or reduction of the period the vehicle is impounded (Vehicle Code §14602.6(b); Vehicle Code § 14602.8(b)).

Aside from those mitigating circumstances enumerated in the Vehicle Code, the registered owner's lack of actual knowledge that the driver to whom the vehicle was loaned was not validly licensed may constitute a mitigating circumstance under Vehicle Code § 14602.6(b) or 14602.8(b), warranting release of the vehicle. This mitigating circumstance exception is not limited to situations

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where the owner made a reasonable inquiry as to the licensed status of the driver before lending the vehicle.

The legislative intent and this department's policy is to prevent unlicensed driving pursuant to Vehicle Code §14602.6. If this purpose is not furthered by the continued impoundment of a vehicle, release is most often appropriate.

- (a) If a decision is made that reasonable grounds for storage or impound have been established, the hearing officer shall advise the inquiring party of the decision and that the inquiring party may pursue further civil remedies if desired.
  - 1. If mitigating circumstances are found to be relevant, the hearing officer shall make reasonable adjustments to the impound period, storage or assessment of fees as warranted.
- (b) If a decision is made that reasonable grounds for storage or impound have not been established, the vehicle in storage shall be released immediately. Towing and storage fees will be paid at the Department's expense (Vehicle Code § 22852(e)).
- (c) If a decision is made that reasonable grounds for storage have not been established and the vehicle has been released with fees having been paid, the receipt for such fees will be forwarded with a letter to the appropriate Bureau Commander. The hearing officer will recommend to the appropriate Bureau Commander that the fees paid by the registered or legal owner of the vehicle in question or their agent be reimbursed by the Department.

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## Impaired Driving and Evidence Collection

### 505.1 PURPOSE AND SCOPE

This policy provides guidance to those department members who play a role in the detection and investigation of driving under the influence (DUI).

### 505.2 POLICY

The Walnut Creek Police Department is committed to the safety of the roadways and the community and will pursue fair but aggressive enforcement of California's impaired driving laws.

### 505.3 INVESTIGATIONS

Officers should not enforce DUI laws to the exclusion of their other duties unless specifically assigned to DUI enforcement. All officers are expected to enforce these laws with due diligence.

The Traffic Lieutenant will develop and maintain, in consultation with the prosecuting attorney, report forms with appropriate checklists to assist investigating officers in documenting relevant information and maximizing efficiency. Any DUI investigation will be documented using these forms. Information documented elsewhere on the form does not need to be duplicated in the report narrative. Information that should be documented includes, at a minimum:

- (a) The field sobriety tests (FSTs) administered and the results.
- (b) The officer's observations that indicate impairment on the part of the individual, and the officer's health-related inquiries that may help to identify any serious health concerns (e.g., diabetic shock).
- (c) Sources of additional information (e.g., reporting party, witnesses) and their observations.
- (d) Information about any audio and/or video recording of the individual's driving or subsequent actions.
- (e) The location and time frame of the individual's vehicle operation and how this was determined.
- (f) Any prior related convictions in California or another jurisdiction.

### 505.4 OBTAINING BLOOD EVIDENCE AT THE MARTINEZ DETENTION

- (a) Officers should make every effort to bring people to the WCPD detention facility for chemical testing. The following steps should be taken when it is necessary to take an arrested person directly to MDF.
- (b) The officer should request an on-call B.A.D. nurse to respond to MDF for blood withdrawal.
- (c) The witnessing officer and the B.A.D. nurse should attempt to obtain the person's cooperation and obtain the blood sample voluntarily.

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- (d) If the person refuses to provide a blood sample, the officer shall repeat the appropriate admonishment (described above).
- (e) If the person still refuses to provide a blood sample, the officer shall consider if it would be appropriate to force the subject to provide a blood sample.
- (f) The officer should contact the WCPD Watch Commander or his/her supervisor for approval to obtain an involuntary sample.
- (g) The officer should then contact the on duty supervisor at MDF to request permission to obtain an involuntary sample and additional personnel to assist in the withdrawal. The officer should document all personnel who assisted.
- (h) The same steps as taking Blood Evidence at WCPD shall then be followed.

### **505.5 CHEMICAL TESTS**

A person implies consent to a chemical test or tests, and to providing the associated chemical sample, under any of the following (Vehicle Code § 23612):

- (a) The person is arrested for driving a vehicle while under the influence, pursuant to Vehicle Code § 23152.
- (b) The person is under 21 years of age and is arrested by an officer having reasonable cause to believe that the person's blood alcohol content is 0.05 or more (Vehicle Code § 23140).
- (c) The person is under 21 years of age and detained by an officer having reasonable cause to believe that the person was driving a vehicle while having a blood alcohol content of 0.01 or more (Vehicle Code § 23136).
- (d) The person was operating a vehicle while under the influence and proximately caused bodily injury to another person (Vehicle Code § 23153).

If a person withdraws this implied consent, or is unable to withdraw consent (e.g., the person is unconscious), the officer should consider implied consent revoked and proceed as though the person has refused to provide a chemical sample.

#### **505.5.1 CHOICE OF TESTS**

Officers shall respect a viable choice of chemical test made by an arrestee, as provided for by law (e.g., breath will not be acceptable for suspected narcotics influence).

A person arrested for DUI has the choice of whether the test is of his/her blood or breath, and the officer shall advise the person that he/she has that choice. If the person arrested either is incapable, or states that he/she is incapable, of completing the chosen test, the person shall submit to the remaining test.

If the person chooses to submit to a breath test and there is reasonable cause to believe that the person is under the influence of a drug or the combined influence of alcohol and any drug,

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the officer may also request that the person submit to a blood test. If the person is incapable of completing a blood test, the person shall submit to and complete a urine test (Vehicle Code § 23612(a)(2)(C)).

### 505.5.2 BREATH SAMPLES

The Traffic Lieutenant should ensure that all devices used for the collection and analysis of breath samples are properly serviced and tested, and that a record of such service and testing is properly maintained.

Officers obtaining a breath sample should monitor the device for any sign of malfunction. Any anomalies or equipment failures should be noted in the appropriate report and promptly reported to the Traffic Lieutenant.

When the arrested person chooses a breath test, the handling officer shall advise the person that the breath-testing equipment does not retain a sample, and the person may, if desired, provide a blood or urine specimen, which will be retained to facilitate subsequent verification testing (Vehicle Code § 23614).

The officer should also require the person to submit to a blood test if the officer has a clear indication that a blood test will reveal evidence of any drug or the combined influence of an alcoholic beverage and any drug. Evidence of the officer's belief shall be included in the officer's report (Vehicle Code § 23612(a)(2)(C)).

### 505.5.3 BLOOD SAMPLES

Only persons authorized by law to draw blood shall collect blood samples (Vehicle Code § 23158). The blood draw should be witnessed by the assigned officer. No officer, even if properly certified, should perform this task.

Officers should inform an arrestee that if he/she chooses to provide a blood sample, a separate sample can be collected for alternate testing. Unless medical personnel object, two samples should be collected and retained as evidence, so long as only one puncture is required.

The blood sample shall be packaged, marked, handled, stored and transported as required by the testing facility.

If an arrestee cannot submit to a blood draw because he/she has a bleeding disorder or has taken medication that inhibits coagulation, he/she shall not be required to take a blood test. Such inability to take a blood test should not be considered a refusal. However, that arrestee may be required to complete another available and viable test.

### 505.5.4 URINE SAMPLES

If a urine test will be performed, the arrestee should be promptly transported to the appropriate testing site. The officer shall follow any directions accompanying the urine evidence collection kit.

Urine samples shall be collected and witnessed by an officer or jail staff member of the same sex as the individual giving the sample. The arrestee should be allowed sufficient privacy to maintain

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his/her dignity, to the extent possible, while still ensuring the accuracy of the sample (Vehicle Code § 23158(i)).

The sample shall be packaged, marked, handled, stored and transported as required by the testing facility.

### **505.5.5 STATUTORY NOTIFICATIONS**

Officers requesting that a person submit to chemical testing shall provide the person with the mandatory warning pursuant to Vehicle Code § 23612(a)(1)(D) and Vehicle Code § 23612(a)(4).

### **505.5.6 PRELIMINARY ALCOHOL SCREENING**

Officers may use a preliminary alcohol screening (PAS) test to assist in establishing reasonable cause to believe a person is DUI. The officer shall advise the person that the PAS test is being requested to assist in determining whether the person is under the influence of alcohol or drugs, or a combination of the two. Unless the person is under the age of 21, he/she shall be advised that the PAS test is voluntary. The officer shall also advise the person that submitting to a PAS test does not satisfy his/her obligation to submit to a chemical test as otherwise required by law (Vehicle Code § 23612).

### **505.5.7 PRELIMINARY ALCOHOL SCREENING FOR A PERSON UNDER AGE 21**

If an officer lawfully detains a person under 21 years of age who is driving a motor vehicle and the officer has reasonable cause to believe that the person has a blood alcohol content of 0.01 or more, the officer shall request that the person take a PAS test to determine the presence of alcohol in the person, if a PAS test device is immediately available. If a PAS test device is not immediately available, the officer may request the person to submit to chemical testing of his/her blood, breath or urine, conducted pursuant to Vehicle Code § 23612 (Vehicle Code § 13388).

If the person refuses to take or fails to complete the PAS test or other chemical test, or if the result of either test reveals a blood alcohol content of 0.01 or more, the officer shall proceed to serve the person with a notice of order of suspension pursuant to this policy (Vehicle Code § 13388).

## **505.6 REPORTING**

When blood is taken against the person's will, officers must be certain to accurately report the conditions surrounding the withdrawal. This shall include:

- (a) Specific information about the suspect's statements and behaviors which indicated he/she refused to provide the blood sample.
- (b) The behavior of the suspect and the force used to obtain the blood evidence.
- (c) Location where the blood evidence was obtained, who obtained the blood sample, and witnesses to the blood withdrawal who can verify the blood was taken in a "medically approved manner."

## **505.7 REFUSALS**

When an arrestee refuses to provide a viable chemical sample, officers should:

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- (a) Advise the arrestee of the requirement to provide a sample (Vehicle Code § 23612).
- (b) Audio- and/or video-record the admonishment when it is practicable.
- (c) Document the refusal in the appropriate report.

### 505.7.1 BLOOD SAMPLE WITHOUT CONSENT

A blood sample may be obtained from a person who refuses a chemical test when any of the following conditions exist:

- (a) A search warrant has been obtained (Penal Code § 1524).
- (b) The officer can articulate that exigent circumstances exist. Exigency does not exist solely because of the short time period associated with the natural dissipation of alcohol or controlled or prohibited substances in the person's bloodstream. Exigency can be established by the existence of special facts such as a lengthy time delay in obtaining a blood sample due to an accident investigation or medical treatment of the person.

### 505.7.2 FORCED BLOOD SAMPLE

If an arrestee indicates by word or action that he/she will physically resist a blood draw, the officer should request a supervisor to respond.

The responding supervisor should:

- (a) Evaluate whether using force to obtain a blood sample is appropriate under the circumstances.
- (b) Ensure that all attempts to obtain a blood sample through force cease if the person agrees to, and completes a viable form of testing in a timely manner.
- (c) Advise the person of his/her duty to provide a sample (even if this advisement was previously done by another officer) and attempt to persuade the individual to submit to such a sample without physical resistance.
  - 1. This dialogue should be recorded on audio and/or video if practicable.
- (d) Ensure that the blood sample is taken in a medically approved manner.
- (e) Ensure the forced blood draw is recorded on audio and/or video when practicable.
- (f) Monitor and ensure that the type and level of force applied appears reasonable under the circumstances:
  - 1. Unless otherwise provided in a warrant, force should generally be limited to handcuffing or similar restraint methods.
  - 2. In misdemeanor cases, if the arrestee becomes violent or more resistant, no additional force will be used and a refusal should be noted in the report.
  - 3. In felony cases, force which reasonably appears necessary to overcome the resistance to the blood draw may be permitted.



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- (g) Ensure the use of force and methods used to accomplish the collection of the blood sample are documented in the related report.

If a supervisor is unavailable, officers are expected to use sound judgment and perform as a responding supervisor, as set forth above.

### 505.7.3 STATUTORY NOTIFICATIONS UPON REFUSAL

Upon refusal to submit to a chemical test as required by law, officers shall personally serve the notice of order of suspension upon the arrestee and take possession of any state-issued license to operate a motor vehicle that is held by that individual (Vehicle Code § 23612(e); Vehicle Code § 23612(f)).

### 505.8 DUI COST RECOVERY

Any person who is under the influence of an alcoholic beverage or any drug or the combined influence of an alcoholic beverage and any drug, whose negligent operation of a motor vehicle caused by that influence proximately causes any incident resulting in an appropriate emergency response, and any person whose intentionally wrongful conduct proximately causes any incident resulting in an appropriate emergency response, is liable for the expense of an emergency response by a public agency to the incident (California Government Code § 53150).

In no event shall a person's liability under this policy for the expense of an emergency response exceed twelve thousand dollars (\$12,000) for a particular incident (GC 53155).

If the person deemed responsible for the incident is a minor, the parents or guardian of such minor shall be liable for the cost of the emergency response.

The following procedure will be used in the tracking and determination of billing costs for driving under the influence incidents:

- The primary officer shall record the required information on a "DUI Emergency Response" form, taking care to accurately record the time spent by all officers assigned to the incident and their tasks performed; such tasks may include:
  - (a) Costs of providing police services at the scene
  - (b) Obtaining medical assistance
  - (c) Removing vehicles
  - (d) Investigating the cause of the incident
  - (e) Conducting field sobriety tests
  - (f) Arresting and detaining the subject
  - (g) Transporting and booking the subject
  - (h) Performing chemical tests
  - (i) Writing required reports (including DUI, accident and related reports)

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(j) Performing follow-up investigation

Upon completion of the report, the primary officer will provide the "DUI Emergency Response" form to the shift supervisor for approval. The shift supervisor shall ensure that all required information has been completed on the form and that the report contains the necessary information for recovery costs. Recovery under GC 53150 requires three distinct components be present:

There must be an intoxicated driver operating a motor vehicle:

- There must be an "incident" caused by the fact that the intoxicated individual is operating a motor vehicle
- There must be an emergency response to the incident. The report should state, at the beginning of the narrative, that there was an emergency response and the emergency incident should be described

Our agency will not bill if the arrestee's blood alcohol level is below .08%. Juvenile DUI cases will be examined on a case by case basis.

The most common incident requiring DUI cost recovery is a DUI accident. Accidents requiring an emergency response must have been caused by the negligent operation of the intoxicated driver.

Routine DUI arrests unaccompanied by any separate incident requiring an emergency response shall not be processed for collection under the DUI Cost Recovery Program.

Other DUI related incidents requiring an emergency response (such as a dispatch to a reckless driver) will be evaluated on a case by case basis to determine if they meet the requirements for reimbursement under the government code section.

The Records Division will forward a copy of the DUI Cost Recovery Form prepared by the Officer, to the Chief's Executive Assistant (EA). The EA will calculate the costs and have the bill approved by a Captain. Once approved, the EA will process the information for collection, request an invoice number from Finance and maintain a record of all pending cases. A copy of the Invoice will be forwarded to the City of Walnut Creek's Finance Department who will collect payment and refer unpaid bills to collections per City Policy.

### **505.9 RECORDS BUREAU RESPONSIBILITIES**

The Records Manager will ensure that all case-related records are transmitted according to current records procedures and as required by the prosecuting attorney's office.

### **505.10 ADMINISTRATIVE HEARINGS**

The Records Manager will ensure that all appropriate reports and documents related to administrative license suspensions are reviewed and forwarded to DMV.

Any officer who receives notice of required attendance to an administrative license suspension hearing should promptly notify the prosecuting attorney.

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An officer called to testify at an administrative hearing should document the hearing date and DMV file number in a supplemental report. Specific details of the hearing generally should not be included in the report unless errors, additional evidence or witnesses are identified.

### **505.11 TRAINING**

The Training Manager should ensure that officers participating in the enforcement of DUI laws receive regular training. Training should include, at minimum, current laws on impaired driving, investigative techniques and rules of evidence pertaining to DUI investigations. The Training Manager should confer with the prosecuting attorney's office and update training topics as needed.

### **505.12 ARREST AND INVESTIGATION**

#### **505.12.1 WARRANTLESS ARREST**

In addition to the arrest authority granted to officers pursuant to Penal Code § 836, an officer may make a warrantless arrest of a person that the officer has reasonable cause to believe has been driving under the influence of an alcoholic beverage or any drug, or under the combined influence of the same when (Vehicle Code § 40300.5):

- (a) The person is involved in a traffic accident.
- (b) The person is observed in or about a vehicle that is obstructing the roadway.
- (c) The person will not be apprehended unless immediately arrested.
- (d) The person may cause injury to him/herself or damage property unless immediately arrested.
- (e) The person may destroy or conceal evidence of a crime unless immediately arrested.

#### **505.12.2 OFFICER RESPONSIBILITIES**

The officer serving the arrested person with a notice of an order of suspension shall immediately (Vehicle Code § 23612):

- (a) Forward a copy of the completed notice of suspension or revocation form and any confiscated driver's license to the Department of Motor Vehicles (DMV).
- (b) Forward a sworn report to DMV that contains the required information in Vehicle Code § 13380.
- (c) Forward the results to the appropriate forensic laboratory if the person submitted to a blood or urine test.

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## Traffic and Parking Citations

### 506.1 PURPOSE AND SCOPE

This policy outlines the responsibility for traffic and parking citations, and the procedures for the dismissal or amendment of traffic citations.

It is the policy of the Walnut Creek Police Department to submit all Notice to Appear and Notice to Correct citations issued by department employees to the court in compliance with California Vehicle Code sections 40202, 40500, 40505 and 40610. Parking citations will be submitted to the company contracted for this service. Voids or requests for dismissal of citations should only be for those instances where a set of facts clearly demonstrates that such action is in the public interest or the interest of justice. Requests for amendments should be made to correct any inaccuracies or incorrect information on the citation. The purpose of this policy is to accomplish the following:

- (a) Provide clear direction that all Notice to Appear/Correct citations shall be processed by the Police Department and filed with the court, except for special situations as described in this directive. Parking citations will be filed with the contracted processing company.
- (b) Establish guidelines as to when a citation may be amended, voided, or a request for dismissal may be made.
- (c) Provide for documentation of citation amendment, voiding, or a request for dismissal.
- (d) Establish a chain of authority to amend, void, or request dismissal of a citation.
- (e) Establish a Records Division procedure for the processing of all citations that have been amended, voided, or dismissed at the request of the department.
- (f) Provide a procedure that meets the requirement of Vehicle Code sections 40202, 40500, 40505 and 40610.

### 506.2 RESPONSIBILITIES AND DEFINITIONS

The Records Supervisor or Manager shall be responsible for the development and design of all Department traffic citations and amendments in compliance with state law and the Judicial Council.

The Records Bureau shall be responsible for the supply of all traffic citations and amendments issued to employees of this department.

#### (a) DEFINITIONS

1. The statute identifies two categories of citations: those that have been issued and those that have not been issued.
2. AUTOCITE: An Autocite is an electronic parking ticket device that stores the vehicle and violation information and prints out a hard copy of a parking citation. Information from Autocites are downloaded to the processing company at the end of each shift.

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3. The term "done" as it relates to the Autocite means that the information for the parking citation was entered into the Autocite and the "done" button has been pushed.
- (b) Issued Citations
1. A citation is considered issued when:
    - (a) A notice of parking violation is placed on the violator's windshield or information is "saved" in the Autocite;
    - (b) A notice to appear (traffic and misdemeanor citations), or a notice to correct is signed and a copy is handed to the violator. Issued citations cannot be altered, voided, or dismissed except by following the procedure in Section IV. Once a notice to appear/correct is issued, it must be filed with the court (Walnut Creek Superior Court). Any requests for dismissals, voids, or corrections must be in writing, including the reasons, to the court. A violation of the Vehicle Code sections covered in this procedure is a misdemeanor.
  2. Citations Not Issued: A citation is considered not issued when:
    - (a) A notice of parking violation has not yet been attached to the violator vehicle or the information has not been "saved" to the Autocite;
    - (b) A notice to appear or notice to correct has not been handed to the violator. Any requests for dismissal, voids, or corrections may be handled within the department according to this procedure.

### **506.3 DISMISSAL OF TRAFFIC AND PARKING CITATIONS**

Following is the procedure to dismiss a notice to appear/correct citation.

Form 204A will be used to request a citation dismissal. The requesting officer must check the "Citation Issued Yes or No" box on form 204A. The citation number, the reason for the request, and the issuer/requestor's initials must also be entered. The officer must submit form 204A with all copies of a "non-issued citation" to his/her supervisor. The supervisor will review the request for dismissal and upon approval, initial and forward to the Operations Captain. If the Operations Captain approves the request, he/she will initial and forward it to the Records Bureau. The Records Bureau will staple the original form (204A) to the citation file copy (hard copy) and file it in the citation file. If the citation was not issued, all copies of form 204A and the citation copies are destroyed. Records shall retain the original ticket and original dismissal and note that all other copies have been destroyed.

Notices to appear/correct that have been "issued" follow the same procedure with the following exceptions. The officer/requestor will forward any copies of the citation he/she has in his possession, or at minimum the hard copy, with form 204A. (The violator may have his/her copy

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and the original may have already been forwarded to the court.) The Records Bureau will staple the first copy of form 204A (yellow copy) to the original copy of the citation and forward it to the court. If the court already has the original copy of the citation, a copy will be made by Records with the yellow copy of 204A attached, and will be forwarded to the court. It is important for "issued" citations that the requestor for a dismissal or amendment completes the postcard side of form 204A. (reverse side of the 204 hard copy). If the cited person's name and address is not known, the registered owner of record should be used. Records will detach the third copy (hard copy) of form 204 and mail it to the cited person.

### **506.5 AMENDING TRAFFIC CITATIONS**

If an officer desires to amend a notice to appear/correct, he/she must complete the front of WCPD form TR-100 in full, sign the bottom of the form and fill out the defendant's address on the back page of the pink copy. The TR-100 will then be forwarded to the Records Division for processing.

Records will attach the white copy of the TR-100 to the WCPD hard copy of the citation, and index it into the Records Management System prior to the citation being filed in the Records File Room.

The Records Technician processing the TR-100 form will verify the "Proof of Service" on page 2 of the form and deposit the amendment in a sealed envelope as stated. If the cited person's name and address is not known, the registered owner of the vehicle should be used.

The court is required by law to maintain the amendment and dismissal requests.

Notice of Parking Violation Procedures for issued or non-issued manually written parking citations are the same as described above. However, the original along with the copy of 204A or TR-100 is routed to the parking citation processing center instead of the court. Parking citations generated by the Autocite system are amended, voided, or dismissed according to the following procedure. If a parking enforcement officer wishes to void or dismiss an Autocite citation, he/she shall attach the original citation to the "Void/Dismissal" form. If the PSO has entered a parking citation into the Autocite, up to and including placing it on the vehicle, and the driver immediately confronts the PSO; the PSO has the discretion to void the ticket and issue a warning citation instead. The PSO must enter a reason into the Autocite for the voided ticket. The parking Lead/Supervisor will periodically audit voids. If the information has been transmitted to the processing center, a copy of the dismissal form is forwarded to them after the Operations Captain's approval. Amendments for Autocite citations are handled the same way as manually written parking citations.

Notice to Correct If proof of correction is sent in by the violator prior to when the original copy is sent to court, the green copy of the citation is stamped "corrected" and is filed by Records and the court copy is destroyed. If the original copy of the notice to correct is forwarded to court, the procedure to amend or dismiss the citation is the same as that described for a notice to appear.

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### **506.6 DISPOSITION OF TRAFFIC CITATIONS**

The court and file copies of all traffic citations issued by members of this department shall be forwarded to the employee's immediate supervisor for review. The citation copies shall then be filed with the Records Bureau.

Upon separation from employment with the department, all employees issued traffic citations books shall return any unused citations to the Records Bureau.

### **506.7 NOTICE OF PARKING VIOLATION APPEAL PROCEDURE**

Disposition of notice of parking violation appeals is conducted pursuant to Vehicle Code § 40215.

#### **506.7.1 APPEAL STAGES**

Parking violation appeals may be pursued sequentially at three different levels:

- (a) Level I - Administrative reviews are conducted by a citation processing firm contracted by the City of Walnut Creek who will review written/documentary data. Requests for Level I administrative reviews are available at the City of Walnut Creek, front desk, on-line at [walnutcreekpd.com](http://walnutcreekpd.com), or by writing a letter that contains all relevant information on the citation. These requests are informal written statements outlining why the notice of parking violation should be dismissed. Copies of documentation relating to the notice of parking violation and the request for dismissal must be mailed to the current mailing address of the processing agency or hand delivered to the WCPD front counter and date stamped by the Front Counter PSO. A written response to the Level I appeal will be mailed to the registered owner of the vehicle. If the appellant wishes to pursue the matter beyond the Level I administrative review, a Level II administrative hearing may be conducted in person or by written application, at the election of the appellant. The appellant has 21 days from the date of the Level I Review Response to complete a written request for a Level II Administrative Hearing. This request must be accompanied by the payment in full for the parking violation. If the citation is not paid in full, a Denied Formal Hearing letter will be mailed with the option to pay within ten days from the mailing date of the letter. If the request is beyond the 21 days from the Review Response mail date, a hearing can no longer be granted. A Denied Formal Hearing letter will be mailed to the citizen advising of this decision. These requests are informal written statements outlining why the notice of parking violation should be dismissed. Copies of documentation relating to the notice of parking violation and the request for dismissal must be mailed to the current mailing address of the processing agency.
- (b) During the Level II Hearing, an independent arbitrator will review the existent administrative file, amendments, and/or testimonial material provided by the appellant and may conduct further investigation or follow-up on their own. A written response to the Level II Hearing will be provided to the appellant either at the time of the hearing or by mail. If the citation is dismissed, the appellant will receive a refund for the parking fee/fine paid at the time of the Level II request.

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- (c) If the appellant wishes to pursue the matter beyond an administrative hearing, a Superior Court review may be presented in person by the appellant after an application for review and designated filing fees have been paid to The Superior Court of California.

### **506.7.2 TIME REQUIREMENTS**

Administrative review or appearance before a hearing examiner will not be provided if the mandated time limits are not adhered to by the violator.

- (a) Requests for an administrative review must be postmarked within 21 days of issuance of the notice of parking violation, or within 14 days of the mailing of the Notice of Delinquent Parking Violation.
- (b) Requests for administrative hearings must be postmarked within 21 calendar days of the notification mailing of the results of the administrative review. Within 30 calendar days after the mailing or personal delivery of the final level II hearing, the appellant may seek review by filing an appeal to the Superior Court. Requests for appeal to the Superior Court must be made within 30 days of the mailing or personal delivery of the administrative hearing results.
- (c) Registered owners of leased or rented vehicles may transfer responsibility for the violation to the lessee or renter of the vehicle at the time of the violation if the name, address, driver's license number of the lessee/renter, and a copy of the written lease or rental agreement between the customer and rental agency is provided to the processing agency within 30 days of the mail date of the delinquent notice. Payment by the lessee or rentee must be received with 21 calendar days from the date of issuance, or 14 calendar days after the delinquent mailing to avoid late penalties.

### **506.7.3 COSTS**

- (a) There is no cost for an administrative review.
- (b) Appellants must pay the full amount due for the citation, or provide satisfactory proof of their inability to pay, before receiving an administrative hearing.
- (c) An appeal through Superior Court requires prior payment of filing costs including applicable court charges and fees. These costs will be reimbursed to the appellant in addition to any previously paid fines if appellant's liability is overruled by the Superior Court.

### **506.8 JUVENILE CITATIONS**

Completion of traffic citation forms for juveniles may vary slightly from the procedure for adults. The juvenile's age, place of residency, and the type of offense should be considered before issuing the juvenile a citation.



## 72-Hour Parking Violations

### 508.1 PURPOSE AND SCOPE

This policy provides procedures for the marking, recording, and storage of vehicles parked in violation of the Walnut Creek City Ordinance regulating 72-hour parking violations and abandoned vehicles under the authority of Vehicle Code § 22669.

### 508.2 MARKING VEHICLES

Vehicles suspected of being in violation of the City of Walnut Creek 72-Hour Parking Ordinance shall be marked and noted on the Walnut Creek Police Department Unattended Vehicle Check form (WCPD 250-1). No case number is required but an event shall be created and the number noted on the form.

The method of marking the vehicle shall be noted on the WCPD Unattended Vehicle Check form. Following the original and first mark of a vehicle, the investigating officer should make a good faith effort to notify the owner of the vehicle prior to having the vehicle removed. This may be accomplished by personal contact, telephone or by leaving notice attached to the vehicle at least 72 hours prior to removal.

All Unattended Vehicle Check cards shall be submitted to the PSO mail box or WCPD Front Counter for computer data entry.

If a marked vehicle has been moved or the markings have been removed during a 72-hour investigation period, the vehicle shall be remarked for the 72-hour parking violation. An Unattended Vehicle Check card shall be completed, however, a vehicle that is remarked does not require Card #1 to be left for notification purposes. The completed form shall be forwarded to the PSO mail box or WCPD Front Counter.

The issuance of a parking citation for the 72-hour parking ordinance is at the discretion of the responding officer when the vehicle is stored for the 72-hour parking violation.

#### 508.2.1 MARKED VEHICLE FILE

The Front Counter PSO(s) shall be responsible for maintaining a file for all Unattended Vehicle Check cards.

#### 508.2.2 VEHICLE STORAGE

Any vehicle in violation shall be stored by an authorized towing service from the Rotation Tow List maintained in Dispatch. A vehicle storage report (CHP 180 form) shall be completed by the officer authorizing the storage of the vehicle. Dispatch will be responsible for the DOJ Stolen Vehicle System (SVS) entry (Vehicle Code § 22851.3(b)) once the CHP180 is completed and the tow company has taken the vehicle.

The CHP180 form shall be submitted for approval to the officer's supervisor immediately following the storage of the vehicle. A copy of the SVS entry and any other DMV inquiries shall be included with the form. A copy of the facesheet of the CHP180 shall also be placed in the wooden box in

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the Report Writing area and the front counter PSO(s) shall maintain a binder of all active tows by date. This binder will be maintained at the front counter for quick reference during tow releases.

All vehicles towed under a Vehicle Code authority shall be reviewed by a supervisor **before** the end of the shift. Within 48 hours of the storage of any such vehicle, excluding weekends and holidays, it shall be the responsibility of the Records Bureau to determine the names and addresses of any individuals having an interest in the vehicle through DMV or CLETS computers. Notice to all such individuals shall be sent first-class or certified mail pursuant to Vehicle Code § 22851.3(d).

All vehicle releases shall follow WCPD Policy 510 & 512.

## Disabled Vehicles

### 520.1 PURPOSE AND SCOPE

Vehicle Code § 20018 provides that all law enforcement agencies having responsibility for traffic enforcement may develop and adopt a written policy to provide assistance to motorists in disabled vehicles within their primary jurisdiction.

### 520.2 OFFICER RESPONSIBILITY

When an on-duty officer observes a disabled vehicle on the roadway, the officer should make a reasonable effort to provide assistance. If that officer is assigned to a call of higher priority, the dispatcher should be advised of the location of the disabled vehicle and the need for assistance. The dispatcher should then assign another available officer to respond for assistance as soon as practical.

### 520.3 EXTENT OF ASSISTANCE

In most cases, a disabled motorist will require assistance. After arrangements for assistance are made, continued involvement by department personnel will be contingent on the time of day, the location, the availability of departmental resources, and the vulnerability of the disabled motorist.

#### 520.3.1 MECHANICAL REPAIRS

Department personnel shall not make mechanical repairs to a disabled vehicle. The use of push bumpers to relocate vehicles to a position of safety is not considered a mechanical repair.

#### 520.3.2 RELOCATION OF DISABLED VEHICLES

The relocation of disabled vehicles by members of this department by pushing or pulling a vehicle should only occur when the conditions reasonably indicate that immediate movement is necessary to reduce a hazard presented by the disabled vehicle.

#### 520.3.3 RELOCATION OF DISABLED MOTORIST

The relocation of a disabled motorist should only occur with the person's consent and should be suggested when conditions reasonably indicate that immediate movement is necessary to mitigate a potential hazard. The department member may stay with the disabled motorist or transport him/her to a safe area to await pickup.

### 520.4 PUBLIC ACCESS TO THIS POLICY

This written policy is available upon request.

### 520.5 GUIDELINES

#### 520.5.1 DISCRETION

This policy provides direction to officers encountering motorists with disabled vehicles, but is not intended to require officers to render assistance in all circumstances.

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### 520.5.2 PRISONER TRANSPORTATION

An officer transporting a prisoner should not stop to assist a motorist with a disabled vehicle unless the vehicle is creating a grave danger and stopping would not endanger the prisoner or create an opportunity for the prisoner's escape. The officer should ask that another officer be sent to handle the disabled vehicle, if in the officer's judgment, it is not safe, prudent, or necessary to provide immediate assistance.

### 520.5.3 OFFICERS OUTSIDE THE CITY

Officers outside the city are allowed, but not required to assist disabled motorists. Officers should provide assistance if, in the officer's judgment, the disabled vehicle constitutes a hazard. The officer should remain with the vehicle until relieved by another agency or the vehicle and/or motorist is moved to a place of safety.

## Chapter 6 - Investigation Operations

## Investigation and Prosecution

### 600.1 PURPOSE AND SCOPE

The purpose of this policy is to set guidelines and requirements pertaining to the handling and disposition of criminal investigations.

### 600.2 POTENTIALLY EXCULPATORY EVIDENCE OR FACTS

Officers must include in their reports adequate reference to all material evidence and facts which are reasonably believed to be exculpatory to any individual in the case. If an officer learns of potentially exculpatory information any time after submission of the case, the officer must notify the prosecutor as soon as practicable.

Evidence or facts are considered material if there is a reasonable probability that they may impact the result of a criminal proceeding or trial. Determining whether evidence or facts are material often requires legal or even judicial review. If an officer is unsure whether evidence or facts are material, the officer should address the issue with a supervisor.

Supervisors uncertain about whether evidence or facts are material should address the issue with the District Attorney's office.

### 600.3 POLICY

It is the policy of the Walnut Creek Police Department to investigate crimes thoroughly and with due diligence, and to evaluate and prepare criminal cases for appropriate clearance or submission to a prosecutor.

### 600.4 CUSTODIAL INTERROGATION REQUIREMENTS

Suspects who are in custody and subjected to an interrogation shall be given the *Miranda* warning, unless an exception applies. Interview or interrogation of a juvenile shall be in accordance with the Temporary Custody of Juveniles Policy.

#### 600.4.1 AUDIO/VIDEO RECORDINGS

Any custodial interrogation of an individual who is suspected of having committed any violent felony offense should be recorded (audio or video with audio as available) in its entirety. Regardless of where the interrogation occurs, every reasonable effort should be made to secure functional recording equipment to accomplish such recordings.

Consideration should also be given to recording a custodial interrogation, or any investigative interview, for any other offense when it is reasonable to believe it would be appropriate and beneficial to the investigation and is otherwise allowed by law.

No recording of a custodial interrogation should be destroyed or altered without written authorization from the prosecuting attorney and the Detective Bureau supervisor. Copies of recorded interrogations or interviews may be made in the same or a different format as the original

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recording, provided the copies are true, accurate and complete and are made only for authorized and legitimate law enforcement purposes.

Recordings should not take the place of a thorough report and investigative interviews. Written statements from suspects should continue to be obtained when applicable.

### 600.4.2 MANDATORY RECORDING OF ADULTS

Any custodial interrogation of an adult who is suspected of having committed any murder shall be recorded in its entirety. The recording should be video with audio if reasonably feasible (Penal Code § 859.5).

This recording is not mandatory when (Penal Code § 859.5):

- (a) Recording is not feasible because of exigent circumstances that are later documented in a report.
- (b) The suspect refuses to have the interrogation recorded, including a refusal any time during the interrogation, and the refusal is documented in a report. If feasible, the refusal shall be electronically recorded.
- (c) The custodial interrogation occurred in another state by law enforcement officers of that state, unless the interrogation was conducted with the intent to avoid the requirements of Penal Code § 859.5.
- (d) The interrogation occurs when no member conducting the interrogation has a reason to believe that the individual may have committed murder. Continued custodial interrogation concerning that offense shall be electronically recorded if the interrogating member develops a reason to believe the individual committed murder.
- (e) The interrogation would disclose the identity of a confidential informant or would jeopardize the safety of an officer, the individual being interrogated or another individual. Such circumstances shall be documented in a report.
- (f) A recording device fails despite reasonable maintenance and the timely repair or replacement is not feasible.
- (g) The questions are part of a routine processing or booking, and are not an interrogation.
- (h) The suspect is in custody for murder and the interrogation is unrelated to a murder. However, if any information concerning a murder is mentioned during the interrogation, the remainder of the interrogation shall be recorded.

The Department shall maintain an original or an exact copy of the recording until a conviction relating to the interrogation is final and all appeals are exhausted or prosecution is barred by law (Penal Code § 859.5).

## **600.5 INITIAL INVESTIGATION**

### 600.5.1 OFFICER RESPONSIBILITIES

An officer responsible for an initial investigation shall complete no less than the following:

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- (a) Make a preliminary determination of whether a crime has been committed by completing, at a minimum:
  - 1. An initial statement from any witnesses or complainants.
  - 2. A cursory examination for evidence.
- (b) If information indicates a crime has occurred, the officer shall:
  - 1. Preserve the scene and any evidence as required to complete the initial and follow-up investigation.
  - 2. Determine if additional investigative resources (e.g., investigators or scene processing) are necessary and request assistance as required.
  - 3. If assistance is warranted, or if the incident is not routine, notify a supervisor or the Watch Commander.
  - 4. Make reasonable attempts to locate, identify and interview all available victims, complainants, witnesses and suspects.
  - 5. Collect any evidence.
  - 6. Take any appropriate law enforcement action.
  - 7. Complete and submit the appropriate reports and documentation.
- (c) If the preliminary determination is that no crime occurred, determine what other action may be necessary, what other resources may be available, and advise the informant or complainant of this information.

### **600.5.2 CIVILIAN MEMBER RESPONSIBILITIES**

A civilian member assigned to any preliminary investigation is responsible for all investigative steps, except making any attempt to locate, contact or interview a suspect face-to-face or take any enforcement action. Should an initial investigation indicate that those steps are required, the assistance of an officer shall be requested.

### **600.6 DISCONTINUATION OF INVESTIGATIONS**

The investigation of a criminal case or efforts to seek prosecution should only be discontinued if one of the following applies:

- (a) All reasonable investigative efforts have been exhausted, no reasonable belief that the person who committed the crime can be identified, and the incident has been documented appropriately.
- (b) The perpetrator of a misdemeanor has been identified and a warning is the most appropriate disposition.
  - 1. In these cases, the investigator shall document that the person was warned and why prosecution was not sought.
  - 2. Warnings shall not be given for felony offenses or other offenses identified in this policy or by law that require an arrest or submission of a case to a prosecutor.



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- (c) The case has been submitted to the appropriate prosecutor but no charges have been filed. Further investigation is not reasonable nor has the prosecutor requested further investigation.
- (d) The case has been submitted to the appropriate prosecutor, charges have been filed, and further investigation is not reasonable, warranted or requested, and there is no need to take the suspect into custody.
- (e) Suspects have been arrested, there are no other suspects, and further investigation is either not warranted or requested.
- (f) Investigation has proven that a crime was not committed (see the Sexual Assault Investigations Policy for special considerations in these cases).

The Domestic Violence, Child Abuse Sexual Assault Investigations and Adult Abuse policies may also require an arrest or submittal of a case to a prosecutor.

### **600.7 COMPUTERS AND DIGITAL EVIDENCE**

The collection, preservation, transportation and storage of computers, cell phones and other digital devices may require specialized handling to preserve the value of the related evidence. If it is anticipated that computers or similar equipment will be seized, officers should request that computer forensic examiners assist with seizing computers and related evidence. If a forensic examiner is unavailable, officers should take reasonable steps to prepare for such seizure and use the resources that are available.

### **600.8 INVESTIGATIVE USE OF SOCIAL MEDIA AND INTERNET SOURCES**

Use of social media and any other Internet source to access information for the purpose of criminal investigation shall comply with applicable laws and policies regarding privacy, civil rights and civil liberties. Information gathered via the Internet should only be accessed by members while on-duty and for purposes related to the mission of this department. If a member encounters information relevant to a criminal investigation while off-duty or while using his/her own equipment, the member should note the dates, times and locations of the information and report the discovery to his/her supervisor as soon as practicable. The member, or others who have been assigned to do so, should attempt to replicate the finding when on-duty and using department equipment. Information obtained via the Internet should not be archived or stored in any manner other than department-established record keeping systems (see the Records Maintenance and Release and the Criminal Organizations policies).

#### **600.8.1 INTERCEPTING ELECTRONIC COMMUNICATION**

Intercepting social media communications in real time may be subject to federal and state wiretap laws. Officers should seek legal counsel before any such interception.

#### **600.8.2 ACCESS RESTRICTIONS**

Information that can be accessed from any department computer, without the need of an account, password, email address, alias or other identifier (unrestricted websites), may be accessed and used for legitimate investigative purposes without supervisory approval.

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Accessing information from any Internet source that requires the use or creation of an account, password, email address, alias or other identifier, or the use of nongovernment IP addresses, requires supervisor approval prior to access. The supervisor will review the justification for accessing the information and consult with legal counsel as necessary to identify any policy or legal restrictions. Any such access and the supervisor approval shall be documented in the related investigative report.

Accessing information that requires the use of a third party's account or online identifier requires supervisor approval and the consent of the third party. The consent must be voluntary and shall be documented in the related investigative report.

Information gathered from any Internet source should be evaluated for its validity, authenticity, accuracy and reliability. Corroborative evidence should be sought and documented in the related investigative report.

Any information collected in furtherance of an investigation through an Internet source should be documented in the related report. Documentation should include the source of information and the dates and times that the information was gathered.

### **600.9 MODIFICATION OF CHARGES FILED**

Members are not authorized to recommend to the prosecutor or to any other official of the court that charges on a pending case be amended or dismissed without the authorization of a Bureau Commander or the Chief of Police. Any authorized request to modify the charges or to recommend dismissal of charges shall be made to the prosecutor.

### **600.10 CELLULAR COMMUNICATIONS INTERCEPTION TECHNOLOGY**

The Investigation Bureau Commander is responsible for ensuring the following for cellular communications interception technology operations (Government Code § 53166):

- (a) Security procedures are developed to protect information gathered through the use of the technology.
- (b) A usage and privacy policy is developed that includes:
  1. The purposes for which using cellular communications interception technology and collecting information is authorized.
  2. Identification by job title or other designation of employees who are authorized to use or access information collected through the use of cellular communications interception technology.
  3. Training requirements necessary for those authorized employees.
  4. A description of how the Department will monitor the use of its cellular communications interception technology to ensure the accuracy of the information collected and compliance with all applicable laws.
  5. Process and time period system audits.

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6. Identification of the existence of any memorandum of understanding or other agreement with any other local agency or other party for the shared use of cellular communications interception technology or the sharing of information collected through its use, including the identity of signatory parties.
7. The purpose of, process for and restrictions on the sharing of information gathered through the use of cellular communications interception technology with other local agencies and persons.
8. The length of time information gathered through the use of cellular communications interception technology will be retained, and the process the local agency will utilize to determine if and when to destroy retained information.

Members shall only use approved devices and usage shall be in compliance with department security procedures, the department's usage and privacy procedures and all applicable laws.

## Sexual Assault Investigations

### 601.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for the investigation of sexual assaults. These guidelines will address some of the unique aspects of such cases and the effects that these crimes have on the victims.

Mandatory notifications requirements are addressed in the Child Abuse and Adult Abuse policies.

#### 601.1.1 DEFINITIONS

Definitions related to this policy include:

**Sexual assault** - Any crime or attempted crime of a sexual nature, to include but not limited to offenses defined in Penal Code § 243.4, Penal Code § 261 et seq., and Penal Code § 285 et seq.

**Sexual Assault Response Team (SART)** - A multidisciplinary team generally comprised of advocates; law enforcement officers; forensic medical examiners, including sexual assault forensic examiners (SAFEs) or sexual assault nurse examiners (SANEs) if possible; forensic laboratory personnel; and prosecutors. The team is designed to coordinate a broad response to sexual assault victims.

### 601.2 POLICY

It is the policy of the Walnut Creek Police Department that its members, when responding to reports of sexual assaults, will strive to minimize the trauma experienced by the victims, and will aggressively investigate sexual assaults, pursue expeditious apprehension and conviction of perpetrators, and protect the safety of the victims and the community.

### 601.3 QUALIFIED INVESTIGATORS

Qualified investigators should be available for assignment of sexual assault investigations. These investigators should:

- (a) Have specialized training in, and be familiar with, interview techniques and the medical and legal issues that are specific to sexual assault investigations.
- (b) Conduct follow-up interviews and investigation.
- (c) Present appropriate cases of alleged sexual assault to the prosecutor for review.
- (d) Coordinate with other enforcement agencies, social service agencies and medical personnel as needed.
- (e) Provide referrals to therapy services, victim advocates and support for the victim.
- (f) Participate in or coordinate with SART.

## *Sexual Assault Investigations*

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### **601.4 REPORTING**

In all reported or suspected cases of sexual assault, a report should be written and assigned for follow-up investigation. This includes incidents in which the allegations appear unfounded or unsubstantiated.

### **601.5 RELEASING INFORMATION TO THE PUBLIC**

In cases where the perpetrator is not known to the victim, and especially if there are multiple crimes where more than one appear to be related, consideration should be given to releasing information to the public whenever there is a reasonable likelihood that doing so may result in developing helpful investigative leads. The Detective Bureau supervisor should weigh the risk of alerting the suspect to the investigation with the need to protect the victim and the public, and to prevent more crimes.

### **601.6 TRAINING**

Subject to available resources, periodic training should be provided to:

- (a) Members who are first responders. Training should include:
  1. Initial response to sexual assaults.
  2. Legal issues.
  3. Victim advocacy.
  4. Victim's response to trauma.
  5. Proper use and handling of the California standardized SAFE kit (Penal Code § 13823.14).
- (b) Qualified investigators, who should receive advanced training on additional topics. Advanced training should include:
  1. Interviewing sexual assault victims.
  2. SART.
  3. Medical and legal aspects of sexual assault investigations.
  4. Serial crimes investigations.
  5. Use of community and other federal and state investigative resources, such as the Violent Criminal Apprehension Program (ViCAP).
  6. Techniques for communicating with victims to minimize trauma.

### **601.7 CASE REVIEW**

The Detective Bureau supervisor should ensure case dispositions are reviewed on a periodic basis, at least annually, using an identified group that is independent of the investigation process. The reviews should include an analysis of:

- Case dispositions.

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- Decisions to collect biological evidence.
- Submissions of biological evidence for lab testing.

The SART and/or victim advocates should be considered for involvement in this audit. Summary reports on these reviews should be forwarded through the chain of command to the Chief of Police.

### **601.8 DISPOSITION OF CASES**

If the assigned investigator has reason to believe the case is without merit, the case may be classified as unfounded only upon review and approval of the Detective Bureau supervisor.

Classification of a sexual assault case as unfounded requires the Detective Bureau supervisor to determine that the facts have significant irregularities with reported information and that the incident could not have happened as it was reported. When a victim has recanted his/her original statement, there must be corroborating evidence that the allegations were false or baseless (i.e., no crime occurred) before the case should be determined as unfounded.

### **601.9 VICTIM INTERVIEWS**

The primary considerations in sexual assault investigations, which begin with the initial call to Dispatch, should be the health and safety of the victim, the preservation of evidence, and preliminary interviews to determine if a crime has been committed and to attempt to identify the suspect.

Whenever possible, a member of SART should be included in the initial victim interviews. An in-depth follow-up interview should not be conducted until after the medical and forensic examinations are completed and the personal needs of the victim have been met (e.g., change of clothes, bathing). The follow-up interview may be delayed to the following day based upon the circumstances. Whenever practicable, the follow-up interview should be conducted by a qualified investigator.

No opinion of whether the case is unfounded shall be included in the report.

Victims shall not be asked or required to take a polygraph examination (34 USC § 10451; Penal Code § 637.4).

Victims should be apprised of applicable victim's rights provisions, as outlined in the Victim and Witness Assistance Policy.

#### **601.9.1 VICTIM RIGHTS**

Whenever there is an alleged sexual assault, the assigned officer shall accomplish the following:

- (a) Advise the victim in writing of the right to have a victim advocate and a support person of the victim's choosing present at any interview or contact by law enforcement, any other rights of a sexual assault victim pursuant to Penal Code § 680.2, and the right to have a person of the same or opposite gender present in the room during any interview with a law enforcement official unless no such person is reasonably available (Penal Code § 679.04).

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- (b) If the victim is transported to a hospital for any medical evidentiary or physical examination, the officer shall immediately cause the local rape victim counseling center to be notified (Penal Code § 264.2).
  - 1. The officer shall not discourage a victim from receiving a medical evidentiary or physical examination (Penal Code § 679.04).
  - 2. A support person may be excluded from the examination by the officer or the medical provider if his/her presence would be detrimental to the purpose of the examination (Penal Code § 264.2).

### 601.9.2 VICTIM CONFIDENTIALITY

Officers investigating or receiving a report of an alleged sex offense shall inform the victim, or the victim's parent or guardian if the victim is a minor, that his/her name will become a matter of public record unless the victim requests that his/her name not be made public. The reporting officer shall document in his/her report that the victim was properly informed and shall include any related response made by the victim, or if a minor, any response made by the victim's parent or guardian (Penal Code § 293).

Except as authorized by law, members of this department shall not publicly disclose the name of any victim of a sex crime who has exercised his/her right to confidentiality (Penal Code § 293).

### **601.10 COLLECTION AND TESTING OF BIOLOGICAL EVIDENCE**

Whenever possible, a SART member should be involved in the collection of forensic evidence from the victim.

When the facts of the case indicate that collection of biological evidence is warranted, it should be collected regardless of how much time has elapsed since the reported assault.

If a drug-facilitated sexual assault is suspected, urine and blood samples should be collected from the victim as soon as practicable.

Subject to requirements set forth in this policy, biological evidence from all sexual assault cases, including cases where the suspect is known by the victim, should be submitted for testing.

Victims who choose not to assist with an investigation, do not desire that the matter be investigated, or wish to remain anonymous may still consent to the collection of evidence under their control. In these circumstances, the evidence should be collected and stored appropriately.

#### 601.10.1 COLLECTION AND TESTING REQUIREMENTS

Members investigating a sexual assault offense should take every reasonable step to ensure that DNA testing of such evidence is performed in a timely manner and within the time periods prescribed by Penal Code § 803(g). SAFE kits should be submitted to the crime lab within 20 days after being booked into evidence (Penal Code § 680).

In order to maximize the effectiveness of such testing and identify the perpetrator of any sexual assault, the assigned officer shall ensure that an information profile for the SAFE kit evidence has been created in the California Department of Justice (DOJ) SAFE-T database within 120 days of

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collection and should further ensure that the results of any such test have been timely entered into and checked against both the DOJ Cal-DNA database and the Combined DNA Index System (CODIS) (Penal Code § 680.3).

If the assigned officer determines that a SAFE kit submitted to a private laboratory for analysis has not been tested within 120 days after submission, the officer shall update the SAFE-T database to reflect the reason for the delay in testing. The assigned officer shall continue to update the status every 120 days thereafter until the evidence has been analyzed or the statute of limitations has run (Penal Code § 680.3).

If, for any reason, DNA evidence in a sexual assault case in which the identity of the perpetrator is in issue and is not going to be analyzed within 18 months of the crime, the assigned officer shall notify the victim of such fact in writing no less than 60 days prior to the expiration of the 18-month period (Penal Code § 680).

Additional guidance regarding evidence retention and destruction is found in the Property and Evidence Policy.

### 601.10.2 DNA TEST RESULTS

A SART member should be consulted regarding the best way to deliver biological testing results to a victim so as to minimize victim trauma, especially in cases where there has been a significant delay in getting biological testing results (e.g., delays in testing the evidence or delayed DNA databank hits). Members should make reasonable efforts to assist the victim by providing available information on local assistance programs and organizations as provided in the Victim and Witness Assistance Policy.

- (a) Upon receipt of a written request from a sexual assault victim or the victim's authorized designee, members investigating sexual assault cases shall inform the victim of the status of the DNA testing of any evidence from the victim's case (Penal Code § 680).
  1. Although such information may be communicated orally, the assigned officer should thereafter follow-up with and retain a copy of confirmation by either written or electronic mail.
  2. Absent a written request, no member of this department is required to, but may, communicate with the victim or the victim's authorized designee regarding the status of any DNA testing.
- (b) Subject to the commitment of sufficient resources to respond to requests for information, sexual assault victims shall further have the following rights (Penal Code § 680):
  1. To be informed if a DNA profile of the assailant was obtained from the testing of the SAFE kit or other crime scene evidence from their case.
  2. To be informed if there is a match between the DNA profile of the assailant developed from the evidence and a DNA profile contained in the DOJ Convicted Offender DNA Database, providing that disclosure would not impede or compromise an ongoing investigation.



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3. To be informed if the DNA profile of the assailant developed from the evidence has been entered into the DOJ Databank of case evidence.
- (c) Provided that the sexual assault victim or the victim's authorized designee has kept the assigned officer informed with regard to current address, telephone number, and email address (if available), any victim or the victim's authorized designee shall, upon request, be advised of any known significant changes regarding the victim's case (Penal Code § 680).
1. Although such information may be communicated orally, the assigned officer should thereafter follow-up with and retain a copy of confirmation by either written or electronic mail.
  2. No officer shall be required or expected to release any information which might impede or compromise any ongoing investigation.

### 601.10.3 STANDARDIZED SEXUAL ASSAULT FORENSIC MEDICAL EVIDENCE KIT

The Property and Evidence Section supervisor should make California standardized sexual assault forensic medical evidence (SAFE) kits available to members who may investigate sexual assault cases. Members investigating a sexual assault should use these SAFE kits when appropriate and follow related usage guidelines issued by the California Clinical Forensic Medical Training Center (Penal Code § 13823.14).

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## Asset Forfeiture

### 602.1 PURPOSE AND SCOPE

This policy describes the authority and procedure for the seizure, forfeiture and liquidation of property associated with designated offenses.

#### 602.1.1 DEFINITIONS

Definitions related to this policy include:

**Fiscal agent** - The person designated by the Chief of Police to be responsible for securing and maintaining seized assets and distributing any proceeds realized from any forfeiture proceedings. This includes any time the Walnut Creek Police Department seizes property for forfeiture or when the Walnut Creek Police Department is acting as the fiscal agent pursuant to a multi-agency agreement.

**Forfeiture** - The process by which legal ownership of an asset is transferred to a government or other authority.

**Forfeiture reviewer** - The department member assigned by the Chief of Police who is responsible for reviewing all forfeiture cases and for acting as the liaison between the Department and the assigned attorney.

**Property subject to forfeiture** - The following may be subject to forfeiture:

- (a) Property related to a narcotics offense, which includes (Health and Safety Code § 11470; Health and Safety Code § 11470.1):
  1. Property (not including real property or vehicles) used, or intended for use, as a container for controlled substances, materials to manufacture controlled substances, etc.
  2. Interest in a vehicle (car, boat, airplane, other vehicle) used to facilitate the manufacture, possession for sale or sale of specified quantities of controlled substances.
  3. Money, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance, proceeds traceable to an exchange, etc.
  4. Real property when the owner is convicted of violating Health and Safety Code § 11366, Health and Safety Code § 11366.5 or Health and Safety Code § 11366.6 (drug houses) when the property was not used as a family residence or for other lawful purposes, or property owned by two or more persons, one of whom had no knowledge of its unlawful use.
  5. The expenses of seizing, eradicating, destroying or taking remedial action with respect to any controlled substance or its precursors upon conviction for the unlawful manufacture or cultivation of any controlled substance or its precursors.

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- (b) Property related to criminal profiteering (may include gang crimes), to include (Penal Code § 186.2; Penal Code § 186.3):
  - 1. Any property interest, whether tangible or intangible, acquired through a pattern of criminal profiteering activity.
  - 2. All proceeds acquired through a pattern of criminal profiteering activity, including all things of value that may have been received in exchange for the proceeds immediately derived from the pattern of criminal profiteering activity.

**Seizure** - The act of law enforcement officials taking property, cash or assets that have been used in connection with or acquired by specified illegal activities.

### 602.2 POLICY

The Walnut Creek Police Department recognizes that appropriately applied forfeiture laws are helpful to enforce the law, deter crime and reduce the economic incentive of crime. However, the potential for revenue should never compromise the effective investigation of criminal offenses, officer safety or any person's due process rights.

It is the policy of the Walnut Creek Police Department that all members, including those assigned to internal or external law enforcement task force operations, shall comply with all state and federal laws pertaining to forfeiture.

### 602.3 ASSET SEIZURE

Property may be seized for forfeiture as provided in this policy.

#### 602.3.1 SEIZED PROPERTY

Property seized subject to forfeiture will be inventoried and booked into Property. The property will be checked through the Automated Property System to determine if the property has been stolen.

The property will be booked as evidence, with the notation in the comment section of the property form, "Seized Subject to Forfeiture." Property seized subject to forfeiture should be booked on a separate property form. No other evidence from the case should be booked on this form.

#### 602.3.2 PROPERTY NOT SUBJECT TO SEIZURE

The following property should not be seized for forfeiture:

- (a) Cash and property that does not meet the forfeiture counsel's current minimum forfeiture thresholds should not be seized.
- (b) Real property is not subject to seizure, absent exigent circumstances, without a court order (Health and Safety Code § 11471).
- (c) A vehicle which may be lawfully driven on the highway if there is a community property interest in the vehicle by a person other than the suspect and the vehicle is the sole vehicle available to the suspect's immediate family (Health and Safety Code § 11470).

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- (d) Vehicles, boats or airplanes owned by an “innocent owner,” such as a common carrier with no knowledge of the suspected offense (Health and Safety Code § 11490).
- (e) Any property when the associated activity involves the possession of marijuana or related paraphernalia that is permissible under the Control, Regulate and Tax Adult Use of Marijuana Act (Health and Safety Code § 11362.1).

### 602.3.3 SEIZED VEHICLES

Vehicles seized subject to forfeiture will be taken to the Walnut Creek Police Department Impound Lot. A seized vehicle should not be impounded. The seizing officer's supervisor shall notify an Investigations Bureau Supervisor of the seizure of the vehicle and circumstances of the seizure as soon as possible.

A tow truck will be used to tow the vehicle to the storage facility.

### 602.4 PROCESSING SEIZED PROPERTY FOR FORFEITURE PROCEEDINGS

When property or cash subject to this policy is seized, the officer making the seizure should ensure compliance with the following:

- (a) Complete applicable seizure forms and present the appropriate copy to the person from whom the property is seized. If cash or property is seized from more than one person, a separate copy must be provided to each person, specifying the items seized. When property is seized and no one claims an interest in the property, the officer must leave the copy in the place where the property was found, if it is reasonable to do so.
- (b) Complete and submit a report and original seizure forms within 24 hours of the seizure, if practicable.
- (c) Forward the original seizure forms and related reports to the forfeiture reviewer within two days of seizure.

The officer will book seized property as evidence with the notation in the comment section of the property form, “Seized Subject to Forfeiture.” Property seized subject to forfeiture should be booked on a separate property form. No other evidence from the case should be booked on this form.

Photographs should be taken of items seized, particularly cash, jewelry and other valuable items.

Officers who suspect property may be subject to seizure but are not able to seize the property (e.g., the property is located elsewhere, the whereabouts of the property is unknown, it is real estate, bank accounts, non-tangible assets) should document and forward the information in the appropriate report to the forfeiture reviewer.

### 602.5 MAINTAINING SEIZED PROPERTY

The Property and Evidence Section Supervisor is responsible for ensuring compliance with the following:

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- (a) All property received for forfeiture is reasonably secured and properly stored to prevent waste and preserve its condition.
- (b) All property received for forfeiture is checked to determine if the property has been stolen.
- (c) All property received for forfeiture is retained in the same manner as evidence until forfeiture is finalized or the property is returned to the claimant or the person with an ownership interest.
- (d) Property received for forfeiture is not used unless the forfeiture action has been completed.

### 602.6 ASSET FORFEITURE CHECKLIST

#### ASSET FORFEITURE FORMS CHECKLIST

Copy/paste PC declaration in email to DDA requesting approval to seize assets (or attempt to contact by phone). CC the SIU in email.

A) If able to contact DDA and obtain approval:

If subject CLAIMS ownership to the property seized:

- Notice of Seizure Form (give copy to subject)
- Claim Opposing Forfeiture Form MC-200 (give to subject, Keep this form blank)
- FPR Form (give copy to subject)
- Disclaimer of ownership Form (give copy to subject)
- FPR Form (give copy to subject)

\*\*\*If owner of the property is not present, then complete the above forms and give to the subject on scene who is present.\*\*\*

B) If unable to contact DDA for approval:

- Seize assets as "Evidence"

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- Provide FPR
- Obtain updated home address and phone number
- Do not serve Asset Forfeiture paperwork
- Email SIU case number and attempts to contact DDA

### **602.7 FORFEITURE REVIEWER**

The Chief of Police will appoint an officer as the forfeiture reviewer. Prior to assuming duties, or as soon as practicable thereafter, the forfeiture reviewer should attend a department-approved course on asset forfeiture.

The responsibilities of the forfeiture reviewer include:

- (a) Remaining familiar with forfeiture laws, particularly Health and Safety Code § 11469 et seq. and Penal Code § 186.2 et seq. and the forfeiture policies of the forfeiture counsel.
- (b) Serving as the liaison between the Department and the forfeiture counsel and ensuring prompt legal review of all seizures.
- (c) Making reasonable efforts to obtain annual training that includes best practices in pursuing, seizing and tracking forfeitures.
- (d) Ensuring that property seized under state law is not referred or otherwise transferred to a federal agency seeking the property for federal forfeiture as prohibited by Health and Safety Code § 11471.2.
- (e) Ensuring that responsibilities, including the designation of a fiscal agent, are clearly established whenever multiple agencies are cooperating in a forfeiture case.
- (f) Ensuring that seizure forms are available and appropriate for department use. These should include notice forms, a receipt form and a checklist that provides relevant guidance to officers. The forms should be available in languages appropriate for the region and should contain spaces for:
  1. Names and contact information for all relevant persons and law enforcement officers involved.
  2. Information as to how ownership or other property interests may have been determined (e.g., verbal claims of ownership, titles, public records).
  3. A space for the signature of the person from whom cash or property is being seized.
  4. A tear-off portion or copy, which should be given to the person from whom cash or property is being seized, that includes the legal authority for the seizure, information regarding the process to contest the seizure and a detailed description of the items seized.

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- (g) Ensuring that officers who may be involved in asset forfeiture receive training in the proper use of the seizure forms and the forfeiture process. The training should be developed in consultation with the appropriate legal counsel and may be accomplished through traditional classroom education, electronic media, Daily Training Bulletins (DTBs) or Department Directives. The training should cover this policy and address any relevant statutory changes and court decisions.
- (h) Reviewing each asset forfeiture case to ensure that:
  - 1. Written documentation of the seizure and the items seized is in the case file.
  - 2. Independent legal review of the circumstances and propriety of the seizure is made in a timely manner.
  - 3. Notice of seizure has been given in a timely manner to those who hold an interest in the seized property (Health and Safety Code § 11488.4).
  - 4. Property is promptly released to those entitled to its return (Health and Safety Code § 11488.2).
  - 5. All changes to forfeiture status are forwarded to any supervisor who initiates a forfeiture case.
  - 6. Any cash received is deposited with the fiscal agent.
  - 7. Assistance with the resolution of ownership claims and the release of property to those entitled is provided.
  - 8. Current minimum forfeiture thresholds are communicated appropriately to officers.
  - 9. This policy and any related policies are periodically reviewed and updated to reflect current federal and state statutes and case law.
- (i) Ensuring that a written plan that enables the Chief of Police to address any extended absence of the forfeiture reviewer, thereby ensuring that contact information for other law enforcement officers and attorneys who may assist in these matters is available.
- (j) Ensuring that the process of selling or adding forfeited property to the department's regular inventory is in accordance with all applicable laws and consistent with the department's use and disposition of similar property.
- (k) Keeping a manual that details the statutory grounds for forfeitures and department procedures related to asset forfeiture, including procedures for prompt notice to interest holders, the expeditious release of seized property, where appropriate, and the prompt resolution of claims of innocent ownership (Health and Safety Code § 11469).
- (l) Providing copies of seized business records to the person or business from whom such records were seized, when requested (Health and Safety Code §11471).

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- (m) Notifying the California Franchise Tax Board when there is reasonable cause to believe that the value of seized property exceeds \$5,000.00 (Health and Safety Code § 11471.5).

Forfeiture proceeds should be maintained in a separate fund or account subject to appropriate accounting control, with regular reviews or audits of all deposits and expenditures.

Forfeiture reporting and expenditures should be completed in the manner prescribed by the law and City financial directives (Health and Safety Code § 11495).

### **602.8 DISPOSITION OF FORFEITED PROPERTY**

Forfeited funds distributed under Health and Safety Code § 11489 et seq. shall only be used for purposes allowed by law, but in no case shall a peace officer's employment or salary depend upon the level of seizures or forfeitures he/she achieves (Health and Safety Code § 11469).

The Department may request a court order so that certain uncontaminated science equipment is relinquished to a school or school district for science classroom education in lieu of destruction (Health and Safety Code § 11473; Health and Safety Code § 11473.5).

#### **602.8.1 RECEIVING EQUITABLE SHARES**

When participating in a joint investigation with a federal agency, the Walnut Creek Police Department shall not receive an equitable share from the federal agency of all or a portion of the forfeiture proceeds absent either a required conviction under Health and Safety Code § 11471.2 or the flight, death or willful failure to appear of the defendant. This does not apply to forfeited cash or negotiable instruments of \$40,000 or more.

### **602.9 CLAIM INVESTIGATIONS**

An investigation shall be made as to any claimant of a vehicle, boat or airplane whose right, title, interest or lien is on the record in the Department of Motor Vehicles or in an appropriate federal agency. If investigation reveals that any person, other than the registered owner, is the legal owner, and that ownership did not arise subsequent to the date and time of arrest or notification of the forfeiture proceedings or seizure of the vehicle, boat or airplane, notice shall be made to the legal owner at his/her address appearing on the records of the Department of Motor Vehicles or the appropriate federal agency (Health and Safety Code § 11488.4).



## Informants

### 603.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the use of informants.

#### 603.1.1 DEFINITIONS

Definitions related to this policy include:

**Informant** - A person who covertly interacts with other individuals or suspects at the direction of, request of, or by agreement with, the Walnut Creek Police Department for law enforcement purposes. This also includes a person agreeing to supply information to the Walnut Creek Police Department for a benefit (e.g., a quid pro quo in the form of a reduced criminal penalty, money).

### 603.2 POLICY

The Walnut Creek Police Department recognizes the value of informants to law enforcement efforts and will strive to protect the integrity of the informant process. It is the policy of this department that all funds related to informant payments will be routinely audited and that payments to informants will be made according to the criteria outlined in this policy.

### 603.3 USE OF INFORMANTS

#### 603.3.1 INITIAL APPROVAL

Before using an individual as an informant, an officer must receive approval from his/her supervisor. The officer shall compile sufficient information through a background investigation and experience with the informant in order to determine the suitability of the individual, including age, maturity and risk of physical harm, as well as any indicators of his/her reliability and credibility.

Members of this department should not guarantee absolute safety or confidentiality to an informant.

#### 603.3.2 JUVENILE INFORMANTS

The use of informants under the age of 13 is prohibited.

Except for the enforcement of laws related to the commercial sale of alcohol, marijuana or tobacco products, a juvenile 13 years of age or older may only be used as an informant with the written consent of each of the following:

- (a) The juvenile's parents or legal guardians
- (b) The juvenile's attorney, if any
- (c) The court in which the juvenile's case is being handled, if applicable (Penal Code § 701.5)
- (d) The Chief of Police or the authorized designee

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### **603.3.3 INFORMANT AGREEMENTS**

All informants are required to sign and abide by the provisions of the designated department informant agreement. The officer using the informant shall discuss each of the provisions of the agreement with the informant.

Details of the agreement are to be approved in writing by a supervisor before being finalized with the informant.

### **603.4 INFORMANT INTEGRITY**

To maintain the integrity of the informant process, the following must be adhered to:

- (a) The identity of an informant acting in a confidential capacity shall not be withheld from the Chief of Police, Bureau Commander, Investigation Bureau supervisor or their authorized designees.
  - 1. Identities of informants acting in a confidential capacity shall otherwise be kept confidential.
- (b) Criminal activity by informants shall not be condoned.
- (c) Informants shall be told they are not acting as police officers, employees or agents of the Walnut Creek Police Department, and that they shall not represent themselves as such.
- (d) The relationship between department members and informants shall always be ethical and professional.
  - 1. Members shall not become intimately involved with an informant.
  - 2. Social contact shall be avoided unless it is necessary to conduct an official investigation, and only with prior approval of the Investigation Bureau supervisor.
  - 3. Members shall neither solicit nor accept gratuities or engage in any private business transaction with an informant.
- (e) Officers shall not meet with informants in a private place unless accompanied by at least one additional officer or with prior approval of the Investigation Bureau supervisor.
  - 1. Officers
- (f) When contacting informants for the purpose of making payments, officers shall arrange for the presence of another officer.
- (g) In all instances when department funds are paid to informants, a voucher shall be completed in advance, itemizing the expenses.
- (h) Since the decision rests with the appropriate prosecutor, officers shall not promise that the informant will receive any form of leniency or immunity from criminal prosecution.

### **603.4.1 UNSUITABLE INFORMANTS**

The suitability of any informant should be considered before engaging him/her in any way in a covert or other investigative process. Members who become aware that an informant may be unsuitable will notify the supervisor, who will initiate a review to determine suitability. Until a

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determination has been made by a supervisor, the informant should not be used by any member. The supervisor shall determine whether the informant should be used by the Department and, if so, what conditions will be placed on his/her participation or any information the informant provides. The supervisor shall document the decision and conditions in file notes and mark the file "unsuitable" when appropriate.

Considerations for determining whether an informant is unsuitable include, but are not limited to, the following:

- (a) The informant has provided untruthful or unreliable information in the past.
- (b) The informant behaves in a way that may endanger the safety of an officer.
- (c) The informant reveals to suspects the identity of an officer or the existence of an investigation.
- (d) The informant appears to be using his/her affiliation with this department to further criminal objectives.
- (e) The informant creates officer-safety issues by providing information to multiple law enforcement agencies simultaneously, without prior notification and approval of each agency.
- (f) The informant engages in any other behavior that could jeopardize the safety of officers or the integrity of a criminal investigation.
- (g) The informant commits criminal acts subsequent to entering into an informant agreement.

### **603.5 INFORMANT PAYMENTS**

No informant will be told in advance or given an exact amount or percentage for his/her service. The amount of funds to be paid to any informant will be evaluated against the following criteria:

- The extent of the informant's personal involvement in the case
- The significance, value or effect on crime
- The value of assets seized
- The quantity of the drugs or other contraband seized
- The informant's previous criminal activity
- The level of risk taken by the informant

The unit supervisor will discuss the above factors with the Patrol Bureau Commander and recommend the type and level of payment subject to approval by the Chief of Police.

#### **603.5.1 REPORTING OF PAYMENTS**

Each informant receiving a cash payment shall be advised of his/her responsibility to report the cash to the Internal Revenue Service (IRS) as income. If funds distributed exceed \$600 in any reporting year, the informant should be provided IRS Form 1099 (26 CFR 1.6041-1). If such documentation or reporting may reveal the identity of the informant and by doing so jeopardize

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any investigation, the safety of officers or the safety of the informant (26 CFR 1.6041-3), then IRS Form 1099 should not be issued.

In such cases, the informant shall be provided a letter identifying the amount he/she must report on a tax return as "other income" and shall be required to provide a signed acknowledgement of receipt of the letter. The completed acknowledgement form and a copy of the letter shall be retained in the informant's file.

### **603.5.2 PAYMENT PROCESS**

Approved payments to an informant should be in cash using the following process:

The unit supervisor manages undercover funds and will maintain a Vice Expenditure Log for these funds. This log will be a bound ledger and shall reflect date of expenditure, case number, operator's name or control number, officer's "P" number, type of expenditure (evidence, expense or payment), and amount of expenditure.

It is the responsibility of the unit supervisor to determine the appropriate amount of payment to the operator. In determining the amount of payment, the supervisor will give consideration to local and federal rewards for operators and to the unit policy of cost effectiveness.

Payment amounts are only guidelines. Larger amounts may be paid based upon the quality of the case and future utilization of the operator. When payments are made to an operator, an expenditure form must be completed and forwarded to the Investigations Bureau Commander.

### **603.5.3 AUDIT OF PAYMENTS**

The unit supervisor or the authorized designee shall be responsible for compliance with any audit requirements associated with grant provisions and applicable state and federal law.

At least once a year, the Chief of Police or the authorized designee should conduct an audit of all informant funds for the purpose of accountability and security of the funds. The funds and related documents (e.g., buy/expense fund records, cash transfer forms, invoices, receipts and logs) will assist with the audit process.

### **603.6 INFORMANT FILES**

Informant files shall be utilized as a source of background information about the informant, to enable review and evaluation of information provided by the informant, and to minimize incidents that could be used to question the integrity of department members or the reliability of the informant.

Informant files shall be maintained in a secure area within the Investigation Bureau. The Investigation Bureau supervisor or the authorized designee shall be responsible for maintaining informant files. Access to the informant files shall be restricted to the Chief of Police, Bureau Commander, Investigation Bureau supervisor or their authorized designees.

The Investigation Bureau Commander should arrange for an audit using a representative sample of randomly selected informant files on a periodic basis, but no less than one time per year. If the Investigation Bureau supervisor is replaced, the files will be audited before the new supervisor

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takes over management of the files. The purpose of the audit is to ensure compliance with file content and updating provisions of this policy. The audit should be conducted by a supervisor who does not have normal access to the informant files.

## Eyewitness Identification

### 604.1 PURPOSE AND SCOPE

This policy sets forth guidelines to be used when members of this department employ eyewitness identification techniques (Penal Code § 859.7).

#### 604.1.1 DEFINITIONS

Definitions related to the policy include:

**Eyewitness identification process** - Any field identification, live lineup or photographic identification.

**Field identification** - A live presentation of a single individual to a witness following the commission of a criminal offense for the purpose of identifying or eliminating the person as the suspect.

**Live lineup** - A live presentation of individuals to a witness for the purpose of identifying or eliminating an individual as the suspect.

**Photographic lineup** - Presentation of photographs to a witness for the purpose of identifying or eliminating an individual as the suspect.

### 604.2 POLICY

The Walnut Creek Police Department will strive to use eyewitness identification techniques, when appropriate, to enhance the investigative process and will emphasize identifying persons responsible for crime and exonerating the innocent.

### 604.3 INTERPRETIVE SERVICES

Members should make a reasonable effort to arrange for an interpreter before proceeding with eyewitness identification if communication with a witness is impeded due to language or hearing barriers.

Before the interpreter is permitted to discuss any matter with the witness, the investigating member should explain the identification process to the interpreter. Once it is determined that the interpreter comprehends the process and can explain it to the witness, the eyewitness identification may proceed as provided for within this policy.

### 604.4 EYEWITNESS IDENTIFICATION PROCESS AND FORM

The Detective Bureau supervisor shall be responsible for the development and maintenance of an eyewitness identification process for use by members when they are conducting eyewitness identifications.

The process should include appropriate forms or reports that provide (Penal Code § 859.7):

- (a) The date, time and location of the eyewitness identification procedure.
- (b) The name and identifying information of the witness.

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- (c) The name of the person administering the identification procedure.
- (d) If applicable, the names of all of the individuals present during the identification procedure.
- (e) An instruction to the witness that it is as important to exclude innocent persons as it is to identify a perpetrator.
- (f) An instruction to the witness that the perpetrator may or may not be among those presented and that the witness is not obligated to make an identification.
- (g) If the identification process is a photographic or live lineup, an instruction to the witness that the perpetrator may not appear exactly as he/she did on the date of the incident.
- (h) An instruction to the witness that the investigation will continue regardless of whether an identification is made by the witness.
- (i) A signature line where the witness acknowledges that he/she understands the identification procedures and instructions.
- (j) A statement from the witness in the witness's own words describing how certain he/she is of the identification or non-identification. This statement should be taken at the time of the identification procedure.
- (k) Any other direction to meet the requirements of Penal Code § 859.7, including direction regarding blind or blinded administrations and filler selection.

The process and related forms should be reviewed at least annually and modified when necessary.

### **604.5 EYEWITNESS IDENTIFICATION**

Members are cautioned not to, in any way, influence a witness as to whether any subject or photo presented in a lineup is in any way connected to the case.

Members should avoid mentioning that:

- The individual was apprehended near the crime scene.
- The evidence points to the individual as the suspect.
- Other witnesses have identified or failed to identify the individual as the suspect.

In order to avoid undue influence, witnesses should view suspects or a lineup individually and outside the presence of other witnesses. Witnesses should be instructed to avoid discussing details of the incident or of the identification process with other witnesses.

Whenever feasible, the eyewitness identification procedure should be audio and video recorded and the recording should be retained according to current evidence procedures (Penal Code § 859.7).

### **604.6 DOCUMENTATION**

A thorough description of the eyewitness process and the result of any eyewitness identification should be documented in the case report.

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If a photographic lineup is utilized, a copy of the photographic lineup presented to the witness should be included in the case report. In addition, the order in which the photographs were presented to the witness should be documented in the case report.

### 604.6.1 <B>DOCUMENTATION RELATED TO RECORDINGS</B>

The handling member shall document the reason that a video recording or any other recording of an identification was not obtained (Penal Code § 859.7).

### 604.6.2 <B>DOCUMENTATION RELATED TO BLIND ADMINISTRATION</B>

If a presentation of a lineup is not conducted using blind administration, the handling member shall document the reason (Penal Code § 859.7).

## **604.7 PHOTOGRAPHIC LINEUP AND LIVE LINEUP CONSIDERATIONS**

When practicable, the member presenting the lineup should not be involved in the investigation of the case or know the identity of the suspect. In no case should the member presenting a lineup to a witness know which photograph or person in the lineup is being viewed by the witness (Penal Code § 859.7). Techniques to achieve this include randomly numbering photographs, shuffling folders, or using a computer program to order the persons in the lineup.

Individuals in the lineup should reasonably match the description of the perpetrator provided by the witness and should bear similar characteristics to avoid causing any person to unreasonably stand out. In cases involving multiple suspects, a separate lineup should be conducted for each suspect. The suspects should be placed in a different order within each lineup (Penal Code § 859.7).

The member presenting the lineup should do so sequentially (i.e., show the witness one person at a time) and not simultaneously. The witness should view all persons in the lineup.

A live lineup should only be used before criminal proceedings have been initiated against the suspect. If there is any question as to whether any criminal proceedings have begun, the investigating member should contact the appropriate prosecuting attorney before proceeding.

### 604.7.1 OTHER SAFEGUARDS

Witnesses should be asked for suspect descriptions as close in time to the incident as possible and before conducting an eyewitness identification. No information concerning a suspect should be given prior to obtaining a statement from the witness describing how certain he/she is of the identification or non-identification. Members should not say anything to a witness that may validate or invalidate an eyewitness' identification. In photographic lineups, writings or information concerning any previous arrest of a suspect shall not be visible to the witness (Penal Code § 859.7).

## **604.8 FIELD IDENTIFICATION CONSIDERATIONS**

Field identifications, also known as field elimination show-ups or one-on-one identifications, may be helpful in certain cases, where exigent circumstances make it impracticable to conduct a photo or live lineup identifications. A field elimination show-up or one-on-one identification should not be



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used when independent probable cause exists to arrest a suspect. In such cases a live or photo lineup is the preferred course of action if eyewitness identification is contemplated.

When initiating a field identification, the member should observe the following guidelines:

- (a) Obtain a complete description of the suspect from the witness.
- (b) Assess whether a witness should be included in a field identification process by considering:
  1. The length of time the witness observed the suspect.
  2. The distance between the witness and the suspect.
  3. Whether the witness could view the suspect's face.
  4. The quality of the lighting when the suspect was observed by the witness.
  5. Whether there were distracting noises or activity during the observation.
  6. Any other circumstances affecting the witness's opportunity to observe the suspect.
  7. The length of time that has elapsed since the witness observed the suspect.
- (c) If safe and practicable, the person who is the subject of the show-up should not be handcuffed or in a patrol vehicle.
- (d) When feasible, members should bring the witness to the location of the subject of the show-up, rather than bring the subject of the show-up to the witness.
- (e) The person who is the subject of the show-up should not be shown to the same witness more than once.
- (f) In cases involving multiple suspects, witnesses should only be permitted to view the subjects of the show-up one at a time.
- (g) The person who is the subject of the show-up should not be required to put on clothing worn by the suspect, to speak words uttered by the suspect or to perform other actions mimicking those of the suspect.
- (h) If a witness positively identifies a subject of the show-up as the suspect, members should not conduct any further field identifications with other witnesses for that suspect. In such instances members should document the contact information for any additional witnesses for follow up, if necessary.

## Brady Material Disclosure

### 605.1 PURPOSE AND SCOPE

This policy establishes guidelines for identifying and releasing potentially exculpatory or impeachment information (so-called "*Brady* information") to a prosecuting attorney.

#### 605.1.1 DEFINITIONS

Definitions related to this policy include:

**Brady information** -Information known or possessed by the Walnut Creek Police Department that is both favorable and material to the current prosecution or defense of a criminal defendant.

### 605.2 POLICY

The Walnut Creek Police Department will conduct fair and impartial criminal investigations and will provide the prosecution with both incriminating and exculpatory evidence, as well as information that may adversely affect the credibility of a witness. In addition to reporting all evidence of guilt, the Walnut Creek Police Department will assist the prosecution by complying with its obligation to disclose information that is both favorable and material to the defense. The Department will identify and disclose to the prosecution potentially exculpatory information, as provided in this policy and the October 6, 2016 Memorandum of Understanding between the Contra Costa County Police Chief's Association and the District Attorney's Office titled "Law Enforcement Disclosure of Brady Information".

### 605.3 DISCLOSURE OF INVESTIGATIVE INFORMATION

Officers must include in their investigative reports adequate investigative information and reference to all material evidence and facts that are reasonably believed to be either incriminating or exculpatory to any individual in the case. If an officer learns of potentially incriminating or exculpatory information any time after submission of a case, the officer or the handling investigator must prepare and submit a supplemental report documenting such information as soon as practicable. Supplemental reports shall be promptly processed and transmitted to the prosecutor's office.

If information is believed to be privileged or confidential (e.g., confidential informant or protected personnel files), the officer should discuss the matter with a supervisor and/or prosecutor to determine the appropriate manner in which to proceed.

Evidence or facts are considered material if there is a reasonable probability that they would affect the outcome of a criminal proceeding or trial. Determining whether evidence or facts are material often requires legal or even judicial review. If an officer is unsure whether evidence or facts are material, the officer should address the issue with a supervisor.

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Supervisors who are uncertain about whether evidence or facts are material should address the issue in a written memo to an appropriate prosecutor. A copy of the memo should be retained in the Department case file.

### **605.5 INVESTIGATING BRADY ISSUES**

If the Department receives information from any source that a member may have issues of credibility, dishonesty or has been engaged in an act of moral turpitude or criminal conduct, the information shall be investigated and processed in accordance with the Personnel Complaints Policy.

### **605.6 TRAINING**

Department members should receive periodic training on the requirements of this policy.

## Warrant Service

### 606.1 PURPOSE AND SCOPE

This policy establishes guidelines for the planning and serving of arrest and search warrants by members of this department. It is understood that this policy cannot address every variable or circumstance that can arise in the service of a search or arrest warrant, as these tasks can involve rapidly evolving and unique circumstances.

This policy is intended to be used in conjunction with the Operations Planning and Deconfliction Policy, which has additional guidance on planning and serving high-risk warrants.

This policy is not intended to address the service of search warrants on locations or property already secured or routine field warrant arrests by patrol officers.

### 606.2 POLICY

It is the policy of the Walnut Creek Police Department to balance the safety needs of the public, the safety of department members, privacy interests and other relevant factors when making decisions related to the service of search and arrest warrants.

### 606.3

### 606.4 SEARCH WARRANTS

Officers should consult with a supervisor before preparing a search warrant . Once authorization is received, the officer will prepare the affidavit and search warrant, consulting with the applicable prosecuting attorney as needed. He/she will also complete the risk assessment form and submit it, along with the warrant affidavit, to the appropriate supervisor for review and classification of risk (see the Operations Planning and Deconfliction Policy).

### 606.5 ARREST WARRANTS

If an officer reasonably believes that serving an arrest warrant may pose a higher risk than commonly faced on a daily basis, the officer should complete the risk assessment form and submit it to the appropriate supervisor for review and classification of risk (see the Operations Planning and Deconfliction Policy).

If the warrant is classified as high risk, service consult will be coordinated with the SWAT Commander as specified on the Risk Analysis form . If the warrant is not classified as high risk, the supervisor should weigh the risk of entry into a residence to make an arrest against other alternatives, such as arresting the person outside the residence where circumstances may pose a lower risk.

### 606.6 WARRANT PREPARATION

An officer who prepares a warrant should ensure the documentation in support of the warrant contains as applicable:

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- (a) Probable cause to support the search or arrest, including relevant dates and times to demonstrate timeliness and facts to support any request for nighttime warrant execution.
- (b) A clear explanation of the affiant's training, experience and relevant education.
- (c) Adequately supported opinions, when relevant, that are not left to unsubstantiated conclusions.
- (d) A nexus between the place to be searched and the persons or items central to the investigation. The facts supporting this nexus should be clear and current. For example, the affidavit shall explain why there is probable cause to believe that a particular person is currently residing at a particular location or that the items sought are present at a particular location.
- (e) Full disclosure of known or suspected residents at the involved location and any indication of separate living spaces at the involved location. For example, it should be disclosed that several people may be renting bedrooms at a single location, even if the exact location of the rooms is not known.
- (f) A specific description of the location to be searched, including photographs of the location, if reasonably available.
- (g) A sufficient description of the items to be seized.
- (h) Full disclosure of any known exculpatory information relevant to the warrant application (refer to the Brady Material Disclosure Policy).

### **606.7 HIGH-RISK WARRANT SERVICE**

The Supervisor or SWAT Commander shall coordinate the service of warrants that are categorized as high risk and shall have sole authority in determining the manner in which the warrant will be served, including the number of officers deployed.

The member responsible for directing the service should ensure the following as applicable:

- (a) When practicable and when doing so does not cause unreasonable risk, video or photographic documentation is made of the condition of the location prior to execution of a search warrant. The images should include the surrounding area and persons present.
- (b) The warrant service is audio- and video-recorded when practicable and reasonable to do so.
- (c) Evidence is handled and collected only by those members who are designated to do so. All other members involved in the service of the warrant should alert one of the designated members to the presence of potential evidence and not touch or disturb the items.
- (d) Reasonable efforts are made during the search to maintain or restore the condition of the location.
- (e) Persons who are detained as part of the warrant service are handled appropriately under the circumstances.

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## Warrant Service

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- (f) Reasonable care provisions are made for children and dependent adults (see the Child and Dependent Adult Safety Policy).
- (g) A list is made of all items seized and a copy provided to the person in charge of the premises if present or otherwise left in a conspicuous place.
- (h) A copy of the search warrant is left at the location.
- (i) The condition of the property is documented with video recording or photographs after the search.

### **606.8 DETENTIONS DURING WARRANT SERVICE**

Officers must be sensitive to the safety risks of all persons involved with the service of a warrant. Depending on circumstances and facts present, it may be appropriate to control movements of any or all persons present at a warrant service, including those who may not be the subject of a warrant or suspected in the case. However, officers must be mindful that only reasonable force may be used and weapons should be displayed no longer than the officer reasonably believes is necessary (see the Use of Force Policy).

As soon as it can be determined that an individual is not subject to the scope of a warrant and that no further reasonable suspicion or safety concerns exist to justify further detention, the person should be promptly released.

Officers should, when and to the extent reasonable, accommodate the privacy and personal needs of people who have been detained.

### **606.9 ACTIONS AFTER WARRANT SERVICE**

The Case Agent or Officer shall ensure that all affidavits, warrants, receipts and returns, regardless of any associated cases, are filed with the issuing judge or magistrate as soon as reasonably possible, but in any event no later than any date specified on the warrant.

### **606.10 OUTSIDE AGENCIES AND CROSS-JURISDICTIONAL WARRANTS**

The Supervisor will ensure that cooperative efforts with other agencies in the service of warrants conform to existing mutual aid agreements or other memorandums of understanding and will work cooperatively to mitigate risks including, but not limited to, the following:

- Identity of team members
- Roles and responsibilities
- Familiarity with equipment
- Rules of engagement
- Asset forfeiture procedures

Any outside agency requesting assistance in the service of a warrant within this jurisdiction should be referred to the on-duty Supervisor. The Supervisor should review and confirm the warrant, including the warrant location, and should discuss the service with the appropriate supervisor

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from the other agency. The Supervisor should ensure that members of the Walnut Creek Police Department are utilized appropriately. Any concerns regarding the requested use of Walnut Creek Police Department members should be brought to the attention of the Chief of Police or the authorized designee. The actual service of the warrant will remain the responsibility of the agency requesting assistance.

If the Supervisor is unavailable, the Watch Commander should assume this role.

If officers intend to serve a warrant outside Walnut Creek Police Department jurisdiction, the Supervisor should provide reasonable advance notice to the applicable agency, request assistance as needed and work cooperatively on operational planning and the mitigation of risks detailed in this policy.

Officers will remain subject to the policies of the Walnut Creek Police Department when assisting outside agencies or serving a warrant outside Walnut Creek Police Department jurisdiction.

### **606.11 MEDIA ACCESS**

No advance information regarding warrant service operations shall be released without the approval of the Chief of Police. Any media inquiries or press release after the fact shall be handled in accordance with the News Media Relations Policy.

### **606.12 TRAINING**

The Training Manager should ensure officers receive periodic training on this policy and associated topics, such as legal issues, warrant preparation, warrant service and reporting requirements.

## Operations Planning and Deconfliction

### 607.1 PURPOSE AND SCOPE

This policy provides guidelines for planning, deconfliction and execution of high-risk operations.

Additional guidance on planning and serving high-risk warrants is provided in the Warrant Service Policy.

#### 607.1.1 DEFINITIONS

Definitions related to this policy include:

**High-risk operations** - Operations, including service of search and arrest warrants and sting operations, that are likely to present higher risks than are commonly faced by officers on a daily basis, including suspected fortified locations, reasonable risk of violence or confrontation with multiple persons, or reason to suspect that persons anticipate the operation.

### 607.2 POLICY

It is the policy of the Walnut Creek Police Department to properly plan and carry out high-risk operations, including participation in a regional deconfliction system, in order to provide coordination, enhance the safety of members and the public, decrease the risk of compromising investigations and prevent duplicating efforts.

### 607.3

### 607.4 RISK ASSESSMENT

#### 607.4.1 RISK ASSESSMENT FORM PREPARATION

Officers assigned as operational leads for any operation that may qualify as a high-risk operation shall complete a risk assessment form.

When preparing the form, the officer should query all relevant and reasonably available intelligence resources for information about the subject of investigation, others who may be present and the involved location. These sources may include regional intelligence and criminal justice databases, target deconfliction systems, firearm records, commercial databases and property records. Where appropriate, the officer should also submit information to these resources.

The officer should gather available information that includes, but is not limited to:

- (a) Photographs, including aerial photographs, if available, of the involved location, neighboring yards and obstacles.
- (b) Maps of the location.
- (c) Diagrams of any property and the interior of any buildings that are involved.
- (d) Historical information about the subject of investigation (e.g., history of weapon possession or use, known mental illness, known drug use, threats against police, gang affiliation, criminal history).



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## *Operations Planning and Deconfliction*

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- (e) Historical information about others who may be present at the location (e.g., other criminals, innocent third parties, dependent adults, children, animals).
- (f) Obstacles associated with the location (e.g., fortification, booby traps, reinforced doors/windows, surveillance measures, number and type of buildings, geographic and perimeter barriers, the number and types of weapons likely to be present, information that suggests the presence of explosives, chemicals or other hazardous materials, the potential for multiple dwellings or living spaces, availability of keys/door combinations).
- (g) Other environmental factors (e.g., nearby venues such as schools and day care centers, proximity of adjacent homes or other occupied buildings, anticipated pedestrian and vehicle traffic at the time of service).
- (h) Other available options that may minimize the risk to officers and others (e.g., making an off-site arrest or detention of the subject of investigation).

### 607.4.2 RISK ASSESSMENT REVIEW

Officers will present the risk assessment form and other relevant documents (such as copies of search warrants and affidavits and arrest warrants) to their supervisor .

The supervisor shall evaluate the operation and determine the level of risk. Supervisors should take reasonable actions if there is a change in circumstances that elevates the risks associated with the operation.

### 607.4.3 HIGH-RISK OPERATIONS

If the involved supervisor, determines that the operation is high risk, the supervisor should:

- (a) Determine what resources will be needed at the location, and contact and/or place on standby any of the following appropriate and available resources:
  - 1. (SWAT)
  - 2. Additional personnel
  - 3. Outside agency assistance
  - 4. Special equipment
  - 5. Medical personnel
  - 6. Persons trained in negotiation
  - 7. Additional surveillance
  - 8. Canines
  - 9. Property and Evidence Section or analytical personnel to assist with cataloguing seizures
  - 10. Forensic specialists
  - 11. Specialized mapping for larger or complex locations
- (b) Contact the appropriate department members or other agencies as warranted to begin preparation.

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- (c) Ensure that all legal documents such as search warrants are complete and have any modifications reasonably necessary to support the operation.
- (d) Coordinate the actual operation.

### **607.5 DECONFLICTION**

Deconfliction systems are designed to identify persons and locations associated with investigations or law enforcement operations and alert participating agencies when others are planning or conducting operations in close proximity or time or are investigating the same individuals, groups or locations.

The officer who is the operations lead shall ensure the subject of investigation and operations information have been entered in an applicable deconfliction system to determine if there is reported conflicting activity. This should occur as early in the process as practicable, but no later than two hours prior to the commencement of the operation. The officer should also enter relevant updated information when it is received.

If any conflict is discovered, the supervisor will contact the involved jurisdiction and resolve the potential conflict before proceeding.

### **607.6 OPERATIONS PLAN**

The supervisor should ensure that a written operations plan is developed for all high-risk operations. Plans should also be considered for other operations that would benefit from having a formal plan.

The plan should address such issues as:

- (a) Operation goals, objectives and strategies.
- (b) Operation location and people:
  1. The subject of investigation (e.g., history of weapon possession/use, known mental illness issues, known drug use, threats against police, gang affiliation, criminal history)
  2. The location (e.g., fortification, booby traps, reinforced doors/windows, surveillance cameras and/or lookouts, number/type of buildings, geographic and perimeter barriers, the number and types of weapons likely to be present, information that suggests the presence of explosives, chemicals or other hazardous materials, the potential for multiple dwellings or living spaces, availability of keys/door combinations), including aerial photos, if available, and maps of neighboring yards and obstacles, diagrams and other visual aids
  3. Other environmental factors (e.g., nearby venues such as schools and day care centers, proximity of adjacent homes or other occupied buildings, anticipated pedestrian and vehicle traffic at the time of service)
  4. Identification of other people who may be present in or around the operation, such as other criminal suspects, innocent third parties and children

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## *Operations Planning and Deconfliction*

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- (c) Information from the risk assessment form by attaching a completed copy in the operational plan.
  - 1. The volume or complexity of the information may indicate that the plan includes a synopsis of the information contained on the risk assessment form to ensure clarity and highlighting of critical information.
- (d) Participants and their roles.
  - 1. An adequate number of uniformed officers should be included in the operation team to provide reasonable notice of a legitimate law enforcement operation.
  - 2. How all participants will be identified as law enforcement.
- (e) Whether deconfliction submissions are current and all involved individuals, groups and locations have been deconflicted to the extent reasonably practicable.
- (f) Identification of all communications channels and call-signs.
- (g) Use of force issues.
- (h) Contingencies for handling medical emergencies (e.g., services available at the location, closest hospital, closest trauma center).
- (i) Plans for detaining people who are not under arrest.
- (j) Contingencies for handling children, dependent adults, animals and other people who might be at the location in accordance with the Child Abuse, Adult Abuse, Child and Dependent Adult Safety and Animal Control policies.
- (k) Communications plan
- (l) Responsibilities for writing, collecting, reviewing and approving reports.

### **607.6.1 OPERATIONS PLAN RETENTION**

Since the operations plan contains intelligence information and descriptions of law enforcement tactics, it shall not be filed with the report. The operations plan shall be stored separately and retained in accordance with the established records retention schedule.

### **607.7 OPERATIONS BRIEFING**

A briefing should be held prior to the commencement of any high-risk operation to allow all participants to understand the operation, see and identify each other, identify roles and responsibilities and ask questions or seek clarification as needed. Anyone who is not present at the briefing should not respond to the operation location without specific supervisory approval.

- (a) The briefing should include a verbal review of plan elements, using visual aids, to enhance the participants' understanding of the operations plan.
- (b) All participants should be provided a copy of the operations plan and search warrant, if applicable. Participating personnel should be directed to read the search warrant and initial a copy that is retained with the operation plan. Any items to be seized should be identified at the briefing.
- (c) The Supervisor shall ensure that all participants are visually identifiable as law enforcement officers.

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## *Operations Planning and Deconfliction*

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1. Exceptions may be made by the operations director for officers who are conducting surveillance or working under cover. However, those members exempt from visual identification should be able to transition to a visible law enforcement indicator at the time of enforcement actions, such as entries or arrests, if necessary.
- (d) The briefing should include details of the communications plan.
1. It is the responsibility of the operations director to ensure that Dispatch is notified of the time and location of the operation, and to provide a copy of the operation plan prior to officers arriving at the location.
  2. If the radio channel needs to be monitored by Dispatch, the dispatcher assigned to monitor the operation should attend the briefing, if practicable, but at a minimum should receive a copy of the operation plan.
  3. The briefing should include a communications check to ensure that all participants are able to communicate with the available equipment on the designated radio channel.

### **607.8 SWAT PARTICIPATION**

If the supervisor or SWAT Commander determines that SWAT participation is appropriate, the supervisor and the SWAT Commander shall work together to develop a written plan. The SWAT Commander shall assume operational control until all persons at the scene are appropriately detained and it is safe to begin a search. When this occurs, the SWAT Commander shall transfer control of the scene to the handling supervisor. This transfer should be communicated to the officers present.

### **607.9 MEDIA ACCESS**

No advance information regarding planned operations shall be released without the approval of the Chief of Police. Any media inquiries or press release after the fact shall be handled in accordance with the News Media Relations Policy.

### **607.10 OPERATIONS DEBRIEFING**

High-risk operations should be debriefed as soon as reasonably practicable. The debriefing should include as many participants as possible. This debrief may be separate from any SWAT debriefing.

### **607.11 TRAINING**

The Training Manager should ensure officers and SWAT team members who participate in operations subject to this policy should receive periodic training including, but not limited to, topics such as legal issues, deconfliction practices, operations planning concepts and reporting requirements.

## Chapter 7 - Equipment

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## Department Owned and Personal Property

### 700.1 PURPOSE AND SCOPE

Department employees are expected to properly care for department property assigned or entrusted to them. Employees may also suffer occasional loss or damage to department property while performing their assigned duty. This policy provides guidelines governing the use and care of all departmental property.

### 700.2 CARE OF DEPARTMENTAL PROPERTY

Employees shall be responsible for the safekeeping, serviceable condition, proper care, use and replacement of department property assigned or entrusted to them. An employee's intentional or negligent abuse or misuse of department property may lead to discipline including, but not limited to the cost of repair or replacement.

- (a) Employees shall promptly report through their chain of command, any loss, damage to, or unserviceable condition of any department issued property or equipment assigned for their use.
- (b) W.C.P.D. form # 302 shall be used to report
- (c) The use of damaged or unserviceable department property should be discontinued as soon as practical and replaced with comparable Department property as soon as available and following notice to a supervisor.
- (d) Except when otherwise directed by competent authority or required by exigent circumstances, department property shall only be used by those to whom it was assigned. Use should be limited to official purposes and in the capacity for which it was designed.
- (e) Department property shall not be thrown away, sold, traded, donated, destroyed, or otherwise disposed of without proper authority.
- (f) In the event that any Department property becomes damaged or unserviceable, no employee shall attempt to repair the property without prior approval of a supervisor.

### 700.3 REPORTING REQUIREMENT

A verbal report shall be made to the employee's immediate supervisor as soon as circumstances permit.

A written report (W.C.P.D. form #302) shall be submitted before the employee goes off duty or within the time frame directed by the supervisor to whom the verbal report is made.

### 700.4 LOSS OR DAMAGE OF PROPERTY OF ANOTHER

Officers and other employees intentionally or unintentionally may cause damage to the real or personal property of another while performing their duties. Any employee who damages or causes

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## *Department Owned and Personal Property*

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to be damaged any real or personal property of another while performing any law enforcement functions, regardless of jurisdiction, shall report it as provided below.

- (a) A verbal report shall be made to the employee's immediate supervisor as soon as circumstances permit.
- (b) A written report (W.C.P.D. form #302) shall be submitted before the employee goes off duty or within the time frame directed by the supervisor to whom the verbal report is made.

### 700.4.1 DAMAGE BY PERSON OF ANOTHER AGENCY

If employees of another jurisdiction cause damage to real or personal property belonging to the City, it shall be the responsibility of the employee present or the employee responsible for the property to make a verbal report to his/her immediate supervisor as soon as circumstances permit. The employee shall submit a written report (W.C.P.D. form #302) before going off duty or as otherwise directed by the supervisor.

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## Personal Communication Devices

### 701.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for the use of mobile telephones and communication devices, whether issued or funded by the Department or personally owned, while on-duty or when used for authorized work-related purposes.

This policy generically refers to all such devices as Personal Communication Devices (PCDs) but is intended to include all mobile telephones, personal digital assistants (PDAs), wireless capable tablets and similar wireless two-way communications and/or portable Internet access devices. PCD use includes, but is not limited to, placing and receiving calls, text messaging, blogging and microblogging, emailing, using video or camera features, playing games and accessing sites or services on the Internet.

### 701.2 POLICY

The Walnut Creek Police Department allows members to utilize department-issued or funded PCDs and to possess personally owned PCDs in the workplace, subject to certain limitations. Any PCD used while on-duty, or used off-duty in any manner reasonably related to the business of the Department, will be subject to monitoring and inspection consistent with the standards set forth in this policy.

The inappropriate use of a PCD while on-duty may impair officer safety. Additionally, members are advised and cautioned that the use of a personally owned PCD either on-duty or after duty hours for business-related purposes may subject the member and the member's PCD records to civil or criminal discovery or disclosure under applicable public records laws.

Members who have questions regarding the application of this policy or the guidelines contained herein are encouraged to seek clarification from supervisory personnel.

### 701.3 PRIVACY EXPECTATION

Members forfeit any expectation of privacy with regard to any communication accessed, transmitted, received or reviewed on any PCD issued or funded by the Department and shall have no expectation of privacy in their location should the device be equipped with location detection capabilities (see the Information Technology Use Policy for additional guidance).

#### 701.3.1 CALIFORNIA ELECTRONIC COMMUNICATIONS PRIVACY ACT (CALECPA)

No member is authorized to be the sole possessor of a department-issued PCD. Department-issued PCDs can be retrieved, reassigned, accessed or used by any member as directed by a supervisor without notice. Member use of a department-issued PCD and use of a personal PCD at work or for work-related business constitutes specific consent for access for department purposes. Prior to conducting an administrative search of a PCD, supervisors should consult legal counsel to ensure access is consistent with CalECPA (Penal Code § 1546; Penal Code § 1546.1).



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## *Personal Communication Devices*

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### **701.4 DEPARTMENT-ISSUED PCD**

Depending on a member's assignment and the needs of the position, the Department may, at its discretion, issue or fund a PCD. Department-issued or funded PCDs are provided as a convenience to facilitate on-duty performance only. Such devices and the associated telephone number shall remain the sole property of the Department and shall be subject to inspection or monitoring (including all related records and content) at any time without notice and without cause.

### **701.6 USE OF PCD**

The following protocols shall apply to all PCDs that are carried while on-duty or used to conduct department business:

- (a) A PCD shall not be carried in a manner that allows it to be visible while in uniform, unless it is in an approved carrier.
- (b) All PCDs in the workplace shall be set to silent or vibrate mode.
- (c) A PCD may not be used to conduct personal business while on-duty, except for brief personal communications (e.g., informing family of extended hours). Members shall endeavor to limit their use of PCDs to authorized break times, unless an emergency exists.
- (d) Members may use a PCD to communicate with other personnel in situations where the use of radio communications is either impracticable or not feasible. PCDs should not be used as a substitute for, as a way to avoid, or in lieu of regular radio communications.
- (e) Members are prohibited from taking pictures, audio or video recordings or making copies of any such picture or recording media unless it is directly related to official department business. Disclosure of any such information to any third party through any means, without the express authorization of the Chief of Police or the authorized designee, may result in discipline.
- (f) Members will not access social networking sites for any purpose that is not official department business.
- (g) Using PCDs to harass, threaten, coerce or otherwise engage in inappropriate conduct with any third party is prohibited. Any member having knowledge of such conduct shall promptly notify a supervisor.

### **701.7 SUPERVISOR RESPONSIBILITIES**

The responsibilities of supervisors include, but are not limited to:

- (a) Ensuring that members under their command are provided appropriate training on the use of PCDs consistent with this policy.
- (b) Monitoring, to the extent practicable, PCD use in the workplace and taking prompt corrective action if a member is observed or reported to be improperly using a PCD.

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## *Personal Communication Devices*

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1. An investigation into improper conduct should be promptly initiated when circumstances warrant.
2. Before conducting any administrative search of a member's personally owned device, supervisors should consult with the Chief of Police or the authorized designee.

### **701.8 USE WHILE DRIVING**

The use of a PCD while driving can adversely affect safety, cause unnecessary distractions and present a negative image to the public. Officers operating emergency vehicles should restrict the use of these devices to matters of an urgent nature and should, where practicable, stop the vehicle at an appropriate location to use the PCD.

Members who are operating department vehicles that are not authorized emergency vehicles shall not use a PCD while driving unless the device is specifically designed and configured to allow hands-free use. In an emergency, a wireless phone may be used to place an emergency call to the Department or other emergency services agency (Vehicle Code § 23123; Vehicle Code § 23123.5). Hands-free use should be restricted to business-related calls or calls of an urgent nature.

### **701.9 OFFICIAL USE**

Members are reminded that PCDs are not secure devices and conversations may be intercepted or overheard. Caution should be exercised while utilizing PCDs to ensure that sensitive information is not inadvertently transmitted. As soon as reasonably possible, members shall conduct sensitive or private communications on a land-based or other department communications network.

## Vehicle Maintenance

### 702.1 PURPOSE AND SCOPE

Employees are responsible for assisting in maintaining Department vehicles so that they are properly equipped, properly maintained, properly refueled and present a clean appearance.

### 702.2 DEFECTIVE VEHICLES

When a department vehicle becomes inoperative or in need of repair that affects the safety of the vehicle, that vehicle shall be removed from service for repair. Proper documentation shall be promptly completed by the employee who first becomes aware of the defective condition, describing the correction needed. The paperwork shall be promptly forwarded to vehicle maintenance for repair.

#### 702.2.1 DAMAGE OR POOR PERFORMANCE

Vehicles that may have been damaged, or perform poorly shall be removed from service for inspections and repairs as soon as practicable.

#### 702.2.2 SEVERE USE

Vehicles operated under severe-use conditions, which include operations for which the vehicle is not designed or that exceed the manufacturer's parameters, should be removed from service and subjected to a safety inspection as soon as practicable. Such conditions may include rough roadway or off-road driving, hard or extended braking, pursuits or prolonged high-speed operation.

#### 702.2.3 REMOVAL OF WEAPONS

All firearms, weapons and control devices shall be removed from a vehicle and properly secured in the department armory prior to the vehicle being released for maintenance, service or repair.

### 702.3 VEHICLE EQUIPMENT

Certain items shall be maintained in all department vehicles for emergency purposes and to perform routine duties.

#### 702.3.1 PATROL VEHICLES

- (a) Officers shall inspect the patrol vehicle at the beginning of the shift and ensure that the following equipment, at a minimum, is present in the vehicle:
  - o 20 Emergency road flares
  - o 2 Sticks yellow crayon or chalk
  - o 1 Roll Crime Scene Barricade Tape
  - o 1 First aid kit, CPR mask
  - o 1 Blanket
  - o 1 Traffic Safety Vest

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### *Vehicle Maintenance*

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- 1 Hazardous Materials Emergency Response Handbook
- (b) Checking Engine Oil and Coolant
  - Employees should check the engine oil and coolant levels every time they refuel a vehicle
- (c) Checking Tires
  - Employees should inspect the tires every time they refuel a vehicle. They should determine if there is sufficient tread depth on the tires. They should also adjust the tire pressure to the maximum pressure listed on the tires or vehicle specifications. For vehicles equipped with a tire pressure warning system; all tires should be within 2-3 PSI of each other or the tire pressure warning light will come on.
- (d) End-of-Shift Procedure
  - Officers shall leave patrol cars in good condition for service by another officer and also remove debris and refuse from the interior of the vehicle. All auxiliary electronic equipment, (i.e., lightbar, siren, MDT, and the radio) shall be turned off prior to securing the vehicle in the lot.
- (e) Smoking
  - Consistent with the City Administrative Policy on Smoking and a staff determination that all department vehicles are included in that policy, there shall be no smoking in any department vehicle at any time.
- (f) Minor Repairs
  - Officers may, with supervisory approval, use the Chevron credit cards for minor repairs such as burned-out light bulbs, fuses, and necessary fluids when it is necessary to keep the vehicle in service and the corporation yard auto shop services are not available.
- (g) Vehicle Security
  - It is the policy of the department to secure all department vehicles when left unattended to minimize the potential for vandalism and theft of materials and equipment. Unless emergency conditions warrant deviation from this policy, doors shall be locked; windows shall be closed to prevent access to interiors with keys removed by the operator.
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### *Vehicle Maintenance*

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#### (i) Spare Tire

1. The spare tires have been removed from the trunks of the Patrol cars. There should be two spare tires located in storage shed (bay # 4) just outside the entrance to the corporation yard.
  - (a) If you have a flat tire on a patrol car that does not have a spare tire, you should do the following:
    1. During the hours that the corporation yard is open, ask a dispatcher to have someone from the corporation yard sent with a spare tire to change the tire.
    2. After hours, if feasible, ask a dispatcher to send a tow truck first to the corporation yard to pick up a spare tire from storage shed then take it to your location and change the tire. Otherwise, simply have the vehicle towed to the corporation yard.
  - (b) A service request to have the tire repaired should be completed by the officer. A new or repaired tire should be returned to the storage shed for future use.

#### (j) Service Requests

1. If a malfunction is noted in any vehicle, the employee who notices the malfunction shall complete a service request form in a timely manner and place the form in the appropriate location so the malfunction can be repaired. Vehicles with a hazardous malfunction shall not be operated until they are repaired.
2. Service request forms and vehicle repairs are processed and tracked by police services officers as directed by that unit's supervisor. Coordination of repairs to

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## *Vehicle Maintenance*

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vehicles is done daily in cooperation with the corporation yard auto shop in an effort to minimize vehicle down time.

### **702.4 VEHICLE REFUELING**

Absent emergency conditions or supervisor approval, officers driving patrol vehicles shall not place a vehicle in service that has less than one-quarter tank of fuel. Vehicles shall only be refueled at the authorized location.

### **702.5 WASHING OF VEHICLES**

All units shall be kept clean at all times and weather conditions permitting, shall be washed as necessary to enhance their appearance.

Employees using a vehicle shall remove any trash or debris at the end of their shift. Confidential material should be placed in a designated receptacle provided for the shredding of this matter.

### **702.6 CIVILIAN EMPLOYEE USE**

Civilian employees using marked vehicles shall ensure all weapons are removed from vehicles before going into service. Civilian employees shall also prominently display the "out of service" placards or lightbar covers at all times. Civilian employees shall not operate the emergency lights or siren of any vehicle unless expressly authorized by a supervisor.

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## Vehicle Use

### 703.1 PURPOSE AND SCOPE

The purpose of this policy is to establish a system of accountability to ensure department vehicles are used appropriately. This policy provides guidelines for on- and off-duty use of department vehicles and shall not be construed to create or imply any contractual obligation by the City of Walnut Creek to provide assigned take-home vehicles.

### 703.2 POLICY

The Walnut Creek Police Department provides vehicles for department-related business and may assign patrol and unmarked vehicles based on a determination of operational efficiency, economic impact to the Department, requirements for tactical deployments and other considerations.

#### 703.2.1 SHIFT ASSIGNED VEHICLES

Personnel assigned to routine scheduled field duties shall log onto the in-car computer inputting the required information when going on duty. If the employee exchanges vehicles during the shift, the new vehicle number shall be entered.

Employees shall be responsible for inspecting the interior and exterior of any assigned vehicle before taking the vehicle into service, and at the conclusion of their shift. Any previously unreported damage, mechanical problems, unauthorized contents or other problems with the vehicle shall be promptly reported to a supervisor and documented as appropriate.

Employees shall complete a service request form in a timely manner and place the form in the appropriate location so the malfunction can be repaired. Vehicles with a hazardous malfunction shall not be operated until they are repaired.

Service request forms and vehicle repairs are processed and tracked by police services officers as directed by that unit's supervisor. Coordination of repairs to vehicles is done daily in cooperation with the corporation yard auto shop in an effort to minimize vehicle down time.

Officers may, with supervisory approval, use the Chevron credit cards for minor repairs such as burned-out light bulbs, fuses, and necessary fluids when it is necessary to keep the vehicle in service and the corporation yard auto shop services are not available.

#### 703.2.2 UNSCHEDULED USE OF VEHICLES

Personnel utilizing a vehicle for any purpose other than their normally assigned duties shall first notify the Watch Commander of the reasons for use and a notation will be made on the shift roster indicating the operator's name and vehicle number. This section does not apply to personnel permanently assigned an individual vehicle (e.g., command staff, detectives), or to Property and Evidence Section personnel assigned transportation duties to and from the maintenance yard, etc.

#### 703.2.3 UNDERCOVER VEHICLES

Unmarked units, if not assigned to an individual employee, shall not be used without first obtaining approval from the respective unit supervisor.

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### *Vehicle Use*

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#### 703.2.4 DETECTIVE BUREAU VEHICLES

Investigation Bureau vehicle use is restricted to detective personnel unless approved by a supervisor.

#### 703.2.5 AUTHORIZED PASSENGERS

Personnel operating department owned vehicles shall not permit persons other than City employees or persons required to be conveyed in the performance of duty or as otherwise authorized to ride as a passenger in their vehicle.

#### 703.2.7 INSPECTIONS

The interior of any vehicle that has been used to transport any person other than an employee should be inspected prior to placing another person in the vehicle and again after the person is removed. This is to ensure that unauthorized items have not been left in the vehicle.

### **703.3 USE OF VEHICLES**

#### 703.3.1 OTHER USE OF VEHICLES

Members utilizing a vehicle for any purpose other than their normally assigned duties or normal vehicle assignment (e.g., transportation to training, community event) shall first notify the Watch Commander. A notation will be made on the shift assignment roster indicating the member's name and vehicle number.

This subsection does not apply to those who are assigned to vehicle transportation duties to and from the maintenance yard or carwash.

#### 703.3.2 INSPECTIONS

Members shall be responsible for inspecting the interior and exterior of any assigned vehicle before taking the vehicle into service and at the conclusion of their shifts. Any previously unreported damage, mechanical problems, unauthorized contents or other problems with the vehicle shall be promptly reported to a supervisor and documented as appropriate.

The interior of any vehicle that has been used to transport any person other than a member of this department should be inspected prior to placing another person in the vehicle and again after the person is removed. This is to ensure that unauthorized or personal items have not been left in the vehicle.

When transporting any suspect, prisoner or arrestee, the transporting member shall search all areas of the vehicle that are accessible by the person before and after that person is transported.

All department vehicles are subject to inspection and/or search at any time by a supervisor without notice and without cause. No member assigned to or operating such vehicle shall be entitled to any expectation of privacy with respect to the vehicle or its contents.

#### 703.3.3 SECURITY AND UNATTENDED VEHICLES

Unattended vehicles should be locked and secured at all times. No key should be left in the vehicle except when it is necessary that the vehicle be left running (e.g., continued activation of emergency



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lights, canine safety, equipment charging). Officers who exit a vehicle rapidly in an emergency situation or to engage in a foot pursuit must carefully balance the need to exit the vehicle quickly with the need to secure the vehicle.

Members shall ensure all weapons are secured while the vehicle is unattended.

#### 703.3.4 MDT

Members assigned to vehicles equipped with a Mobile Digital Terminal (MDT) should log onto the MDT with the required information when going on-duty. If the vehicle is not equipped with a working MDT, the member shall notify Dispatch. Use of the MDT is governed by the Mobile Digital Terminal Use Policy.

#### 703.3.5 KEYS

Members who are assigned a specific vehicle should be issued keys for that vehicle.

Members shall not duplicate keys. The loss of a key shall be promptly reported in writing through the member's chain of command.

#### 703.3.6 AUTHORIZED PASSENGERS

Members operating department vehicles shall not permit persons other than City personnel or persons required to be conveyed in the performance of duty, or as otherwise authorized, to ride as passengers in the vehicle, except as stated in the Ride-Along Policy.

#### 703.3.7 PARKING

Except when responding to an emergency or when urgent department-related business requires otherwise, members driving department vehicles should obey all parking regulations at all times.

Undercover vehicles may park at expired meters or along red curbs in the downtown area as long as the location does not create a potential traffic hazard.

Department vehicles should be parked in assigned stalls. Members shall not park privately owned vehicles in stalls assigned to department vehicles or in other areas of the parking lot that are not so designated unless authorized by a supervisor. Privately owned motorcycles shall be parked in designated areas.

#### 703.3.8 ACCESSORIES AND/OR MODIFICATIONS

There shall be no modifications, additions or removal of any equipment or accessories without written permission from the assigned vehicle program manager.

#### 703.3.9 ALCOHOL

Members who have consumed alcohol are prohibited from operating any department vehicle unless it is required by the duty assignment (e.g., task force, undercover work). Regardless of assignment, members may not violate state law regarding vehicle operation while intoxicated. Investigators who are assigned take-home vehicles may consume alcohol after their work shift (and prior to driving home) as long as they do not drive if feeling impaired and under no circumstances if they have a BAC of 0.04 or above.

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#### 703.3.10 CIVILIAN MEMBER USE

Civilian members using marked emergency vehicles shall ensure that all weapons have been removed before going into service. Civilian members shall prominently display the "out of service" placards or light bar covers when possible. Civilian members shall not operate the emergency lights or siren of any vehicle unless expressly authorized by a supervisor.

#### **703.4 INDIVIDUAL MEMBER ASSIGNMENT TO VEHICLES**

Department vehicles may be assigned to individual members at the discretion of the Chief of Police. Vehicles may be assigned for on-duty and/or take-home use. Assigned vehicles may be changed at any time. Permission to take home a vehicle may be withdrawn at any time.

The assignment of vehicles may be suspended when the member is unable to perform his/her regular assignment.

#### 703.4.1 KEYS

All uniformed field personnel approved to operate marked patrol vehicles shall be issued their own personal unit key as part of their initial equipment distribution upon hiring. Personnel assigned a permanent vehicle shall be issued keys for their respective vehicle. The loss of any assigned key shall be promptly reported in writing (form 302) through the employee's chain of command.

#### 703.4.2 ON-DUTY USE

Vehicle assignments shall be based on the nature of the member's duties, job description and essential functions, and employment or appointment status. Vehicles may be reassigned or utilized by other department members at the discretion of the Chief of Police or the authorized designee.

#### 703.4.3 UNSCHEDULED TAKE-HOME USE

Circumstances may arise where department vehicles must be used by members to commute to and from a work assignment. Members may take home department vehicles only with prior approval of a supervisor and should meet the following criteria:

- (a) The circumstances are unplanned and were created by the needs of the department.
- (b) Other reasonable transportation options are not available.
- (c) The member lives within a reasonable distance (generally not to exceed a 60-minute drive time) of the Walnut Creek City limits.
- (d) Off-street parking will be available at the member's residence.
- (e) Vehicles will be locked when not attended.
- (f) All firearms, weapons and control devices will be removed from the interior of the vehicle and properly secured in the residence when the vehicle is not attended, unless the vehicle is parked in a locked garage.

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### 703.4.4 MAINTENANCE

Members are responsible for the cleanliness (exterior and interior) and overall maintenance of their assigned vehicles. Failure to adhere to these requirements may result in discipline and loss of vehicle assignment. The following should be performed as outlined below:

- (a) Members shall make daily inspections of their assigned vehicles for service/maintenance requirements and damage.
- (b) It is the member's responsibility to ensure that his/her assigned vehicle is maintained according to the established service and maintenance schedule.
- (c) All scheduled vehicle maintenance and car washes shall be performed as necessary at a facility approved by the department supervisor in charge of vehicle maintenance.
- (d) The Department shall be notified of problems with the vehicle and approve any major repairs before they are performed.
- (e) When leaving the vehicle at the maintenance facility, the member will complete a vehicle repair card explaining the service or repair, and leave it on the seat or dash.
- (f) All weapons shall be removed from any vehicle left for maintenance.

### 703.4.5 ASSIGNED VEHICLES

Assignment of take-home vehicles shall be based on the location of the member's residence, the nature of the member's duties, job description and essential functions, and employment or appointment status. Residence in the City of Walnut Creek is a prime consideration for assignment of a take-home vehicle. Members who reside outside the City of Walnut Creek may be required to secure the vehicle at a designated location or the Department at the discretion of the Chief of Police.

Members are cautioned that under federal and local tax rules, personal use of a City vehicle may create an income tax liability for the member. Questions regarding tax rules should be directed to the member's tax adviser.

Criteria for use of take-home vehicles include the following:

- (a) Vehicles shall only be used for work-related purposes and shall not be used for personal errands or transports, unless special circumstances exist and the Chief of Police or a Bureau Commander gives authorization.
- (b) Vehicles may be used to transport the member to and from the member's residence for work-related purposes.
- (c) Vehicles will not be used when off-duty except:
  - 1. In circumstances when a member has been placed on call by the Chief of Police or Bureau Commanders and there is a high probability that the member will be called back to duty.
  - 2. When the member is performing a work-related function during what normally would be an off-duty period, including vehicle maintenance or travelling to or from a work-related activity or function.

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3. When the member has received permission from the Chief of Police or Bureau Commanders.
  4. When the vehicle is being used by the Chief of Police, Bureau Commanders or members who are in on-call administrative positions.
  5. When the vehicle is being used by on-call investigators.
- (d) While operating the vehicle, authorized members should carry and have accessible their duty firearms and be prepared to perform any function they would be expected to perform while on-duty.
- (e) The two-way communications radio, MDT and global positioning satellite device, if equipped, must be on and set to an audible volume when the vehicle is in operation.
- (f) Unattended vehicles are to be locked and secured at all times.
1. No key should be left in the vehicle except when it is necessary that the vehicle be left running (e.g., continued activation of emergency lights, canine safety, equipment charging).
  2. All weapons shall be secured while the vehicle is unattended.
  3. All department identification, portable radios and equipment should be secured.
- (g) Vehicles are to be parked off-street at the member's residence unless prior arrangements have been made with the Chief of Police or the authorized designee. If the vehicle is not secured inside a locked garage, all firearms and kinetic impact weapons shall be removed and properly secured in the residence (see the Firearms Policy regarding safe storage of firearms at home).
- (h) Vehicles are to be secured at the member's residence or the appropriate department facility, at the discretion of the Department when a member will be away (e.g., on vacation) for periods exceeding one week.
1. If the vehicle remains at the residence of the member, the Department shall have access to the vehicle.
  2. If the member is unable to provide access to the vehicle, it shall be parked at the Department.
- (i) The member is responsible for the care and maintenance of the vehicle.

### 703.4.6 ENFORCEMENT ACTIONS

When driving a take-home vehicle to and from work outside of the jurisdiction of the Walnut Creek Police Department or while off-duty, an officer shall not initiate enforcement actions except in those circumstances where a potential threat to life or serious property damage exists (see the Off-Duty Law Enforcement Actions and Law Enforcement Authority policies).

Officers may render public assistance when it is deemed prudent (e.g., to a stranded motorist).

Officers driving take-home vehicles shall be armed, appropriately attired and carry their department-issued identification. Officers should also ensure that department radio communication capabilities are maintained to the extent feasible.

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### **703.5 DAMAGE, ABUSE AND MISUSE**

When any department vehicle is involved in a traffic collision or otherwise incurs damage, the involved member shall promptly notify a supervisor. Any traffic collision report shall be filed with the agency having jurisdiction (see the Traffic Collision Reporting Policy).

When a collision involves a department vehicle or when a member of this department is an involved driver in a collision that occurs in this jurisdiction, and the collision results in serious injury or death, the California Highway Patrol should be summoned to handle the investigation.

Non-injury and very minor injury vehicle accidents involving police employees within the Walnut Creek city limits shall be investigated by the Walnut Creek Police Department.

A "Report of Damage to Police Equipment" (form #302), when such occurs, shall be completed by the employee involved in the accident. When the involved employee is unable to complete the "Report," the bureau or watch commander shall designate an employee to complete the report. The bureau or watch commander shall review the "Report" and be responsible for routing appropriately.

Damage to any department vehicle that was not caused by a traffic collision shall be immediately reported during the shift in which the damage was discovered, and A "Report of Damage to Police Equipment" (form #302), shall be completed by a Watch Commander.

#### **703.5.1 ACCESSORIES AND/OR MODIFICATIONS**

No modifications, additions or deletions of any equipment or accessories shall be made to the vehicle without written permission from the assigned vehicle program manager.

### **703.6 TOLL ROAD USAGE**

Law enforcement vehicles are not routinely exempted from incurring toll road charges.

To avoid unnecessary toll road charges, all members operating department vehicles on a toll road shall adhere to the following:

- (a) Members operating department vehicles for any reason other than in response to an emergency shall pay the appropriate toll charge or utilize the appropriate toll way transponder. Members may submit a request for reimbursement from the City for any toll fees incurred in the course of official business.
- (b) Members passing through a toll plaza or booth during a response to an emergency shall notify, in writing, the appropriate Bureau Commander within five working days explaining the circumstances.

## Cash Handling, Security and Management

### 704.1 PURPOSE AND SCOPE

This policy provides guidelines to ensure department members handle cash appropriately in the performance of their duties.

This policy does not address cash-handling issues specific to the Property and Evidence and Informants policies.

### 704.2 POLICY

It is the policy of the Walnut Creek Police Department to properly handle and document cash transactions and to maintain accurate records of cash transactions in order to protect the integrity of department operations and ensure the public trust.

### 704.3 PETTY CASH FUNDS

The Chief of Police shall designate a person as the fund manager responsible for maintaining and managing the petty cash fund.

Each petty cash fund requires the creation and maintenance of an accurate and current transaction ledger and the filing of invoices, receipts, cash transfer forms and expense reports by the fund manager.

### 704.4 PETTY CASH TRANSACTIONS

The fund manager shall document all transactions on the ledger and any other appropriate forms. Each person participating in the transaction shall sign or otherwise validate the ledger, attesting to the accuracy of the entry. Transactions should include the filing of an appropriate receipt, invoice or cash transfer form. Transactions that are not documented by a receipt, invoice or cash transfer form require an expense report.

### 704.5 PETTY CASH AUDITS

The fund manager and city cashier shall perform an audit annually. This audit requires that the fund manager and city cashier, review the transaction ledger and verify the accuracy of the accounting. The fund manager and city cashier shall sign or otherwise validate the ledger attesting to the accuracy of all documentation and fund accounting. A discrepancy in the audit requires documentation by those performing the audit and an immediate reporting of the discrepancy to the Chief of Police.

Transference of fund management to another member shall require a separate petty cash audit and the city cashier.

### 704.6 ROUTINE CASH HANDLING

Those who handle cash as part of their property or Investigation Bureau supervisor duties shall discharge those duties in accordance with the Property and Evidence and Informants policies.

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## *Cash Handling, Security and Management*

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Members who routinely accept payment for department services shall discharge those duties in accordance with the procedures established for those tasks.

### **704.7 OTHER CASH HANDLING**

Members of the Department who, within the course of their duties, are in possession of cash that is not their property or that is outside their defined cash-handling responsibilities shall, as soon as practicable, verify the amount, summon another member to verify their accounting, and process the cash for safekeeping or as evidence or found property, in accordance with the Property and Evidence Policy.

## Prisoner Transport Van

### 705.1 POLICY

The prisoner transport van will be operated in accordance with applicable laws and Walnut Creek Police Department policy in a manner that provides for the safe movement of prisoners and officers.

#### 705.1.1 PURPOSE

The purpose of this policy is to provide guidelines for the use of the prisoner transport van.

### 705.2 PROCEDURE

#### 705.2.1 SEARCHING PRISONERS

Prior to placing prisoners into the van, the operator shall inspect the prisoner area of the van and ensure the area is free of property and/or contraband. All prisoners will be **thoroughly searched** before being placed into the van. **Standard Search**

The standard search of a prisoner should eliminate the concern for weapons or contraband entering the van and county jail. It will normally require the prisoner to submit to a search of the outer clothing and personal property, including such things as pockets, backpacks, wallets and purses. The pat search of prisoners may also include use of the metal detector.

- (a) Prisoner property will be removed, placed in a bag, inventoried and marked for identification before placing a suspect into the van.
- (b) Transport officers are responsible for the security of prisoner property.
- (c) Oversize property items will be booked into WCPD custody and placed into the oversize prisoner property locker in the WCPD sally port.

#### 705.2.2 TRANSPORTING PRISONERS

- (a) The prisoner transport van should be used when multiple subjects are to be transported or the subjects to be transported require separation.
- (b) Prisoners shall be placed in the back of the van and not in the front seat.
- (c) Prisoners who require separation outlined in the jail manual shall be separated in the same manner when using the prisoner transport van. Juveniles should be transported in a patrol car unless there are only juveniles to be transported.
- (d) The total number of prisoners that can be transported at any one time is eight.
  1. Prisoners who are placed in a Wrap should not be transported with other prisoners.
- (e) While transporting prisoners, officers should avoid making unnecessary stops or otherwise interrupt the transport. Exceptions to this may include:



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1. Stopping to assist another officer in an emergency, when other officers are not readily available to provide assistance.

### 705.2.3 SICK OR INJURED PRISONERS

Prisoners who require medical clearance at any hospital should not be taken in the prisoner transport van if there are other prisoners present.

### 705.2.4 MONITORING PRISONERS

Prisoners in the prisoner transport van shall be monitored by police personnel at all times. Personnel monitoring prisoners shall remain in close enough proximity to respond to a call for assistance and have a radio or cell phone to summon help if necessary. If a prisoner is escorted to the restroom; at least one police employee is required to stay with the prisoner transport van and remaining prisoners.

All persons secured in the prisoner transport van will be provided access to a restroom facility within a reasonable amount of time after the request is made. Subjects requesting to use restroom facilities while in the downtown core should be taken to the WCPD jail. Requests in route to county jail can be handled at that facility.

### 705.2.5 ESCAPE

Should a prisoner escape during detention or transport, the transporting officer should do the following:

- (a) Notify dispatch, who in turn will notify the law enforcement agency having jurisdiction where the escape occurred, if different than ours.
- (b) Notify the shift supervisor
- (c) Coordinate a search

### 705.2.6 MAINTENANCE

The van should be cleaned and ready for use at the end of each shift. Debris and bio hazards should be removed, cleaned and the passenger area dried before parking the van for the day. The facilities at the corporation yard or Crime Scene Cleaners are options for cleaning the van.

Any property or contraband located at the end of a transport shall be booked into evidence/custody at the Walnut Creek Police Department.

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# Personal Protective Equipment

## 706.1 PURPOSE AND SCOPE

This policy identifies the different types of personal protective equipment (PPE) provided by the Department as well the requirements and guidelines for the use of PPE.

This policy does not address ballistic vests or protection from communicable disease, as those issues are addressed in the Body Armor and Communicable Diseases policies.

### 706.1.1 DEFINITIONS

Definitions related to this policy include:

**Personal protective equipment (PPE)** - Equipment that protects a person from serious workplace injuries or illnesses resulting from contact with chemical, radiological, physical, electrical, mechanical or other workplace hazards.

**Respiratory PPE** - Any device that is worn by the user to protect from exposure to atmospheres where there is smoke, low levels of oxygen, high levels of carbon monoxide, or the presence of toxic gases or other respiratory hazards. For purposes of this policy, respiratory PPE does not include particulate-filtering masks such as N95 or N100 masks.

## 706.2 POLICY

The Walnut Creek Police Department endeavors to protect members by supplying certain PPE to members as provided in this policy.

## 706.3 OFFICER RESPONSIBILITIES

Members are required to use PPE as provided in this policy and pursuant to their training.

Members are responsible for proper maintenance and storage of issued PPE. PPE should be stored in an appropriate location so that it is available when needed.

Any member who identifies hazards in the workplace is encouraged to utilize the procedures in the Illness and Injury Prevention Policy to recommend new or improved PPE or additional needs for PPE.

## 706.4 HEARING PROTECTION

Approved hearing protection shall be used by members during firearms training.

Hearing protection shall meet or exceed the requirements provided in 8 CCR 5098.

## 706.5 EYE PROTECTION

Approved eye protection, including side protection, shall be used by members during firearms training. Eye protection for members who wear prescription lenses shall incorporate the prescription (e.g., eye protection that can be worn over prescription lenses). Members shall ensure their eye protection does not interfere with the fit of their hearing protection.

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The Firearms Team shall ensure eye protection meets or exceeds the requirements provided in 8 CCR 3382.

### **706.6 HEAD AND BODY PROTECTION**

Members who make arrests or control crowds should be provided ballistic head protection with an attachable face shield.

Padded body protection consisting of chest, arm, leg and groin protection should be provided as required by any collective bargaining agreement.

### **706.7 RESPIRATORY PROTECTION**

The Administration Bureau Commander is responsible for ensuring a respiratory protection plan is developed and maintained by a trained and qualified member. The plan shall include procedures for (8 CCR 5144):

- (a) Selecting appropriate respiratory PPE based on hazards and risks associated with functions or positions.
- (b) Fit testing, including identification of members or contractors qualified to conduct fit testing.
- (c) Medical evaluations.
- (d) PPE inventory control.
- (e) PPE issuance and replacement.
- (f) Cleaning, disinfecting, storing, inspecting, repairing, discarding and otherwise maintaining respiratory PPE, including schedules for these activities.
- (g) Regularly reviewing the PPE plan.
- (h) Remaining current with applicable National Institute for Occupational Safety and Health (NIOSH), American National Standards Institute (ANSI), Occupational Safety and Health Administration (OSHA), Environmental Protective Agency (EPA) and state PPE standards and guidelines.

#### **706.7.1 RESPIRATORY PROTECTION USE**

Designated members may be issued respiratory PPE based on the member's assignment (e.g., a narcotics investigator who is involved in clandestine lab investigations).

Respiratory PPE may be worn when authorized by a scene commander who will determine the type and level of protection appropriate at a scene based upon an evaluation of the hazards present.

Scene commanders are responsible for monitoring members using respiratory PPE and their degree of exposure or stress. When there is a change in work area conditions or when a member's degree of exposure or stress may affect respirator effectiveness, the scene commander shall reevaluate the continued effectiveness of the respirator and direct the member to leave the respirator use area when the scene commander reasonably believes (8 CCR 5144):

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- (a) It is necessary for the member to wash his/her face and the respirator facepiece to prevent eye or skin irritation associated with respirator use.
- (b) The member detects vapor or gas breakthrough, or there is a change in breathing resistance or leakage of the facepiece.
- (c) The member needs to replace the respirator, filter, cartridge or canister.

### 706.7.2 MEMBER RESPONSIBILITIES FOR RESPIRATORY PROTECTION

Members shall not use self-contained breathing apparatus (SCBA), full-face respirators or cartridge respirators unless they have completed training requirements for the equipment.

Members exposed to environments that are reasonably known to be harmful due to gases, smoke or vapors shall use respiratory PPE.

Members using respiratory PPE shall (8 CCR 5144):

- (a) Ensure that they have no facial hair between the sealing surface of the facepiece and the face that could interfere with the seal or the valve function. Members also shall ensure that they have no other condition that will interfere with the face-to-facepiece seal or the valve function.
- (b) Not wear corrective glasses, goggles or other PPE that interferes with the seal of the facepiece to the face, or that has not been previously tested for use with that respiratory equipment.
- (c) Perform a user seal check per department-approved procedures recommended by the respirator manufacturer each time they put on a tight-fitting respirator.
- (d) Leave a respiratory use area whenever they detect vapor or gas breakthrough, changes in breathing resistance or leakage of their facepiece and ensure that the respirator is replaced or repaired before returning to the affected area.

### 706.7.3 GAS MASK

Full-face air-purifying respirators, commonly referred to as gas masks, may be fitted with mechanical pre-filters or combination cartridge/filter assemblies for use in areas where gases, vapors, dusts, fumes or mists are present. Members must identify and use the correct cartridge based on the circumstances (8 CCR 5144).

A scene commander may order the use of gas masks in situations where the use of a SCBA is not necessary. These incidents may include areas where tear gas has or will be used or where a vegetation fire is burning. Gas masks shall not be used if there is a potential for an oxygen-deficient atmosphere.

Members shall ensure their gas mask filters are replaced whenever:

- (a) They smell, taste or are irritated by a contaminant.
- (b) They experience difficulty breathing due to filter loading.
- (c) The cartridges or filters become wet.
- (d) The expiration date on the cartridges or canisters has been reached.

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### 706.7.4 SELF-CONTAINED BREATHING APPARATUS

Scene commanders may direct members to use SCBA when entering an atmosphere that may pose an immediate threat to life, would cause irreversible adverse health effects or would impair an individual's ability to escape from a dangerous atmosphere. These situations may include, but are not limited to:

- (a) Entering the hot zone of a hazardous materials incident.
- (b) Entering any area where contaminant levels may become unsafe without warning, or any situation where exposures cannot be identified or reasonably estimated.
- (c) Entering a smoke- or chemical-filled area.

The use of SCBA should not cease until approved by a scene commander.

### 706.7.5 RESPIRATOR FIT TESTING

No member shall be issued respiratory PPE until a proper fit testing has been completed by a designated member or contractor (8 CCR 5144).

After initial testing, fit testing for respiratory PPE shall be repeated (8 CCR 5144):

- (a) At least once every 12 months.
- (b) Whenever there are changes in the type of SCBA or facepiece used.
- (c) Whenever there are significant physical changes in the user (e.g., obvious change in body weight, scarring of the face seal area, dental changes, cosmetic surgery or any other condition that may affect the fit of the facepiece seal).

All respirator fit testing shall be conducted in negative-pressure mode.

### 706.7.6 RESPIRATORY MEDICAL EVALUATION QUESTIONNAIRE

No member shall be issued respiratory protection that forms a complete seal around the face until (8 CCR 5144):

- (a) The member has completed a medical evaluation that includes a medical evaluation questionnaire.
- (b) A physician or other licensed health care professional has reviewed the questionnaire.
- (c) The member has completed any physical examination recommended by the reviewing physician or health care professional.

## **706.8 RECORDS**

The Training Manager is responsible for maintaining records of all:

- (a) PPE training.
- (b) Initial fit testing for respiratory protection equipment.
- (c) Annual fit testing.
- (d) Respirator medical evaluation questionnaires and any subsequent physical examination results.

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1. These records shall be maintained in a separate confidential medical file.

The records shall be maintained in accordance with the department records retention schedule and 8 CCR 5144.

### **706.9 TRAINING**

Members should be trained in the respiratory and other hazards to which they may be potentially exposed during routine and emergency situations.

All members shall be trained in the proper use and maintenance of PPE issued to them, including when the use is appropriate; how to put on, remove and adjust PPE; how to care for the PPE; and the limitations (8 CCR 3380).

Members issued respiratory PPE shall attend annual training on the proper use of respiratory protection devices (8 CCR 5144).

## **Chapter 8 - Support Services**

## Dispatch

### 800.1 PURPOSE AND SCOPE

This policy establishes guidelines for the basic functions of Dispatch. It addresses the immediate information needs of the Department in the course of its normal daily activities and during emergencies.

#### 800.1.1 FCC COMPLIANCE

Walnut Creek Police Department radio operations shall be conducted in accordance with Federal Communications Commission (FCC) procedures and guidelines.

The Executive Lieutenant is responsible for overall radio system license and equipment management. The Police Services Supervisor(s) and Dispatch Leads are responsible for supervising employee use of the system.

### 800.2 POLICY

It is the policy of the Walnut Creek Police Department to provide 24-hour telephone service to the public for information and for routine or emergency assistance. The Department provides two-way radio capability providing continuous communication between Dispatch and department members in the field.

#### 800.2.1 COMMUNICATIONS LOG

It shall be the responsibility of Dispatch to record all relevant information on calls for criminal and non-criminal service or self-initiated activity. Employees shall attempt to elicit as much information as possible to enhance the safety of the officer and assist in anticipating conditions to be encountered at the scene.

- Calls for service will be assigned one of three priorities. The timeliness of dispatching and responding to calls will be based on the assigned priority, which should be determined by considering the following:
  - The severity of the incident
  - The likelihood of injury or property damage
  - The possibility of apprehending suspects or recovering property
  - The possibility that evidence may be lost, destroyed, or damaged
  - The probability that, if response is delayed, a crime may go undetected or unreported
- "Priority One," are calls that meet the following criteria:
  - Serious injury is likely or imminent
  - The call is an "in progress" felony
  - The call is an "in progress" domestic violence



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- To increase the possibility of apprehending a fleeing felon
  - Priority One calls should be dispatched, as soon as possible, as information is being received. Dispatchers should update information to responding officers as it is received. An officer response time of less than five minutes is our goal.
- "Priority Two," are calls that meet the following criteria:
  - Urgent but not emergencies
  - Alarm calls
  - When rapid response increases the chances of apprehending a fleeing suspect
  - Misdemeanors in progress, or when vehicle traffic is blocked
    - Dispatchers should broadcast information about the call as soon as possible after receiving it. An officer response time of less than seven minutes is our goal.
- "Priority Three," are all other calls that do not meet the above criteria:
  - Dispatchers should assign these calls within thirty minutes, and officers should arrive within thirty minutes of being dispatched.
    - Dispatchers should notify the reporting party if response is expected to exceed thirty minutes.

### **800.3 RADIO COMMUNICATIONS**

Operations are more efficient and officer safety is enhanced when dispatchers, supervisors, and fellow officers know the status of officers, their locations and the nature of cases.

- The following procedures, when followed, should enhance safety:
  - (a) Use radios only for necessary transmissions.
  - (b) Employees should always inform dispatch of their location and activities, whether transmitted by voice or MDT.
  - (c) When stopping vehicles or pedestrians, employees should radio information about the stop to dispatch by voice. Employees should always inform dispatch of needs for assistance.
  - (d) Dispatchers are responsible for prioritizing radio and telephone communications. During emergencies, dispatchers should be aware of radio before telephone traffic.
  - (e) To enhance officer and public safety, "Code 33" is intended to eliminate unnecessary radio traffic on specified channels during significant crime calls and certain other emergencies. It should be used during "in-progress" felonies,

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pursuits, Priority One calls involving weapons or safety issues, or to reserve a radio channel for events such as a search warrant service or a dignitary visit. "Code 33's" should primarily be done on the main channel for safety reasons. Use of "Code 33" for other events and using the secondary channel should be individually evaluated based on the need for immediate, uninterrupted radio communications.

- (a) A "Code 33" may be initiated by dispatch, responding officers, or a supervisor. When a "Code 33" is initiated, dispatch will announce the "Code 33" on both radio channels and over the building public address system (including what the "Code 33" is for). Dispatch will then engage the "Code 33" audible tone unless otherwise instructed by units in the field. A "Silent Code 33" should only be used when the audible tone might compromise officer safety. During a "Code 33, radio traffic on the affected WCPD channel will be limited to information related to the event precipitating the "Code 33" and to other emergency transmissions. Even traffic related to the "Code 33" event should be limited to that which is necessary to the call. The "Code 33" should end as soon as practical to allow normal radio traffic to resume.
- (f) Periodically, "Code 3" responses are necessary. All employees shall comply with the guidelines for emergency vehicle operation as outlined in Vehicle Use Policy #706.
- (g) Field units shall decide when a "Code 3" response is appropriate and inform dispatch when responding "Code 3." Dispatch shall immediately inform the patrol supervisor of the "Code 3" response and announce that "Code 3" response over the radio so other units are aware.

### 800.3.1 OFFICER IDENTIFICATION

Identification systems are based on factors such as beat assignment and officer identification numbers. Employees should use the entire call sign when initiating communication whether to dispatch or from dispatch to the field. When first transmitting, always identify yourself with agency, shift, and sector identifiers; for example, 15-X-12, 10-8. The 15 may be deleted in subsequent, related transmissions.

When employees transmit, they must engage the "push-to-talk" switch a moment before talking, to prevent the loss of the first part of their transmission.

Employees initiating communication with other agencies shall use their entire call sign. This requirement does not apply to continuing conversation between the mobile unit and dispatcher or once the mobile unit has been properly identified.

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### 800.3.2 USER GUIDELINES

The F.C.C. periodically monitors radio transmissions. Inappropriate use or violations of F.C.C. rules can result in sanctions against our radio licenses. Therefore, all employees should comply with the following radio procedures:

- (a) Radio communications shall be clear, concise, and professional. Inappropriate comments, jokes, and personal conversation are prohibited.
- (b) Avoid lengthy transmissions. However, should a lengthy transmission be necessary, pause periodically to allow other radio transmissions or to ensure that the transmission is being understood.
- (c) Use radio codes whenever possible to reduce the length of radio transmissions.
- (d) When first transmitting, always identify yourself with agency, shift, and sector identifiers; for example, 15-X-12, 10-
- (e) Patrol and Communications supervisors must monitor radio traffic and ensure compliance with F.C.C. and Walnut Creek Police rules and guidelines.
- (f) Patrol supervisors should audibly acknowledge to dispatch all emergency radio transmissions.

### 800.4 TEAMWORK

- Consistency reduces unnecessary radio traffic and increases understanding and safety.
  - (a) Dispatchers and field units must work as a team, and courtesy and respect are expected. Behaviors such as sarcasm and anger, when expressed on the radio, damage working relationships and diminish others. At no time over the police radio will employees express such behaviors toward other employees, an assignment, or the public.
  - (b) Dispatch will manage calls for service and radio traffic and decide response priorities. When in doubt regarding the priority of a call, a supervisor should be consulted.
  - (c) Dispatch is responsible for assigning calls to field units. While field units may request to respond to or assume responsibility for calls, dispatch will decide who responds. Disagreements should not be aired on the radio. Should a field unit question an assignment, that unit will respond to the call as dispatched and later, if appropriate, discuss the disagreement with the patrol or communications supervisor.
  - (d) Employees should avoid requests that require dispatch to make telephone calls or research their investigations or calls-for-service.

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- (e) When making enforcement stops, whether they are traffic stops, pedestrian stops or suspicious vehicle contacts, officers will inform dispatch of the stop and wait for dispatch to acknowledge before continuing. The details about the stop will be given in the following manner: unit call sign, type of stop, license plate twice- once phonetically and once normal, location and request for cover if needed.
- **Examples:**
    - **Traffic Stop, Code 4:** 15-Y31, 11-95, (eleven ninety-five), Provide plate phonetically 123ABC (123 Adam Boy Charles) (repeat plate 123ABC ), Main/Ygnacio
    - **Pedestrian Stop :** 15-Y31, 11-94, (eleven ninety-four), Main/Ygnacio
  - The officer has 60 seconds in which to advise his/her status. If the officer has not given a status in that time frame, the dispatcher will check the unit's status. At that time, the officer will advise if he/she is code 4, needs an additional unit or may advise no status. The dispatcher will either acknowledge a code 4 status, route an additional unit or if "no status" is specified by the officer, the dispatcher will re-set the timer for an additional 60 seconds and status check the officer a second time. If the officer again advises no status upon the second status check, dispatch should inquire as to whether the officer would like an additional unit.
- (f) When requesting drivers license or records checks, employees will provide dispatch with full names and other identifying information in the following order: last, first, and middle names; date of birth; race and gender; other identifying information, such as drivers license or CII numbers.
- (g) When assigning "priority three" calls, dispatchers will provide the location of the incident, the nature of the call, time of occurrence, name and location of the reporting person, and other information that may be necessary for the employee to locate the reporting person. Employees should avoid asking dispatchers for information they are likely to learn during investigation of the call. Additional information is usually available through the MDT.

## 800.5 RESPONSIBILITIES

### 800.5.1 DISPATCH SUPERVISOR

The Chief of Police shall appoint and delegate certain responsibilities to a Dispatch Supervisor. The Dispatch Supervisor is directly responsible to the Executive Lieutenant Bureau Commander or the authorized designee.

The responsibilities of the Dispatch Supervisor include, but are not limited to:

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- (a) Overseeing the efficient and effective operation of Dispatch in coordination with other supervisors.
- (b) Scheduling and maintaining dispatcher time records.
- (c) Supervising, training and evaluating dispatchers.
- (d) Ensuring the radio and telephone recording system is operational.
  - 1. Recordings shall be maintained in accordance with the established records retention schedule and as required by law.
- (e) Processing requests for copies of Dispatch information for release.
- (f) Maintaining Dispatch database systems.
- (g) Maintaining and updating Dispatch procedures manual.
  - 1. Procedures for specific types of crime reports may be necessary. For example, specific questions and instructions may be necessary when talking with a victim of a sexual assault to ensure that his/her health and safety needs are met, as well as steps that he/she may take to preserve evidence.
  - 2. Ensuring dispatcher compliance with established policies and procedures.
- (h) Handling internal and external inquiries regarding services provided and accepting personnel complaints in accordance with the Personnel Complaints Policy.
- (i) Maintaining a current contact list of City personnel to be notified in the event of a utility service emergency.

### 800.5.2 ADDITIONAL PROCEDURES

The Dispatch Supervisor should establish procedures for:

- (a) Recording all telephone and radio communications and playback issues.
- (b) Storage and retention of recordings.
- (c) Security of audio recordings (e.g., passwords, limited access, authorized reviewers, preservation of recordings past normal retention standards).
- (d) Availability of current information for dispatchers (e.g., Watch Commander contact, rosters, member tracking methods, member contact, maps, emergency providers, tactical dispatch plans).
- (e) Assignment of field members and safety check intervals.
- (f) Emergency Medical Dispatch (EMD) instructions.
- (g) Procurement of external services (e.g., fire suppression, ambulances, aircraft, tow trucks, taxis).
- (h) Protection of essential equipment (e.g., surge protectors, gaseous fire suppression systems, uninterruptible power systems, generators).
- (i) Protection of radio transmission lines, antennas and power sources for Dispatch (e.g., security cameras, fences).
- (j) Handling misdirected, silent and hang-up calls.

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- (k) Handling private security alarms, if applicable.
- (l) Radio interoperability issues.

### **800.5.3 DISPATCHERS**

Dispatchers report to the Dispatch Supervisor. The responsibilities of the dispatcher include, but are not limited to:

- (a) Receiving and handling all incoming and transmitted communications, including:
  - 1. Emergency 9-1-1 lines.
  - 2. Business telephone lines.
  - 3. Telecommunications Device for the Deaf (TDD)/Text Telephone (TTY) equipment.
  - 4. Radio communications with department members in the field and support resources (e.g., fire department, emergency medical services (EMS), allied agency law enforcement units).
  - 5. Other electronic sources of information (e.g., text messages, digital photographs, video).
- (b) Documenting the field activities of department members and support resources (e.g., fire department, EMS, allied agency law enforcement units).
- (c) Inquiry and entry of information through Dispatch, department and other law enforcement database systems (CLETS, DMV, NCIC).
- (d) Monitoring department video surveillance systems.
- (e) Maintaining the current status of members in the field, their locations and the nature of calls for service.
- (f) Notifying the Watch Commander or field supervisor of emergency activity, including, but not limited to:
  - 1. Vehicle pursuits.
  - 2. Foot pursuits.
  - 3. Assignment of emergency response.

### **800.6 CALL HANDLING**

This Department provides members of the public with access to the 9-1-1 system for a single emergency telephone number.

When a call for services is received, the dispatcher will reasonably and quickly attempt to determine whether the call is an emergency or non-emergency, and shall quickly ascertain the call type, location and priority by asking four key questions:

- Where?
- What?
- When?

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- Who?

If the dispatcher determines that the caller has a hearing and/or speech impairment or disability, he/she shall immediately initiate a connection with the individual via available TDD/TTY equipment or Telephone Relay Service (TRS), as mandated by the Americans with Disabilities Act (ADA).

If the dispatcher determines that the caller is a limited English proficiency (LEP) individual, the dispatcher should quickly determine whether sufficient information can be obtained to initiate an appropriate response. If language assistance is still needed, the language is known and a language-appropriate authorized interpreter is available in Dispatch, the dispatcher should immediately connect the LEP caller to the authorized interpreter.

If no authorized interpreter is available or the dispatcher is unable to identify the caller's language, the dispatcher will contact the contracted telephonic interpretation service and establish a three-party call connecting the dispatcher, the LEP individual and the interpreter.

Dispatchers should be courteous, patient and respectful when dealing with the public.

### **800.6.1 EMERGENCY CALLS**

A call is considered an emergency when there is an immediate or potential threat to life or serious property damage, and the timely arrival of public safety assistance is of the utmost importance. A person reporting an emergency should not be placed on hold until the dispatcher has obtained all necessary information to ensure the safety of the responding department members and affected individuals.

Emergency calls should be dispatched immediately. The Watch Commander shall be notified of pending emergency calls for service when department members are unavailable for dispatch.

### **800.6.2 NON-EMERGENCY CALLS**

A call is considered a non-emergency call when there is no immediate or potential threat to life or property. A person reporting a non-emergency may be placed on hold, if necessary, to allow the dispatcher to handle a higher priority or emergency call.

The reporting person should be advised if there will be a delay in the dispatcher returning to the telephone line or when there will be a delay in the response for service.

## **800.7 RADIO COMMUNICATIONS**

The police radio system is for official use only, to be used by dispatchers to communicate with department members in the field. All transmissions shall be professional and made in a calm, businesslike manner, using proper language and correct procedures. Such transmissions shall include, but are not limited to:

- (a) Members acknowledging the dispatcher with their radio identification call signs and current location.
- (b) Dispatchers acknowledging and responding promptly to all radio transmissions.
- (c) Members keeping the dispatcher advised of their status and location.

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- (d) Member and dispatcher acknowledgements shall be concise and without further comment unless additional information is needed.

The Dispatch Supervisor shall be notified of radio procedure violations or other causes for complaint. All complaints and violations will be investigated and reported to the complainant's supervisor and processed through the chain of command.

### **800.8 CONFIDENTIALITY**

Information that becomes available through Dispatch may be confidential or sensitive in nature. All members of Dispatch shall treat information that becomes known to them as confidential and release that information in accordance with the Protected Information Policy.

Automated data, such as Department of Motor Vehicle records, warrants, criminal history information, records of internal police files or medical information, shall only be made available to authorized law enforcement personnel. Prior to transmitting confidential information via the radio, an admonishment shall be made that confidential information is about to be broadcast.

### **800.9 TRAINING AND CERTIFICATION**

Dispatchers shall receive training consistent with minimum standards established by POST (Penal Code § 13510).



## 911 Calls from Cellular Telephones

### 801.1 PURPOSE AND SCOPE

9-1-1 calls from cellular phones are identified and routed differently than calls from landline telephones. Public Safety Answering Point (PSAP) operators and officers responding to emergency calls need to be aware of these differences and the type and level of response that is appropriate or necessary for these types of calls. This Training Bulletin informs dispatchers and officers of the different types of cellular 9-1-1 calls that can be received and provides guidelines for their efficient processing and handling.

### 801.2 GENERAL

Calls generated from cellular telephones are sent by radio waves to the nearest "cell site" or cellular phone system antenna. From there they are transmitted by microwave or hardwire into an interface with the AT&T system. Each "cell site" can cover several square miles of area, depending on the topography of the land.

Federal law requires that Wireless Service Providers deliver any 9-1-1 call originating on their systems to a Public Safety Answering Point. This not only allows the provider's direct customers access to 9-1-1 via their network, it accommodates roaming customers from other providers, and uninitialized wireless phones. However, because the cell phone is not locked to a specific address, the ANI/ALI information sent to the PSAP is different than a landline telephone. Location information is determined by the latitude/longitude coordinates of either the cell site tower or the cell phone, rather than a permanent address assigned to a telephone number.

### 801.3 TYPES OF WIRELESS 9-1-1 CALLS

There are currently three types of wireless 9-1-1 calls that we have the potential of receiving:

- (a) **Phase 1 Calls** provide the PSAP with the cell phone number, the address of the cell tower, and the LAT/LON coordinates of the cell tower. **Phase 1 calls are designated by a W911** in the upper right corner of the ALI screen.
- (b) **Phase 2 Calls** provide the PSAP with the cell phone number, the address of the cell tower, and the LAT/LON coordinates of the cell phone. **Phase 2 calls are designated by a WPH2** in the upper right corner of the ALI screen.
- (c) **Uninitialized Calls** are from cell phones that have no service provider (see below for additional information.) These calls will display on the ANI/ALI screen with a phone number beginning with the prefix "911" followed by the numbers 1234 **(925) 911-1234 or (925) xxx-xxxx**. They may or may not display any additional ANI/ALI information.
- (d) **Fixed Micro-cell Calls** are mini cell phone boosters that consumers can buy to increase cell phone reception in their home. An address may appear if the customer has registered the phone. If the customer moves, but does not update the address, the information on the ALI screen could be outdated. The LAT/LON will likely come back to where the phone was registered, not necessarily where the call is coming

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from. If no voice contact is made, treat this type of call like a Phase 2, being cognizant of the fact that the residents may or may not have made the call.

### 801.4 PROCEDURE

The following are steps that should be taken for the indicated types of calls:

#### 801.4.1 PHASE I AND II CALLS:

- (a) When there is **no indication of a problem**. Dispatchers shall make one attempt to call the number back when the number is provided. If it rings to voice mail; leave a message instructing the caller to call back and stay on the line if they need 911 services. The call will be cleared using the F6 box. No officer is dispatched.
- (b) If the call taker **identifies a problem, or is unsure a problem exists**, a call for service will be created and officers will be dispatched. If the caller was unable to provide an address, the call taker will use the GPS location for phase II calls, or the cell tower location for phase I calls. Call takers shall utilize the "refresh" function to try to obtain the GPS location on phase I calls. Officers will be dispatched to the location in an attempt to locate a problem.
- (c) When there is **clear indication of a problem**, a call for service will be entered using GPS location in the event the caller is unable to provide an address. Furthermore, the call taker will obtain the phone number subscriber information from the cell provider and officers will be dispatched to that location as well. If that address is outside city limit, request the outside agency perform a wellness check at that location. **In any situation where the call taker believes an emergency situation may exist, a call will be created and an officer dispatched**

#### 801.4.2 UNINITIALIZED DEFINED

A phone is considered "uninitialized" under the following circumstances:

- (a) Customer purchases wireless phone services and later discontinues service. The telephone number is removed from the phone by the Wireless Service Provider, but it is still capable of dialing 9-1-1.
- (b) Customer buys a wireless phone, but does not subscribe to a wireless service provider. No telephone number is ever assigned to this phone, but it is still capable of dialing 9-1-1.
- (c) Customer replaces their old wireless phone with a new one, and keeps the old phone. Their number is transferred to the new phone, so the old one no longer has a telephone number assigned to it. It is still capable of dialing 9-1-1.
- (d) Customer donates an old phone to a charity; the charity in turn donates it to an at-risk person, (domestic violence victim, senior citizen, etc.), for use in an emergency. The original telephone number is stripped from this phone, but it is capable of dialing 9-1-1.

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- (e) Customer buys a "9-1-1 only" phone. They generally pay the one-time cost of the phone and no monthly charges. This phone is never assigned a telephone number, but it is still capable of dialing 9-1-1.

In each of these scenarios the phone can dial 9-1-1, but no actual telephone number is displayed. There is no way to call this phone back if the call is disconnected, nor is there any way to identify the caller through the other means that may normally be available, such as through the Wireless Service Provider's customer data base.

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## Property and Evidence

### 802.1 PURPOSE AND SCOPE

This policy provides for the proper collection, storage, and security of evidence and other property. Additionally, this policy provides for the protection of the chain of evidence and those persons authorized to remove and/or destroy property.

### 802.2 DEFINITIONS

**Property** - Includes all items of evidence, items taken for safekeeping and found property.

**Evidence** - Includes items taken or recovered in the course of an investigation that may be used in the prosecution of a case. This includes photographs and latent fingerprints.

**Safekeeping** - Includes the following types of property:

- Property obtained by the Department for safekeeping such as a firearm
- Personal property of an arrestee not taken as evidence
- Property taken for safekeeping under authority of a law (e.g., Welfare and Institutions Code § 5150 (mentally ill persons))

**Found property** - Includes property found by an employee or citizen that has no apparent evidentiary value and where the owner cannot be readily identified or contacted.

### 802.3 PROPERTY HANDLING

- (a) Any employee who first comes into possession of any property, shall retain such property in his/her possession until it is properly booked and tagged and placed in the designated property locker or storage room and a computerized Property Report is created in Versaterm. Care shall be taken to maintain the chain of custody for all evidence.
- (b) Where ownership can be established as to found property with no apparent evidentiary value, such property may be released to the owner without the need for booking. The property release receipt must be completed to document the release of property not booked and the owner shall sign the form acknowledging receipt of the item(s).
- (c) When the Property and Evidence Clerk, or the Property Supervisor, determine an employee has violated this policy they will immediately notify the employee. Exceptions to this rule can be made by a supervisor or manager in rare cases where such notification needs to be delayed or is not necessary.
- (d) All written or electronic notifications from the Property and Evidence Clerk to individual employees regarding violations of policy shall also be copied to the employee's direct supervisor.

#### 802.3.1 PROPERTY BOOKING PROCEDURE

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All property must be booked prior to the employee going off-duty unless otherwise approved by a supervisor. Employees booking property shall observe the following guidelines:

- (a) Complete the computerized property report describing each item of property separately, listing all serial numbers, owner's name, finder's name, and other identifying information or markings.
- (b) Print an evidence/property tag and attach it to each package or envelope in which the property is stored.
- (c) When the property is too large to be placed in a locker, the item may be placed in the oversized storage locker in the Sally Port or in the bicycle storage area at the Corp Yard. Firearms, airsoft rifles, BB guns or Evidence shall not be placed in the oversized storage lockers. An email should be sent promptly to Property personnel notifying them of the location of the property.

#### 802.3.2 NARCOTICS AND DANGEROUS DRUGS

Officers shall be responsible for performing presumptive testing on all suspected narcotics/drugs. Exceptions to this rule are outlined in Training Notice #4.

- (a) Officers shall be responsible for weighing and packaging narcotics/drugs to Contra Costa County Crime Lab standards.
- (b) Employees should always utilize proper PPE when handling, testing, weighing, or packaging suspected narcotics.
- (c) Evidence staff shall transport narcotics/drugs to the Contra Costa County Crime Lab for laboratory analysis, when appropriate.
- (d) Drugs for destruction shall be identified prior to disposal.

#### 802.3.3 EXPLOSIVES

Officers who encounter a suspected explosive device shall promptly notify their immediate supervisor or the Watch Commander. The bomb squad will be called to handle explosive-related incidents and will be responsible for the handling, storage, sampling and disposal of all suspected explosives.

In no case should an unexploded device (other than fixed ammunition) or hazardous materials be transported to or stored in or around the police building or Corp Yard. If hazardous material is located in the field, the Contra Costa County Hazmat Team should be consulted. They may be reached at 925-335-3232.

If an unexploded device is located in the field, the Walnut Creek PD Bomb Squad should be consulted and all such devices will be released to them for disposal.

Should an unexploded firework be deemed secure and stable, the device may be booked into the WCPD Gun Vault and the Bomb Squad notified. The Bomb Squad will then dispose of the device accordingly. Large quantities of fireworks should be turned over to the Contra Costa Consolidated Fire District.

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Evidence recovery of an exploded device should always be photographed as found prior to removal. Each item recovered should be placed in a separate container and marked as to the exact location where it was found.

All flammable liquids from an unused fire bomb (or after it was burned out) must be removed and sealed in a metal container.

Fireworks will be transported to the fire department for destruction.

Class A explosives, such as dynamite, blasting caps, commercial explosives, desensitized nitroglycerin, large quantities of fireworks, and more than one pound of black powder, will not be stored due to inadequate storage facilities. For destruction of these items and/or storage of small quantities, contact the Bomb Team Supervisor for instructions.

(a) **DISPOSAL OF HAZARDOUS MATERIALS/CHEMICALS**

1. The disposal of hazardous materials falls under a number of state and federal statutes. Hazardous materials should not be brought to the Police Department or Warehouse. If hazardous materials are located in the field, Contra Costa County Hazmat should be called to respond.
2. County Hazmat will respond to the following incidents:
  - Chemical spills
  - Toxic releases
  - Drug labs
3. County Hazmat is available to provide the following services:
  - 24-hour/7-day technical assistance
  - Identification of unknown substances
  - Health hazard information
  - Cleanup oversight
  - Community Warning System activation
  - Community Alert Network
4. **County Hazmat**
  - (a) 4585 Pacheco Blvd. Suite 100, Martinez, CA 94553
  - (b) General Phone Number: 925-335-3200
  - (c) 24 hour Emergency Phone Number (for any hazardous materials emergency): 925-335-3232

If the Police Department comes into possession of hazardous waste, County Hazmat should be contacted.

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Citizens may be referred to County Hazmat or the Central Sanitation District's Household hazardous waste location in Pacheco. They are located at 5019 Imhoff Place Martinez, CA and the phone number is (925) 228-9500.

The Walnut Creek Police Department Bomb Squad is also knowledgeable on hazardous materials and may be contacted for advice.

Additionally, the California State Office of Emergency Services may be contacted on its 24-hour hotline. The number is (800) 852-7550.

### **802.3.4 EXCEPTIONAL HANDLING**

Certain property items require a separate process. The following items shall be processed in the described manner:

- (a) Bodily fluids such as blood or semen stains shall be air dried prior to booking
- (b) License plates found not to be stolen or connected with a known crime, should be released directly to the Evidence Technician, or placed in the designated container for return to the Department of Motor Vehicles. No formal property booking process is required
- (c) All bicycles and bicycle frames require a property record. Property tags will be securely attached to each bicycle or bicycle frame. The property will be placed in the bicycle storage area at the Corp Yard.
- (d) All cash shall be counted in the presence of two employees and the envelope initialed by the booking officer and the witness employee

### **802.4 PACKAGING OF PROPERTY**

Certain items require special consideration and shall be booked separately as follows:

- (a) Narcotics and dangerous drugs
- (b) Firearms (ensure they are unloaded and booked separately from ammunition)
- (c) Property with more than one known owner
- (d) Paraphernalia as described in Health and Safety Code § 11364
- (e) Fireworks
- (f) Contraband

#### **802.4.1 PACKAGING CONTAINER**

Employees shall package all property, except narcotics and dangerous drugs in a suitable container available for its size. Knife boxes should be used to package knives, and syringe tubes should be used to package syringes and needles.

A property tag shall be securely attached to the outside of all items.

#### **802.4.2 PACKAGING NARCOTICS**

The officer seizing narcotics and dangerous drugs shall retain such property in their possession until it is properly weighed, packaged, tagged, and placed in a property locker. Prior to packaging

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and if the quantity allows, a presumptive test should be made on all suspected narcotics. Exceptions to this rule are outlined in Training Notice #4. If conducted, the results of this test shall be included in the officer's report.

Narcotics and dangerous drugs shall be packaged in a narcotics envelope. The booking officer shall initial the sealed envelope. If the quantity exceeds the envelope size, the officer shall complete a narcotics envelope and attach it to the outside of a suitable container. Narcotics and dangerous drugs shall not be packaged with other property. If the suspected narcotics are hazardous, such as fentanyl, they should be double bagged prior to being placed into a narcotics envelope.

A completed property tag shall be attached to the outside of the envelope or container. The chain of evidence shall be recorded on the envelope.

### **802.5 TEMPORARY LOCKERS**

#### 1) Temporary Lockers in the Property and Evidence Room

a. Temporary lockers are to be used for no more than SEVEN days. Extensions may be granted by a supervisor. The approving supervisor shall notify the Property and Evidence Clerk and Property Supervisor in writing or email of any extensions as soon as possible.

b. Officers using temporary lockers shall maintain custody and control of the Temporary locker key at all times except when the locker contains items for immediate release.

c. All Narcotics, Currency, and Firearms shall be booked into Evidence by the end of shift. On occasion, these items may be placed into a temporary locker with supervisor approval.

d. After seven days, if property or evidence remains in a temporary locker the Property and Evidence Clerk will immediately send the employee and their supervisor an email informing them they are in violation of policy and to remove the property from the temporary locker or obtain approval for an extension. If notice is given to the employee in person a follow-up email shall be sent to the supervisor.

e. The employee placing property into a temporary locker is responsible for completing all information on the white board attached to the locker. This includes officer name, case number, and date. If there is no case number the employee should write an incident number. Case and incident numbers from outside agencies would also apply and should be noted if there is no WCPD number. If there is not an assigned number the employee shall write "none". If the Property and Evidence Clerk locates items in a temporary locker with missing information on the white board they shall immediately notify the on-duty watch commander in person or via email. If it is via email the Property Supervisor shall also be copied on the message.

f. Temporary holding cells in the jail are not to be used to store property or evidence of any kind without written permission from the Administration Division Captain or Investigations Bureau Commander. In the event the Investigations Bureau Commander grants permission to use a cell



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for storage he or she will immediately write the Administration Division Captain a memorandum indicating permission was granted and the reasons why.

### 2) Temporary Lockers in the Investigations Bureau:

- a. Temporary lockers are to be used for no more than SEVEN days. Extensions may be granted by a supervisor.
- b. Officers using Temporary lockers shall maintain custody and control of the Temporary locker key at all times except when the locker contains items for immediate release.
- c. All Narcotics, Currency, and Firearms shall be booked into Evidence by the end of shift. On occasion, these items may be placed into a temporary locker in the Property and Evidence room with supervisor approval. Temporary lockers in the investigations bureau shall not be used to store narcotics, currency, or firearms.
- d. The employee placing property into a temporary locker is responsible for completing all information on the window of the locker. This includes officer name, case number, and date.

### **802.6 PROPERTY CONTROL**

Each time the Evidence Technician receives property or releases property to another person, he/she shall enter this information on the property control card. Officers desiring property for court shall contact the Evidence Technician at least one day prior to the court day.

#### **802.6.1 RESPONSIBILITY OF DEPARTMENT PERSONNEL**

Every time property is released or received, an appropriate entry in the storage control screen of the property report shall be completed to maintain the chain of possession. No property or evidence is to be released without first receiving written authorization from a supervisor, detective or investigating officer (except for found property and safekeeping property which may be released by the Property Clerk).

Request for analysis for items other than blood, narcotics or drugs shall be completed on the appropriate forms and submitted to the Evidence Technician. This request may be filled out any time after booking of the property or evidence.

#### **802.6.2 TRANSFER OF EVIDENCE TO CRIME LABORATORY**

The transporting employee will check the evidence out of property on the computerized property report.

The lab forms will be transported with the property to the examining laboratory. Upon delivering the item involved, the item will be scanned into the Crime Lab's computerized system.

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#### 802.6.3 STATUS OF PROPERTY

Each person receiving property will make the appropriate entry to document the chain of evidence. Temporary release of property to officers for investigative purposes, or for court, shall be noted in the computerized property report.

The Evidence Technician shall obtain the signature of the person to whom property is released, and the reason for release. Any employee receiving property shall be responsible for such property until it is properly returned to property or properly released to another authorized person or entity.

The return of the property should be recorded in the computerized property report.

#### 802.6.4 AUTHORITY TO RELEASE PROPERTY

The Investigating Officer, Detective Bureau or Property Supervisor shall authorize the disposition or release of all evidence and property coming into the care and custody of the Department. Refer to the WCPD Property Manual for specific instructions concerning the disposition of property and evidence.

#### 802.6.5 RELEASE OF PROPERTY

All reasonable attempts shall be made to identify the rightful owner of found property or evidence not needed for an investigation.

Release of property shall be made upon receipt of an authorized release form, listing the name and address of the person to whom the property is to be released. The release authorization shall be signed by the investigating officer, authorizing supervisor or detective and must conform to the items listed on the property form or must specify the specific item(s) to be released. Release of all property shall be documented on the property release receipt.

With the exception of firearms and other property specifically regulated by statute, found property shall be held for a minimum of 90 days. Safekeeping property shall be held for a minimum of 60 days. During such period, property personnel shall attempt to contact the rightful owner by telephone and/or mail when sufficient identifying information is available. Property not held for any other purpose and not claimed within 90 days after notification (or receipt, if notification is not feasible) may be auctioned to the highest bidder at a properly published public auction. If such property is not sold at auction or otherwise lawfully claimed, it may thereafter be destroyed (Civil Code § 2080.6). The final disposition of all such property shall be fully documented in related reports.

A Evidence Technician shall release the property upon proper identification being presented by the owner for which an authorized release has been received (found and safekeeping property do not require prior authorization). A signature of the person receiving the property shall be recorded on the Property Release Receipt. The Property Release Receipt shall be forwarded to the Records Division for scanning to the case file.

Under no circumstances shall any firearm taken into custody by the police department for any reason be returned to any individual unless and until such person presents valid identification and

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written notification from the California Department of Justice that conforms to the provisions of Penal Code §33865.

The Property and Evidence Unit personnel should also make reasonable efforts to determine whether the person is the subject of any court order preventing the person from possessing a firearm and if so, the firearm should not be released to the person while the order is in effect.

The Department is not required to retain any firearm 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 other deadly weapon may be processed for disposal in accordance with applicable law (Penal Code § 33875).

### 802.6.6 DISPUTED CLAIMS TO PROPERTY

Occasionally more than one party may claim an interest in property being held by the Department, and the legal rights of the parties cannot be clearly established. Such property shall not be released until one party has obtained a valid court order or other undisputed right to the involved property.

All parties should be advised that their claims are civil and in extreme situations, legal counsel for the Department may wish to file an interpleader to resolve the disputed claim (Code of Civil Procedure § 386(b)).

### 802.6.7 RELEASE OF FIREARM IN DOMESTIC VIOLENCE MATTERS

Within five days of the expiration of a restraining order issued in a domestic violence matter that required the relinquishment of a firearm, the Evidence Technician shall return the weapon to the owner if the requirements of Penal Code § 33850 and Penal Code § 33855 are met unless the firearm is determined to be stolen, evidence in a criminal investigation or the individual is otherwise prohibited from possessing a firearm (Family Code § 6389(g); Penal Code § 33855).

### 802.6.8 RELEASE OF FIREARMS AND WEAPONS IN MENTAL ILLNESS MATTERS

Firearms and other deadly weapons confiscated from an individual detained for an evaluation by a mental health professional or subject to the provisions of Welfare and Institutions Code § 8100 or Welfare and Institutions Code § 8103 shall be released or disposed of as follows:

- (a) If a petition for a hearing regarding the return of the weapon has been initiated pursuant to Welfare and Institutions Code § 8102(c), the weapon shall be released or disposed of as provided by an order of the court. If the court orders a firearm returned, the firearm shall not be returned unless and until the person presents valid identification and written notification from the California Department of Justice (DOJ) which conforms to the provisions of Penal Code § 33865.
- (b) If no petition has been initiated pursuant to Welfare and Institutions Code § 8102(c) and the weapon is not retained as evidence, the Department shall make the weapon available for return. No firearm will be returned unless and until the person presents valid identification and written notification from the California DOJ which conforms to the provisions of Penal Code § 33865.

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- (c) Unless the person contacts the Department to facilitate the sale or transfer of the firearm to a licensed dealer pursuant to Penal Code § 33870, firearms not returned should be sold, transferred, destroyed or retained as provided in Welfare and Institutions Code § 8102.

### **802.6.9 RELEASE OF FIREARMS IN GUN VIOLENCE RESTRAINING ORDER MATTERS**

Firearms and ammunition that were taken into temporary custody or surrendered pursuant to a gun violence restraining order shall be returned to the restrained person upon the expiration of the order and in accordance with the requirements of Penal Code § 33850 et seq. (Penal Code § 18120).

If the restrained person who owns the firearms or ammunition does not wish to have the firearm or ammunition returned, he/she is entitled to sell or transfer title to a licensed dealer, provided that the firearms or ammunition are legal to own or possess and the restrained person has right to title of the firearms or ammunition (Penal Code § 18120).

If a person other than the restrained person claims title to the firearms or ammunition surrendered pursuant to Penal Code § 18120 and the Walnut Creek Police Department determines him/her to be the lawful owner, the firearms or ammunition shall be returned in accordance with the requirements of Penal Code § 33850 et seq. (Penal Code § 18120).

Firearms and ammunition that are not claimed are subject to the requirements of Penal Code § 34000.

### **802.7 DISPOSITION OF PROPERTY**

All property not held for evidence in a pending criminal investigation or proceeding, and held for six months or longer where the owner has not been located or fails to claim the property, may be disposed of in compliance with existing laws upon receipt of proper authorization for disposal.

#### **802.7.2 UNCLAIMED MONEY**

If found or seized money is no longer required as evidence and remains unclaimed after three years, the Department shall cause a notice to be published each week for a period of two consecutive weeks in a local newspaper of general circulation (Government Code § 50050). Such notice shall state the amount of money, the fund in which it is held and that the money will become the property of the agency on a designated date not less than 45 days and not more than 60 days after the first publication (Government Code § 50051).

Any individual item with a value of less than \$15.00, or any amount if the depositor/owner's name is unknown, which remains unclaimed for a year or by order of the court, may be transferred to the general fund without the necessity of public notice (Government Code § 50055).

If the money remains unclaimed as of the date designated in the published notice, the money will become the property of this department to fund official law enforcement operations. Money representing restitution collected on behalf of victims shall either be deposited into the Restitution Fund or used for purposes of victim services.

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### 802.7.3 RETENTION OF BIOLOGICAL EVIDENCE

The Property and Evidence Section Supervisor shall ensure that no biological evidence held by the Department is destroyed without adequate notification to the following persons, when applicable:

- (a) The defendant
- (b) The defendant's attorney
- (c) The appropriate prosecutor and Attorney General
- (d) Any sexual assault victim
- (e) The Investigation Bureau supervisor

Biological evidence shall be retained for either a minimum period that has been established by law (Penal Code § 1417.9) or that has been established by the Property and Evidence Section Supervisor, or until the expiration of any imposed sentence that is related to the evidence, whichever time period is greater. Following the retention period, notifications should be made by certified mail and should inform the recipient that the evidence will be destroyed after a date specified in the notice unless a motion seeking an order to retain the sample is filed and served on the Department within 180 days of the date of the notification. A record of all certified mail receipts shall be retained in the appropriate file. Any objection to, or motion regarding, the destruction of the biological evidence should be retained in the appropriate file and a copy forwarded to the Investigation Bureau supervisor.

Biological evidence related to a homicide shall be retained indefinitely and may only be destroyed with the written approval of the Chief of Police and the head of the applicable prosecutor's office.

Biological evidence or other crime scene evidence from an unsolved sexual assault should not be disposed of prior to expiration of the statute of limitations and shall be retained as required in Penal Code § 680. Even after expiration of an applicable statute of limitations, the Investigation Bureau supervisor should be consulted and the sexual assault victim shall be notified at least 60 days prior to the disposal (Penal Code § 680). Reasons for not analyzing biological evidence shall be documented in writing (Penal Code § 680.3).

### 802.8 DOCUMENTATION

- (a) When booking any type of property (including digital evidence), employees SHALL notate what was booked in the EVIDENCE category of their report. All references to both Property and Evidence should be an accurate and factual representation of the actions the employee took.
- (b) When booking digital evidence into Veripic, employees shall notate this in the EVIDENCE category of their report. For example: "15 digital photos of the scene uploaded to Veripic".
- (c) At the end of each calendar year, the Investigations Bureau Commander will conduct an audit of police reports that involved the booking of property or evidence.

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#### **802.9 INSPECTIONS OF THE EVIDENCE ROOM**

- (a) On a monthly basis, the supervisor of the evidence custodian shall make an inspection of the evidence storage facilities and practices to ensure adherence to appropriate policies and procedures.
- (b) Unannounced inspections of evidence storage areas shall be conducted annually as directed by the Chief of Police.
- (c) An annual audit of evidence held by the Department shall be conducted by a Bureau Commander (as appointed by the Chief of Police) not routinely or directly connected with evidence control.
- (d) Whenever a change is made in personnel who have access to the evidence room, an inventory of all evidence/property shall be made by an individual not associated to the property room or function to ensure that records are correct and all evidence property is accounted for.

## Code 666 and BOLO Broadcasts

### 803.1 POLICY

The Walnut Creek Police Department will participate in the county-wide intersection observation plan (Code 666) and use of the Contra Costa County APB Channel, for "Be On the Look-Out" (BOLO) broadcasts.

#### 803.1.1 PURPOSE

The purpose of this policy is to provide guidelines and procedures for the department's participation in a coordinated effort within the county toward the apprehension of suspects fleeing from major crimes.

### 803.2 GUIDELINES

(a) **Code 666 broadcasts** may be made based on the following criteria:

1. **Person Crimes:** All "person felonies" which have occurred within 15 minutes of the broadcast and there is a specific reason to believe that the suspect(s) have fled in a vehicle. All CODE 666 broadcasts must include complete or exceptionally distinctive vehicle description information.
  - Broadcasts may be designated as "ALL COUNTY" or as "REGIONAL" (i.e., EAST, CENTRAL, WEST) as determined by the watch commander.
2. **Property Crimes and Officer Safety:** A "regional" broadcast may be made for "property crime felonies" and/or officer safety incidents which have occurred within 15 minutes of the broadcast and there is specific reason to believe that the suspect(s) have fled in a vehicle.
  - Regional broadcasts shall be made to the region in which the crime was committed. The broadcast may be extended to an adjacent region based on specific information that suggests flight to that area.

(b) **BOLO Broadcasts** may be made for other felony crimes or officer safety incidents which have occurred beyond the 15-minute time period or for which specific vehicle information is not available.

**NOTE: Approval by a supervisor or watch commander is required for all Code 666 and BOLO broadcasts to outside agencies.**

### 803.3 PROCEDURE

#### 803.3.1 IMPLEMENTATION OF THE BROADCAST

The initiating agency will broadcast on the Contra Costa County APB Channel as soon as possible after an incident has occurred.

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## *Code 666 and BOLO Broadcasts*

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- (a) In addition to suspect and/or vehicle descriptions, the broadcast should include time and location of the incident, possible direction of travel of the suspects, information on weapons involved, and information on potential hostages.
- (b) CODE 666 broadcasts may be made with partial information, as long as updates follow as soon as possible.
- (c) If sufficient information cannot be obtained, the broadcast should be canceled. Dispatchers should inform all agencies on the Contra Costa County APB Channel or inform individual agencies for a "regional" or limited broadcast by pressing the appropriate buttons on the console and broadcasting the information. The initiating agency shall request acknowledgment by each receiving agency at the end of the broadcast. Each agency receiving the broadcast shall acknowledge receipt by acknowledging over the Contra Costa County APB Channel or by sending a CLETS message to the initiating agency.



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## *Code 666 and BOLO Broadcasts*

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### 803.3.3 SUSPECT APPREHENSION

Because **CODE 666** broadcasts result from felony violations, there is a significant risk that suspects will use the vehicle they are in to avoid apprehension by approaching officers. Consequently, a pursuit may initiate when an officer attempts to apprehend a suspect as a result of a **CODE 666** broadcast and the involved vehicle fails to comply with the law requiring it to stop.

- (a) Officers involved in a pursuit as a result of a **CODE 666** broadcast shall comply with department policy relating to vehicle pursuits in our directive on Emergency Vehicle Operation.
- (b) Control of vehicle pursuits that traverse multiple jurisdictions and involve officers from multiple agencies shall be established by the procedures set forth in our directive on Emergency Vehicle Operation.

If a suspect is apprehended as a result of this plan, the originating agency shall immediately respond to take custody of the suspect as well as all evidence and property.

If a more serious crime has been committed by the suspect in the jurisdiction of the apprehending agency, the watch commanders or supervisors of the originating and apprehending agencies should negotiate custody, investigative responsibility, and scene processing.

In the event an officer involved injury or death is associated with a **CODE 666** apprehension, venue shall be established as designated in the Officer-Involved Fatal Incident Protocol.

### 803.3.4 CANCELLATION

The originating agency is responsible for canceling any **CODE 666** broadcast, when appropriate, and no later than 20 minutes after the time of the original broadcast.

After 20 minutes, our **CODE 666** broadcasts should be canceled by dispatch unless the watch commander requests an extension. Information on whether or not the suspect(s) and vehicle are still outstanding should be included in the cancellation of the broadcast.

Upon participating for over 20 minutes in a **Code 666** requested by another agency, our dispatch should cancel our units unless the watch commander requests an extension.

### 803.3.5 UNASSIGNED UNIT RESPONSIBILITIES

Those patrol units not specifically assigned to an observation post in the **CODE 666** plan shall continue their normally assigned patrol duties, being cognizant of the wanted vehicle and observing the major traffic arteries through their areas.

### 803.3.6 RECORDING OF CODE 666 AND BOLO BROADCASTS

Dispatch shall create a CAD event for every **CODE 666** or **BOLO** broadcast. The information broadcasted and the action taken should be included in an incident report or in a case report, as required.

## Records Bureau

### 804.1 PURPOSE AND SCOPE

This policy establishes the guidelines for the operational functions of the Walnut Creek Police Department Records Bureau. The policy addresses department file access and internal requests for case reports.

### 804.2 POLICY

It is the policy of the Walnut Creek Police Department to maintain department records securely, professionally, and efficiently.

### 804.3 REQUISITION OF SUPPLIES

All personnel who are in need of supplies should email the Supply Technician with their request. The request shall be approved by a supervisor and then submitted to the Supply Technician in the Records Bureau.

#### 804.3.1 RECORDS MANAGER

The Chief of Police shall appoint and delegate certain responsibilities to a Records Manager. The Records Manager shall be directly responsible to the Administration Bureau Commander or the authorized designee.

The responsibilities of the Records Manager include but are not limited to:

- (a) Overseeing the efficient and effective operation of the Records Bureau.
- (b) Scheduling and maintaining Records Bureau time records.
- (c) Supervising, training, and evaluating Records Bureau staff.
- (d) Maintaining and updating a Records Bureau procedure manual.
- (e) Ensuring compliance with established policies and procedures.
- (f) Supervising the access, use, and release of protected information (see the Protected Information Policy).
- (g) Establishing security and access protocols for case reports designated as sensitive, where additional restrictions to access have been implemented. Sensitive reports may include but are not limited to:
  1. Homicides.
  2. Cases involving department members or public officials.
  3. Any case where restricted access is prudent.

#### 804.3.2 RECORDS BUREAU

The responsibilities of the Records Bureau include but are not limited to:

- (a) Maintaining a records management system for case reports.

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## Records Bureau

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- (a) The records management system should include a process for numbering, identifying, tracking, and retrieving case reports.
- (b) Entering case report information into the records management system.
  - 1. Modification of case reports shall only be made when authorized by a supervisor.
- (c) Providing members of the Department with access to case reports when needed for investigation or court proceedings.
- (d) Maintaining compliance with federal, state, and local regulations regarding reporting requirements of crime statistics. This includes reporting statistical data to the California Department of Justice (DOJ) for:
  - 1. All officer-involved shootings and incidents involving use of force resulting in serious bodily injury (Government Code § 12525.2).
  - 2. Suspected hate crimes (Penal Code § 13023).
  - 3. Complaints of racial bias against officers (Penal Code § 13012; Penal Code § 13020).
  - 4. Civilian complaints made against officers (Penal Code § 832.5; Penal Code § 13012).
  - 5. Stop data required by Government Code § 12525.5 and 11 CCR 999.226.
    - (a) The reported information must not contain personally identifiable information of the person stopped or other information exempt from disclosure pursuant to Government Code § 12525.5 (11 CCR 999.228).
- (e) Maintaining compliance with federal, state, and local regulations regarding criminal history reports and auditing.
- (f) Identifying missing case reports and notifying the responsible member's supervisor.
- (g) Updating the Automated Firearms System to reflect any firearms relinquished to the Department and the subsequent disposition to the DOJ pursuant to Penal Code § 34010 (Penal Code § 29810).
- (h) Entering into the Automated Firearms System information about each firearm that has been reported stolen, lost, found, recovered, held for safekeeping, or under observation within seven calendar days of the precipitating event (Penal Code § 11108.2).
- (i) Maintaining compliance with the state and DOJ reporting requirements regarding the number of transfers of individuals to immigration authorities and offenses that allowed for the transfers (Government Code § 7284.6(c)(2)).

### **804.4 DETERMINATION OF FACTUAL INNOCENCE**

In any case where a person has been arrested by officers of the Walnut Creek Police Department and no accusatory pleading has been filed, the person arrested may petition the Department to destroy the related arrest records. Petitions should be forwarded to the Administration Captain. The Administration Captain should promptly contact the prosecuting attorney and request a written

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opinion as to whether the petitioner is factually innocent of the charges (Penal Code § 851.8). Factual innocence means the accused person did not commit the crime.

Upon receipt of a written opinion from the prosecuting attorney affirming factual innocence, the Administration Captain should forward the petition to the Detective Bureau Supervisor and the City Attorney for review. After such review and consultation with the City Attorney, the Detective Bureau Supervisor and the Administration Captain shall decide whether a finding of factual innocence is appropriate.

Upon determination that a finding of factual innocence is appropriate, the [DivisionAdmin Captain shall ensure that the arrest record and petition are sealed for later destruction and the required notifications are made to the California DOJ and other law enforcement agencies (Penal Code § 851.8).

The Administration Captain should respond to a petition with the Department's decision within 45 days of receipt. Responses should include only the decision of the Department, not an explanation of the analysis leading to the decision.

#### **804.5 FILE ACCESS AND SECURITY**

The security of files in the Records Bureau must be a high priority and shall be maintained as mandated by state or federal law. All case reports including but not limited to initial, supplemental, follow-up, evidence, and any other reports related to a police department case, including field interview (FI) cards, criminal history records, and publicly accessible logs, shall be maintained in a secure area within the Records Bureau, accessible only by authorized members of the Records Bureau. Access to case reports or files when Records Bureau staff is not available may be obtained through the Watch Commander.

The Records Bureau will also maintain a secure file for case reports deemed by the Chief of Police as sensitive or otherwise requiring extraordinary access restrictions.

#### **804.6 ORIGINAL CASE REPORTS**

Generally, original case reports shall not be removed from the Records Bureau. Should an original case report be needed for any reason, the requesting department member shall first obtain authorization from the Records Manager. All original case reports removed from the Records Bureau shall be recorded on a designated report check-out log, which shall be the only authorized manner by which an original case report may be removed from the Records Bureau.

#### **804.7 CONFIDENTIALITY**

Records Bureau staff has access to information that may be confidential or sensitive in nature. Records Bureau staff shall not access, view, or distribute, or allow anyone else to access, view, or distribute any record, file, or report, whether in hard copy or electronic file format, or any other confidential, protected, or sensitive information except in accordance with the Records Maintenance and Release and Protected Information policies and the Records Bureau procedure manual.

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### **804.8 ARREST WITHOUT FILING OF ACCUSATORY PLEADING**

The Patrol Bureau Commander should ensure a process is in place for when an individual is arrested and released and no accusatory pleading is filed so that the following occurs (Penal Code § 849.5; Penal Code § 851.6):

- (a) The individual is issued a certificate describing the action as a detention.
- (b) All references to an arrest are deleted from the arrest records of the Department and the record reflects only a detention.
- (c) The California DOJ is notified.

## Restoration of Firearm Serial Numbers

### 805.1 PURPOSE AND SCOPE

The primary purpose for restoring firearm serial numbers is to determine the prior owners or origin of the item from which the number has been recovered. Thus, property can be returned to rightful owners or investigations can be initiated to curb illegal trade of contraband firearms. The purpose of this plan is to develop standards, methodologies, and safety protocols for the recovery of obliterated serial numbers from firearms and other objects using procedures that are accepted as industry standards in the forensic community. All personnel who are involved in the restoration of serial numbers will observe the following guidelines. This policy complies with Penal Code § 11108.9.

### 805.2 PROCEDURE

Any firearm coming into the possession of the Walnut Creek Police Department as evidence, found property, etc., where the serial numbers have been removed or obliterated will be processed in the following manner:

#### 805.2.1 PRELIMINARY FIREARM EXAMINATION

- (a) Always keep the muzzle pointed in a safe direction. Be sure the firearm is in an unloaded condition. This includes removal of the ammunition source (e.g., the detachable magazine, contents of the tubular magazine) as well as the chamber contents.
- (b) If the firearm is corroded shut or in a condition that would preclude inspection of the chamber contents, treat the firearm as if it is loaded. Make immediate arrangements for a firearms examiner or other qualified examiner to render the firearm safe.
- (c) Accurately record/document the condition of the gun when received. Note the positions of the various components such as the safeties, cylinder, magazine, slide, hammer, etc. Accurately record/document cylinder chamber and magazine contents. Package the ammunition separately.
- (d) If the firearm is to be processed for fingerprints or trace evidence, process before the serial number restoration is attempted. First record/document important aspects such as halos on the revolver cylinder face or other relevant evidence that might be obscured by the fingerprinting chemicals.

#### 805.2.2 PROPERTY BOOKING PROCEDURE

Any employee taking possession of a firearm with removed/obliterated serial numbers shall book the firearm into property following standard procedures. The employee booking the firearm shall indicate in the computerized Property Report entry that serial numbers have been removed or obliterated.

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### 805.2.3 OFFICER RESPONSIBILITY

The property clerk receiving a firearm when the serial numbers have been removed or obliterated shall consult with a Detective Sergeant to determine if the firearm should be sent to the crime lab for restoration. If so, the property clerk shall arrange for the firearm to be transported to the crime lab for restoration and maintain the chain of evidence.

### 805.2.4 DOCUMENTATION

Case reports are prepared in order to document the chain of custody and the initial examination and handling of evidence from the time it is received/collected until it is released.

This report must include a record of the manner in which and/or from whom the firearm was received. This may appear on the request form or property form depending on the type of evidence.

### 805.2.5 FIREARM TRACE

After the serial number has been restored (or partially restored) by the criminalistics laboratory, the Evidence Technician will complete a Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) National Tracing Center (NTC) Obliterated Serial Number Trace Request Form (ATF 3312.1-OBL) and forward the form to the NTC in Falling Waters, West Virginia or enter the data into the ATF eTrace system.

## **805.3 BULLET AND CASING IDENTIFICATION**

Exemplar bullets and cartridge cases from the firearm, depending upon acceptance criteria and protocol, may be submitted to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) National Integrated Ballistic Information Network (NIBIN) which uses the Integrated Ballistic Identification System (IBIS) technology to search the national database and compare with ballistic evidence recovered from other crime scenes.

# Voiding, Dismissal or Amendment of a Notice to Appear, Notice of Parking Violation or Notice to Correct

## 806.1 POLICY

It is the policy of the Walnut Creek Police Department to submit all citations issued by department employees to the court in compliance with California Vehicle Code sections 40202, 40500, and 40610. Parking citations will be submitted to the company contracted for this service. Voids or requests for dismissal of citations should only be for those instances where a set of facts clearly demonstrates that such action is in the public interest or the interest of justice. Requests for amendments should be made to correct any inaccuracies or incorrect information on the citation.

### 806.1.1 PURPOSE

The purpose of this policy is to accomplish the following:

- (a) Provide clear direction that all citations shall be processed to the court, except for special situations as described in this directive.
- (b) Establish guidelines as to when a citation may be amended, voided, or a request for dismissal may be made.
- (c) Provide for documentation of citation amendment, voiding, or a request for dismissal.
- (d) Establish a chain of authority to amend, void, or request dismissal of a citation.
- (e) Establish a records procedure for the processing of all citations that have been amended, voided, or dismissed at the request of the department.
- (f) Provide a procedure that meets the requirement of Vehicle Code sections 40202, 40500, and 40610.

## 806.2 DEFINITIONS

The statute identifies two categories of citations: those that have been issued and those that have not been issued.

The term "done" as it relates to the Autocite means that the information for the parking citation was entered into the Autocite and the "done" button has been pushed.

An Autocite is an electronic parking ticket device that stores the vehicle and violation information and prints out a hard copy of a parking citation.

- (a) Issued Citations: A citation is considered **issued** when: (1) a notice of parking violation is placed on the violator windshield or information is "saved" in the Autocite; (2) a notice to appear (traffic and misdemeanor citations), or a notice to correct is signed and a copy is handed to the violator. Issued citations cannot be altered, voided, or dismissed except by following the procedure in Section 809.3. Once a notice to



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appear is issued, it **must** be filed with the court (Walnut Creek Superior Court). Any requests for dismissals, voids, or corrections must be in writing, including the reasons, to the court. A violation of the Vehicle Code sections covered in this procedure is a misdemeanor.

- (b) Citations Not Issued : A citation is considered **not issued** when: (1) a notice of parking violation has not yet been attached to the violator vehicle or the information has not been "saved" to the Autocite; (2) a notice to appear or notice to correct has **not** been handed to the violator. Any requests for dismissal, voids, or corrections may be handled within the department according to this procedure.

### 806.3 PROCEDURE

(a) **Notice to Appear**

1. A single procedure to void or amend "issued" or "non-issued" notices to appear is established as follows:
2. If an officer desires to void, dismiss, or amend a notice to appear, he/she must complete WCPD form #204 (form 204A for dismissals or voids and form 204B for amendments). The requesting officer must check the "Citation Issued Yes or No" box on form 204A. The citation number, the reason for the request, and the issuer/requestor's initials must also be entered.
3. **Dismissals**
  - (a) The officer must submit form 204A with all copies of a "non-issued citation" to his/her supervisor. The supervisor will review the request and upon approval, initial and forward to the operations Captain. If the operations Captain approves the request, he/she will initial and forward it to the Records Bureau. The Records Bureau staples the original form (204A) to the citation file copy (hard copy) and files it in the citation file. All other copies of form 204A and the citation are destroyed. Records shall note on the hard copy that all other copies have been destroyed.
  - (b) Notices to appear that have been "issued" follow the same procedure with the following exceptions. The officer/requestor will forward any copies of the citation he/she has in his possession, but at least the hard copy, with form 204A. (The violator may have his copy and the original may have already been forwarded to the court.) The Records Bureau will staple the first copy of form 204A (yellow copy) to the original copy of the citation and forward it to the court. If the court already has the original copy of the citation, a copy will be made by Records with the yellow copy of 204A attached, and will be forwarded to the court.

4. **Amendments**

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## *Voiding, Dismissal or Amendment of a Notice to Appear, Notice of Parking Violation or Notice to Correct*

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- (a) Requests for amendments are done on form 204B. The same procedures apply to 204B as to 204A. After the original copy of 204B is stapled to the WCPD hard copy of the citation, it is indexed into the automated records system prior to being filed.
  - (b) It is important for "issued" citations that the requestor for a dismissal or amendment completes the postcard side of form 204A or 204B (reverse side of the 204 hard copy). If the cited person's name and address is not known, the registered owner of record should be used. Records will detach the third copy (hard copy) of form 204 and mail it to the cited person.
  - (c) The court is required by law to maintain the amendment and dismissal requests.
- (b) **Notice of Parking Violation** Procedures for issued or non-issued manually written parking citations are the same as described above. However, the original along with the copy of 204A or 204B is routed to the parking citation processing center instead of the court.
- (a) Parking citations generated by the autocite system are amended, voided, or dismissed according to the following procedure.
  - (b) If a parking enforcement officer wishes to void or dismiss an autocite citation, he/she shall attach the original citation to the "Void/Dismissal" form (attached). If the PSO has entered a parking citation into the autocite, up to and including placing it on the vehicle, and the driver immediately confronts the PSO; the PSO has the discretion to void the ticket and issue a warning citation instead. The PSO must enter a reason into the autocite for the voided ticket. The parking supervisor will periodically audit voids. If the information has been transmitted to the processing center, a copy of the dismissal form is forwarded to them after the Operations Captain's approval.
  - (c) Amendments for autocite citations are handled the same way as manually written parking citations.
- (c) **Notice to Correct**
- (a) If proof of correction is sent in by the violator prior to when the original copy is sent to court, the green copy of the citation is stamped "corrected" and is filed by Records and the court copy is destroyed. If the original copy of the notice to correct is forwarded to court, the procedure to amend or dismiss the citation is the same as that described for a notice to appear.

## Criminal Complaint Procedures

### 807.1 PURPOSE AND SCOPE

This Training Bulletin formalizes and standardizes the processes for filing criminal complaints for juvenile and adult crimes involving violations of the Municipal Code and other criminal codes involving misdemeanor or felony violations of law.

### 807.2 JUVENILE AFFIDAVITS (CITATIONS)

With the exception of the California Vehicle Code, a juvenile who commits any misdemeanor or felony is to be issued a Contra Costa County Juvenile Affidavit, and the case referred to the Contra Costa County District Attorney's Office or the Juvenile Probation Department.

The only traffic violations which **must** be referred to the Contra Costa County District Attorney's Office or the Juvenile Probation Department are as follows:

- (a) All felony traffic violations;
- (b) Driving under the influence (CVC 23136, CVC 23140, CVC 23152, or CVC 23153);
- (c) Hit-and-Run collisions (CVC 20002, CVC 20003);
- (d) Reckless driving (CVC 23103);
- (e) Driving when privilege is suspended/revoked (CVC 14601);
- (f) Auto Theft (CVC 10851);
- (g) Vehicle Tampering (CVC 10852);
- (h) All minors detained at Juvenile Hall as a result of a traffic violation (Substantial legal problems such as double jeopardy, and duplication of process and expense, could occur otherwise).
- (i) Where the minor is cited for several violations, one or more of which are within the above categories, all should be referred to Probation Department, and:
- (j) Except as provided above, any offense other than those that a traffic hearing officer is authorized to hear pursuant to Sections 256 and 257 of the Welfare and Institutions Code.

### 807.3 JUVENILE FELONY CASES

#### 807.3.1 JUVENILE ARRESTED FOR FELONY OR MISDEMEANOR AND BOOKED INTO JUVENILE HALL

When a Juvenile is arrested for a ***felony or misdemeanor and IS booked*** into Juvenile Hall, the officer shall:

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- (a) Complete a juvenile affidavit (JH-50). The form is turned over to the Juvenile Hall Staff at the time of booking. The golden "agency copy" is retained and placed in the case jacket.
- (b) Submit a juvenile PC Declaration (ARIES) to the Juvenile Hall staff at the time of booking.
- (c) Complete a Juvenile Felony Packet. This includes a Juvenile Disposition form (JUS 8716), a witness roster (DA-350), Detective Follow-up request (WCPD #503), and a copy of the written report and all supporting documents.
- (d) Include a completed Request for Prosecution sheet (#DA300); separate form of in-custody and out of custody.
- (e) The written report must be sent to the District Attorney's Office - Juvenile Division as soon as possible. This can be done by fax. The juvenile is entitled to a detention hearing within 48 hours.

### 807.3.2 JUVENILE ARRESTED FOR FELONY AND NOT BOOKED INTO JUVENILE HALL

When a juvenile is arrested for a ***felony and NOT booked*** into Juvenile Hall, the officer shall:

- (a) Complete a juvenile affidavit (JH-50). The green "Juvenile Hall" copy of the affidavit will be given to the juvenile or parent(s)/guardian(s). If the Juvenile Affidavit is completed out of the presence of the juvenile or parent(s)/guardian(s), the officer shall write "mailed" on the signature line. The officer shall mail the green copy to the parent(s)/guardian(s).
- (b) Complete a felony packet, which includes; the Juvenile Affidavit (J-50), a Juvenile Disposition form (JUS 8716), a witness roster (DA-350), Detective Follow-up request (WCPD #503), and a copy of the report and all supporting documents.
- (c) Include a completed Request for Prosecution sheet (#DA300); separate form of in-custody and out of custody.
- (d) The Detective Bureau will file the case with the District Attorney's Office.

### 807.3.3 JUVENILE ARRESTED FOR MISDEMEANOR AND NOT BOOKED INTO JUVENILE HALL

When a juvenile is arrested for a misdemeanor and NOT booked into Juvenile Hall, the officer shall:

- (a) Complete a Juvenile Affidavit (JH-50). The green "Juvenile Hall" copy of the affidavit will be given to the juvenile or parent(s)/guardian(s). If the Juvenile Affidavit is completed out of the presence of the juvenile or parent(s)/guardian(s), the officer shall write "mailed" on the signature line. The officer shall mail the green copy to the parent(s)/guardian(s).

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- (b) Complete a written report. Attach the Juvenile Affidavit to the report and any supporting documents.
- (c) The Records Bureau will forward the Juvenile Affidavit to the Juvenile Crimes detective.
- (d) The Juvenile Crimes detective will review the report and attach a Juvenile Case Direction form and return the packet to the Records Bureau.
- (e) The Records Bureau will forward the packet to the Juvenile Probation Department.

### **807.4 MISCELLANEOUS JUVENILE INFORMATION**

- (a) **Juvenile Affidavit VS. Notice to Appear (traffic ticket)** - 11357(b) HS and 308(b) PC should be handled on a Notice to Appear. The evidence does not need to go to the lab. All other misdemeanor or felony arrests go on a Juvenile Affidavit. Any narcotic charges require the evidence be sent to the lab.
- (b) **Shoplift Cases** - Felony shoplift cases (487/459) where the juvenile has no priors will most likely be filed as a misdemeanor. However, Juvenile Probation wants all felonies to go through the DA's office. If you arrest a juvenile for a felony shop lifting case please follow the appropriate steps for a felony case (i.e. a felony packet).
- (c) **Juvenile Probation** - Does not accept cases "for review". Any report being sent to probation requires a juvenile affidavit.

### **807.5 WALNUT CREEK MUNICIPAL CODE VIOLATIONS**

All Municipal Code sections are infractions. Some designated sections may also be cited as misdemeanors rather than infractions. Department personnel shall process the violations in the following manner:

- (a) **Infractions**
  1. Enforcement of the Municipal Code infractions shall always be handled on a Notice to Appear citation.
  2. For violations ***committed*** in the officer's presence:
    - (a) The investigating officer will complete a citation and require the defendant's signature.
    - (b) The defendant will be provided a copy of the citation.
    - (c) The citation docket shall be forwarded to the court by the Complaint Clerk, with no additional paperwork (such as charging documents).
  3. For violations ***NOT committed*** in the officer's presence:
    - (a) The citation will not have the defendant's signature and will have the box checked indicating the officer acted on information and belief.

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- (b) The court date on the citation shall be set for at least six weeks in advance to allow the court enough time to process the citation.
- (c) The defendant will not be provided a copy of the citation.
- (d) The Complaint Clerk shall prepare a declaration and shall forward the citation and declaration to the court.

**NOTE:** In rare cases, when the violation is not committed in the officer's presence, it may be appropriate to have the citizen complainant sign the citation in the space identified for the arresting officer.

**NOTE:** If the defendant pleads Not Guilty to an infraction committed in the officer's presence, the court will send a Notice of Trial to the Police Department. The Subpoena Clerk shall see that the subpoena is sent to the Officer.

### **807.6 MISDEMEANOR VIOLATIONS**

Misdemeanor violations can be handled by a formal complaint or by issuing a citation, depending upon the nature of the incident.

When **committed** in the officer's presence:

- (a) The officer may issue the arrested person a citation in the field or charge via complaint.
- (b) The officer completes a WCPD 530 form and notifies the complaint clerk, both electronically.
- (c) The complaint clerk forwards the case to the District Attorney's office.

**NOTE:** When the crime is a retainable offense (and would be retained on the subject's California Criminal History record; a list of retainable offenses is included in this training bulletin and is maintained in the jail), the officer shall physically arrest the subject and the subject shall be booked.

**NOTE:** When the crime is a non-retainable offense (and is not required to be retained on the subject's California Criminal History record), the officer should arrest and book the subject. The subject shall then be released or taken to county jail in accordance with established criteria as listed below under the heading, O. R Releases for Misdemeanors, Warrants, and Bail Procedures. When the case is written, the officer shall complete an electronic Misdemeanor Complaint Request (WCPD form #530). When **NOT committed** in the officer's presence:

- The charging document shall be a complaint signed by either the officer or the citizen.
- The officer completes a WCPD 530 form and notifies the complaint clerk, both electronically.
- The complaint clerk forwards the case to the District Attorney's office.

**NOTE:** If the defendant pleads Not Guilty, the court will send a Notice of Trial to the Police Department. The Subpoena Clerk shall see that the officer is notified of the trial.

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### 807.6.1 CITATIONS IN-LIEU OF COMPLAINTS

In certain rare situations, it may be appropriate to release the subject from the scene with a Notice to Appear citation or, release the subject from the scene without a Notice to Appear and charge the violation via the misdemeanor complaint process below. (Such situations may be based on staffing shortages, increased calls for service, the age, physical and/or mental health of the suspect, or other criteria as determined by the investigating officer.) In such situations, the officer shall advise his/her Sergeant or supervisor as soon as is practical.

The following is a list of violations that can be charged via a Notice to Appear citation (a copy of the Notice to Appear citation must be included in the copy of the case sent to the District Attorney). They are:

- (a) All infractions;
- (b) City/County ordinances;
- (c) HS 11357(b)/11357(c);
- (d) CVC sections 31, 12500, 14601 (without priors), 14601(a), 20002(a), 23103, 23109;
- (e) BP sections 4149, 7020, 25658, 25662
- (f) PC sections 330, 374.4, 415, 602(l). 602(m)

### 807.6.2 MISDEMEANOR ARRESTS NOT COMMITTED IN THE OFFICER'S PRESENCE EXCEPTIONS

There are now numerous situations where a statute allows you to make a warrantless arrest for a misdemeanor--assuming the arrest is supported by probable cause--even though the misdemeanor was not committed in your presence. These include:

- (a) PC 273.6 - Violation of a Domestic Violence Temporary Restraining Order (***Shall Arrest for Violations of Court Protective Orders***)
- (b) PC 243(e)(1) - Battery, where it occurs in a domestic or dating relationship; (***This exception will cover many domestic violence situations where there appears to have been an assault or battery but no protective or restraining order is involved and the victim is less than eager to press charges***)
- (c) CVC 23152 - DUI, where the officer has reasonable cause to believe the subject is indeed the driver (per CVC 40300.5);
- (d) PC 12031 - Possession of a Loaded Firearm in a Public Place;
- (e) Assaults or batteries on school property per 243.5 PC.
- (f) Any misdemeanor suspect who is a juvenile.
- (g) Assault or battery upon a firefighter, emergency medical technician, or mobile intensive care paramedic while that person is on duty engaged in the performance of his or her duties (Pen. Code, § 836.1)

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- (h) Assault or battery was committed upon any person who is 65 years of age or older and who is related to the suspect by blood or legal guardianship (Pen. Code, § 836, subd. (d)).

### 807.6.3 OTHER MISDEMEANORS NOT COMMITTED IN THE OFFICER'S PRESENCE / CITIZEN'S ARRESTS

The officer's responsibility: Once you have "received" the arrestee or otherwise taken custody of him, you have three options:

- (a) Book the suspect into jail (this is the typical disposition for a felony);
- (b) Cite and release the suspect; or
- (c) Simply release him, without issuing a notice to appear. This third option is the way to go when you believe there are "insufficient grounds for making a criminal complaint." (Pen. Code, § 849, subd. (b)(1).)

**Note:** Effective January 1, 2003, Penal Code section 142-- criminal liability for refusing to receive a person subject to arrest--does not apply to section 837 citizen's arrests.

If either the suspect or the victim is not present, or if the victim is not interested in a Citizen's Arrest, the officer shall complete an electronic Misdemeanor Complaint Request form (WCPD #530). The Police Records Clerk will then prepare a misdemeanor complaint docket to be forwarded to the District Attorney. (In cases when a suspect is not arrested or not assigned a court date for any reason, the officer should indicate on the Misdemeanor Complaint Request form that a court date is requested.)

## **807.7 O.R. RELEASES FOR MISDEMEANORS, WARRANTS, AND BAIL PROCEDURES**

### 807.7.1 MISDEMEANOR PROBABLE CAUSE ARRESTS

Section 853.6(l) PC reads: Whenever any person is arrested by a peace officer for a misdemeanor, that person shall be released under the procedures set forth by this chapter unless one of the following is a reason for non-release, in which case the arresting officer shall release the person, or the arresting officer shall indicate, on a form to be established by his or her employing law enforcement agency, which of the following was a reason for non-release:

- (a) The person arrested was so intoxicated that he or she was a danger to himself or herself or to others.
- (b) The person arrested required medical examination or medical care or was otherwise unable to care for his or her own safety.
- (c) The person was arrested under one or more of the circumstances listed in sections 40302 or 40303 of the Vehicle Code.
- (d) There were one or more outstanding arrest warrants for the person.
- (e) The person could not provide satisfactory evidence of personal identification.



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- (f) 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 immediate release of the person arrested.
- (g) There was 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 release of the person arrested.
- (h) The person arrested demanded to be taken before a magistrate or refused to sign the notice to appear.
- (i) There is reason to believe that the person would not appear at the time and place specified in the notice. The basis for this determination shall be specifically stated.

The policy of this department is to release persons arrested for misdemeanors on their own recognizance whenever appropriate.

### 807.7.2 MISDEMEANOR WARRANT ARRESTS

Section 827.1 PC states: A person who is specified or designated in a warrant of arrest for a misdemeanor offense may be released upon the issuance of a citation, in lieu of physical arrest, unless one of the following conditions exists:

- (a) The misdemeanor cited in the warrant involves violence.
- (b) The misdemeanor cited in the warrant involves a firearm.
- (c) The misdemeanor cited in the warrant involves resisting arrest.
- (d) The misdemeanor cited in the warrant involves giving false information to a peace officer.
- (e) The person arrested is a danger to himself or herself or others due to intoxication or being under the influence of drugs or narcotics.
- (f) The person requires medical attention or medical care or was otherwise unable to care for his or her own safety.
- (g) The person has other ineligible charges pending against him or her.
- (h) There is reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be immediately endangered by the release of the person.
- (i) The person refuses to sign the promise to appear.
- (j) The person cannot provide satisfactory evidence of personal identification.
- (k) The warrant of arrest indicates that the person is not eligible to be released on a citation.

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The issuance of a citation under this section shall be undertaken in the manner set forth in section 853.6 to 853.8, inclusive.

The policy of this department is to allow officers in the field to cite release persons detained for misdemeanor warrants, unless one of the above conditions exists. Officers should consider the nature of the violations on the warrant, the amount of bail, the value of having the detainee booked for identification, and the need to remove the detainee from the field.

### 807.7.3 ACCEPTING BAIL

In addition to cash or a bail bond, bail may be posted in the form of a personal check, subject to the positive identification of the maker, plus a credit card, check guarantee card or other form of credit standing. Checks should not be accepted when it is unlikely that such funds exist in the account of the maker, or whenever a supervisor believes the check will not be honored.

Personal checks shall be made out to the court issuing the warrant, and stamped on the reverse side to log identification and credit card information provided by the maker. A rubber stamp is located at the front counter for this purpose. Supervisory approval of all personal checks should be obtained before acceptance.

### 807.7.4 FELONY COMPLAINT DOCKETS

All In-Custody cases must be filed and the defendant arraigned within 48 hours of the time of arrest. If the detectives are going to obtain the complaint, a Follow-Up Request form (WCPD #503) must be submitted to the detectives with the required paperwork; submit this prior to the end of the shift. It is of utmost importance to notify the detectives as soon as possible so arrangements can be made to file the case. If the suspect cannot be arraigned within the 48 hour window, then a Probable Cause to Detain declaration shall be completed and submitted to the appropriate judge for review. PC Declarations are required when a suspect is arrested between 0001 hours Thursday and 1330 hours Sunday. A roster of on-call judges and court fax numbers is maintained in the Police Records department. When an investigation has been completed and a felony complaint is warranted, the officer shall assemble a felony complaint package, consisting of the following:

- (a) Copies of the case
  1. One copy for the Detective Bureau;
  2. Include a photocopy of supporting documents contained in the case file as well as any relevant color photos or photocopies of evidence items.
- (b) Court Date
  1. If the defendant has posted bail, indicate that and include the court date on the follow-up request.
- (c) Criminal History (Rap)
  1. Attach a copy of all defendant criminal histories to the copy for the Detective Bureau.

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2. If the defendant has a manual rap, send a teletype request for the rap. Request an abbreviated rap be sent via teletype on all In-Custody cases. Indicate in the report (or on the follow-up request with an In-Custody) that the manual rap was requested.
  3. If the defendant has no criminal history, still attach the printouts as described above.
- (d) Parole and Probation
1. Determine if the defendant is on parole. If the defendant is in custody and on parole, call Parole immediately for a parole hold; the 24-hour number is in the investigators directory. Note the results on the follow-up form.
  2. If the defendant is on probation, notify the Probation office. This can be done during business hours. If a probation hold is put on the defendant, note the results on the follow-up form.
  3. If it is non-business hours, make a note on the follow-up request form for the detective to call Probation.
- (e) Clerical Forms
1. Include a completed Request for Prosecution sheet (#DA300); separate form of in-custody and out of custody.
  2. Include a completed Witness Roster (#DA350). The primary investigating officer shall be listed as witness #1, with other involved officers as #2, #3, etc., and then civilian witness numbered sequentially. The defendant(s) shall be listed in the top portion of each page of the witness roster. Make sure to briefly describe what information the witness will testify to in the appropriate space. Include witnesses' CDL, DOB, and sex/race information in the provided space. Include complete contact information, including an alternate contact when possible. In cases providing confidentiality to the victim, complete the Victim Witness sheet.
  3. Include a Bail Form (DET 087:FRM) with the defendant's name and date of birth at the top of the page. Do not fill in the charges or bail. (This will be filled in after the charges are determined by the DA and the complaint is signed by a judge.) Fill in the arresting officer's name and badge number and the WCPD report number at the bottom of the page.
  4. Include a County Booking Reimbursement form (WCPD CR-144).
  5. Complete an electronic Detective Follow Up Request form (WCPD #503).
  6. When the detective bureau receives the felony packet, the detective shall assemble the case as follows:
    - (a) One copy for the District Attorney;

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- (b) One copy for the court for each defendant;
- (c) One copy for each defendant;
- (d) One copy for the Probation Department.
- (e) Recent case precedent has dictated that defendants now receive copies of everything.
  - This includes their own criminal histories (see #3, above), **BUT NOT THE CRIMINAL HISTORIES OF OTHER DEFENDANTS IN THE CASE.** Do not attach copies of DMV or alpha printouts to the court or defendant case copies, unless it is part of the probable cause for arrest (i.e. a warrant). The detective will make arrangements with the District Attorney to present the case.

## Protected Information

### 808.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the access, transmission, release and security of protected information by members of the Walnut Creek Police Department. This policy addresses the protected information that is used in the day-to-day operation of the Department and not the public records information covered in the Records Maintenance and Release Policy.

#### 808.1.1 DEFINITIONS

Definitions related to this policy include:

**Protected information** - Any information or data that is collected, stored or accessed by members of the Walnut Creek Police Department and is subject to any access or release restrictions imposed by law, regulation, order or use agreement. This includes all information contained in federal, state or local law enforcement databases that is not accessible to the public.

### 808.2 POLICY

Members of the Walnut Creek Police Department will adhere to all applicable laws, orders, regulations, use agreements and training related to the access, use, dissemination and release of protected information.

### 808.3 RESPONSIBILITIES

The Chief of Police shall select a member of the Department to coordinate the use of protected information.

The responsibilities of this position include, but are not limited to:

- (a) Ensuring member compliance with this policy and with requirements applicable to protected information, including requirements for the National Crime Information Center (NCIC) system, National Law Enforcement Telecommunications System (NLETS), Department of Motor Vehicle (DMV) records and California Law Enforcement Telecommunications System (CLETS).
- (b) Developing, disseminating and maintaining procedures that adopt or comply with the U.S. Department of Justice's current Criminal Justice Information Services (CJIS) Security Policy.
- (c) Developing, disseminating and maintaining any other procedures necessary to comply with any other requirements for the access, use, dissemination, release and security of protected information.
- (d) Developing procedures to ensure training and certification requirements are met.
- (e) Resolving specific questions that arise regarding authorized recipients of protected information.
- (f) Ensuring security practices and procedures are in place to comply with requirements applicable to protected information.

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### **808.4 ACCESS TO PROTECTED INFORMATION**

Protected information shall not be accessed in violation of any law, order, regulation, user agreement, Walnut Creek Police Department policy or training. Only those members who have completed applicable training and met any applicable requirements, such as a background check, may access protected information, and only when the member has a legitimate work-related reason for such access.

Unauthorized access, including access for other than a legitimate work-related purpose, is prohibited and may subject a member to administrative action pursuant to the Personnel Complaints Policy and/or criminal prosecution.

#### **808.4.1 CRIMINAL RECORD SECURITY OFFICER**

The Records Supervisor is the designated Criminal Record Security Officer for the Walnut Creek Police Department. This supervisor is responsible for ensuring compliance with this procedure and with applicable records security regulations and requirements imposed by federal and state law. The Criminal Record Security Officer will resolve specific questions that arise regarding authorized recipients of CORI.

#### **808.4.2 RELEASE OF CORI**

Only the persons listed below are authorized to release CORI. Each authorized person releasing CORI is responsible to ensure that each request granted appears legitimate and that the requester is an authorized recipient with a right and need to know.

- (a) Criminal Records Security Officer
- (b) Records Supervisor
- (c) Full-time employees of the Records Bureau
- (d) Personnel specifically designated in writing by Bureau Commanders with the concurrence of the Criminal Records Security Officer

#### **808.4.3 RELEASE OF CORI TO FIELD PERSONNEL**

Personnel shall not have access to CORI until a background investigation has been completed and approved.

CORI shall not generally be transmitted by radio, cellular phone, or through computer terminals to field personnel or vehicles except in cases where circumstances reasonably indicate that the immediate safety of the officer or the public are at significant risk. Examples of situations where the transmission of summary criminal history information would be justified include a hostage situation or an armed suspect however a routine investigation or traffic enforcement stop would not be sufficient justification.

Nothing in this procedure is intended to prohibit broadcasting warrant information concerning wanted persons.

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### **808.5 RELEASE OR DISSEMINATION OF PROTECTED INFORMATION**

Protected information may be released only to authorized recipients who have both a right to know and a need to know.

A member who is asked to release protected information that should not be released should refer the requesting person to a supervisor or to the Records Manager for information regarding a formal request.

Unless otherwise ordered or when an investigation would be jeopardized, protected information maintained by the Department may generally be shared with authorized persons from other law enforcement agencies who are assisting in the investigation or conducting a related investigation. Any such information should be released through the Records Bureau to ensure proper documentation of the release (see the Records Maintenance and Release Policy).

Protected information, such as Criminal Justice Information (CJI), which includes Criminal History Record Information (CHRI), should generally not be transmitted by radio, cellular telephone or any other type of wireless transmission to members in the field or in vehicles through any computer or electronic device, except in cases where there is an immediate need for the information to further an investigation or where circumstances reasonably indicate that the immediate safety of officers, other department members or the public is at risk.

Nothing in this policy is intended to prohibit broadcasting warrant information.

#### **808.5.1 REVIEW OF CRIMINAL OFFENDER RECORD**

Individuals requesting to review their own California criminal history information shall be referred to the Department of Justice (Penal Code § 11121).

Individuals shall be allowed to review their arrest or conviction record on file with the Department after complying with all legal requirements regarding authority and procedures in Penal Code § 11120 through Penal Code § 11127 (Penal Code § 13321).

### **808.6 SECURITY OF PROTECTED INFORMATION**

The Chief of Police will select a member of the Department to oversee the security of protected information.

The responsibilities of this position include, but are not limited to:

- (a) Developing and maintaining security practices, procedures and training.
- (b) Ensuring federal and state compliance with the CJIS Security Policy and the requirements of any state or local criminal history records systems.
- (c) Establishing procedures to provide for the preparation, prevention, detection, analysis and containment of security incidents including computer attacks.
- (d) Tracking, documenting and reporting all breach of security incidents to the Chief of Police and appropriate authorities.

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### 808.6.1 MEMBER RESPONSIBILITIES

Members accessing or receiving protected information shall ensure the information is not accessed or received by persons who are not authorized to access or receive it. This includes leaving protected information, such as documents or computer databases, accessible to others when it is reasonably foreseeable that unauthorized access may occur (e.g., on an unattended table or desk; in or on an unattended vehicle; in an unlocked desk drawer or file cabinet; on an unattended computer terminal).

### **808.7 TRAINING**

All members authorized to access or release protected information shall complete a training program that complies with any protected information system requirements and identifies authorized access and use of protected information, as well as its proper handling and dissemination.

#### 808.7.1 COMPUTER TERMINAL SECURITY

Computer terminal equipment capable of providing access to automated criminal offender record information is located in the Records Bureau, Dispatch and in the Detective Bureau to preclude access by unauthorized persons.

No employee shall be authorized to operate computer terminal equipment with access to CORI until the operator has completed the appropriate training.

#### 808.7.2 DESTRUCTION OF CORI

When any document providing CORI has served the purpose for which it was obtained, it shall be destroyed by shredding.

Each employee shall be responsible for destroying the CORI documents they receive.

#### 808.7.3 CUSTODIAN OF CRIMINAL RECORDS

The Records Supervisor, unless otherwise directed by the Administration Bureau Commander, shall be the Department's official Custodian of Criminal Records. The Custodian of Criminal Records shall be responsible for the security, storage, dissemination and destruction of criminal records, and will serve as a primary contact for the California Department of Justice for any related issues. The Administration Bureau Commander may appoint other department employees to the role of Custodian of Criminal Records, who will share the same responsibilities regarding criminal records.

The Administration will ensure that he/she makes the appropriate applications and notifications to the California Department of Justice regarding the Department's Custodian of Criminal Record appointments, per the requirements of Penal Code § 11102.2.

This subsection is not intended to interfere with any other employee acting as a custodian of records for other statutory purposes but is narrowly tailored to address issues of criminal history records.



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### **808.8 TRAINING PROGRAM**

All personnel authorized to process or release CORI shall be required to complete a training program prescribed by the Criminal Record Security Officer. The Training Bureau shall coordinate the course to provide training in the proper use, control, and dissemination of CORI.

### **808.9 PENALTIES FOR MISUSE OF RECORDS**

Penal Code §§ 11140 and 11144 make it a misdemeanor to furnish, buy, receive, or possess Department of Justice rap sheets without authorization by a court, statute, or case law.

Title 11, California Administrative Code § 702 provides that authorized persons or agencies violating the Regulations Regarding the Security of Criminal Offender Record Information in California may lose direct access to CORI maintained by the California Department of Justice.

Divulging the content of any criminal record to anyone other than authorized personnel is a violation of Policy Manual § 340.3.7(a).

Employees who obtain, or attempt to obtain, information from the department files other than that to which they are entitled in accordance with their official duties is a violation of Policy Manual § 340.3.7(a).

### **808.10 CALIFORNIA RELIGIOUS FREEDOM ACT**

Members shall not release personal information from any agency database for the purpose of investigation or enforcement of any program compiling data on individuals based on religious belief, practice, affiliation, national origin or ethnicity (Government Code § 8310.3).

## Computers and Digital Evidence

### 809.1 PURPOSE AND SCOPE

This policy establishes procedures for the seizure and storage of computers, personal communications devices (PCDs) digital cameras, digital recorders and other electronic devices that are capable of storing digital information; and for the preservation and storage of digital evidence. All evidence seized and/or processed pursuant to this policy shall be done so in compliance with clearly established Fourth Amendment and search and seizure provisions.

### 809.2 SEIZING COMPUTERS AND RELATED EVIDENCE

Computer equipment requires specialized training and handling to preserve its value as evidence. Officers should be aware of the potential to destroy information through careless or improper handling, and utilize the most knowledgeable available resources. When seizing a computer and accessories the following steps should be taken:

- (a) Photograph each item, front and back, specifically including cable connections to other items. Consider how the device connects to networks, wirelessly, modem, router, etc. Look for a phone line or cable to a modem for Internet access.
- (b) Consider the possibility of physical evidence on and around the hardware relevant to the particular investigation such as fingerprints, biological or trace evidence, and/or documents.
- (c) If the computer is off, do not turn it on.
- (d) If the computer is on, consider the possibility the computer may be encrypted and the data may become unintelligible if the computer is shut down. If the computer is encrypted the evidence may need to be imaged/copied in the field.
  1. Photograph the screen, if possible, and note any programs or windows that appear to be open and running.
  2. Once the computer can be turned off without evidence being lost the device can be shut down.
- (e) Handle and transport the computer and storage media (e.g., tape, discs, memory cards, flash memory, external drives) with care so that potential evidence is not lost.
- (f) Lodge all computer items in the Property Room or the Computer Forensics Examination Room. Do not store computers where normal room temperature and humidity is not maintained.
- (g) At minimum, officers should document the following in related reports:
  1. Where the computer was located and whether or not it was in operation.
  2. Who was using it at the time.

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## *Computers and Digital Evidence*

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3. Who claimed ownership.
  4. If it can be determined, how it was being used.
- (h) In most cases when a computer is involved in criminal acts and is in the possession of the suspect, the computer itself and all storage devices (hard drives, tape drives, and disk drives) should be seized along with all media. Accessories (printers, monitors, mouse, scanner, keyboard, cables, software and manuals) should not be seized unless they are listed in a search warrant, believed to be evidence, or as a precursor to forfeiture.

### **809.2.1 BUSINESS OR NETWORKED COMPUTERS**

If the computer belongs to a business or is part of a network, it may not be feasible to seize the entire computer. Cases involving networks require specialized handling. Officers should contact an experienced forensic computer examiner for instructions or a response to the scene. It may be possible to perform an on-site inspection, or to image the hard drive only of the involved computer. This should only be done by someone specifically trained in processing computers for evidence.

### **809.2.2 FORENSIC EXAMINATION OF COMPUTERS**

If an examination of the contents of the computer's hard drive, or floppy disks, compact discs, or any other storage media is required, forward the following items to a computer forensic examiner:

- (a) Copy of report(s) involving the computer, including the Evidence/Property sheet.
- (b) Copy of a consent to search form signed by the computer owner or the person in possession of the computer, or a copy of a search warrant authorizing the search of the computer hard drive for evidence relating to investigation.
- (c) A listing of the items to search for (e.g., keywords (search terms), photographs, financial records, e-mail, documents).
- (d) An exact duplicate of the hard drive or disk should be made using a forensic computer and a forensic software program by someone trained in the examination of computer storage devices for evidence.

### **809.3 SEIZING DIGITAL STORAGE MEDIA**

Digital storage media including hard drives, floppy discs, CD's, DVD's, tapes, memory cards, or flash memory devices should be seized and stored in a manner that will protect them from damage.

- (a) If the media has a write-protection tab or switch, it should be activated prior to viewing the data unless other write blocking hardware or software is in use..
- (b) Do not review, access or open digital files prior to submission. If the information is needed for immediate investigation request a Digital Forensics Specialist or the Property and Evidence Section to copy the contents to an appropriate form of storage media.

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- (c) When transporting and storing digital evidence be aware many kinds of storage media can be damaged by magnetic fields.
- (d) Do not leave storage media where they would be subject to excessive heat that will melt or warp plastic.
- (e) Use plastic cases designed to protect the media, or other protective packaging, to prevent damage.

### **809.4 SEIZING PCDS**

Personal communication devices such as cell phones, PDAs or other hand-held devices connected to any communication network must be handled with care to preserve evidence that may be on the device including messages, stored data and/or images.

- (a) When accessing or reviewing such devices in the field be aware that unsent messages can be lost, data can be inadvertently deleted and incoming messages can override stored messages.
- (b) Do not turn the device on or off. The device should be placed in a solid metal container such as a paint can, or wrapped in at least five layers of aluminum foil, or placed in a faraday bag, to prevent the device from sending or receiving information from its host network.
- (c) When seizing the devices, also seize the charging units and keep them plugged in to the chargers until they can be examined. If the batteries go dead all the data may be lost.
- (d) Officers should also attempt to obtain the password to unlock the device. If the device locks after a few minutes it may be impossible to recover the data.

### **809.5 DIGITAL EVIDENCE RECORDED BY OFFICERS**

Officers handling and submitting recorded and digitally stored evidence from digital cameras and audio or video recorders will comply with these procedures to ensure the integrity and admissibility of such evidence.

#### **809.5.1 COLLECTION OF DIGITAL EVIDENCE**

It is recommended officers use freshly formatted storage media prior to collecting evidence in a new case. This may include a memory card or internal memory.

Once evidence is recorded to storage media it shall not be erased, deleted or altered in any way prior to submission. All photographs taken will be preserved regardless of quality, composition or relevance. Video and audio files will not be altered in any way.

#### **809.5.2 SUBMISSION OF DIGITAL MEDIA**

The following are required procedures for the submission of digital media used by cameras or other recorders:

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- (a) Officers will take photographs on their Department issued digital camera. Digital photographs will be downloaded onto CD's and placed in a CD envelope with the audit trail completed.
- (b) The recording media (smart card, compact flash card or any other media) shall be brought to the Property and Evidence Section as soon as practical for submission into evidence
- (c) All CD's and DVD's should be checked in a drive separate from the one that was used to burn the data to verify it is readable.
- (d) Officers who are submitting a felony packet should make an extra copy of the CD at the time the first CD is burned.
- (e) CD envelopes are filed in the photo file in the property room and at the Corp Yard.
- (f) Case and audit trail information should be filled out completely.
- (g) In the near future, VeriPic will be used to store digital photo/audio/video evidence.
- (h) Officers requiring a copy of the digital files must request a copy on the evidence form when submitted to evidence.

#### 809.5.3 DOWNLOADING OF DIGITAL FILES

Digital information such as video or audio files recorded on devices using **internal memory** must be downloaded to storage media. The following procedures are to be followed:

- (a) Files should not be opened or reviewed prior to downloading and storage.
- (b) Where possible, the device should be connected to a computer and the files accessed directly from the computer directory or downloaded to a folder on the host computer for copying to the storage media.

#### 809.5.4 PRESERVATION OF DIGITAL EVIDENCE

- (a) Only digital forensic specialists or evidence technicians are authorized to copy original digital media that is held as evidence. The original digital media should remain in evidence unless being processed by a digital forensic specialist.
- (b) The original digital media should remain unaltered unless minor alterations of the evidence is required to process the evidence. If minor alterations to the evidence are made these alterations should be documented in the corresponding incident report.
- (c) Digital images that are enhanced to provide a better quality photograph for identification and investigative purposes must only be made from a copy of the original media.
- (d) If any enhancement is done to the copy of the original, it shall be noted in the corresponding incident report.

## Records Maintenance and Release

### 810.1 PURPOSE AND SCOPE

This policy provides guidance on the maintenance and release of department records. Protected information is separately covered in the Protected Information Policy

- (a) The Department is the repository for many different records, which come in many different forms and sizes. Our records are created by Department members, submitted by victims and witnesses, and collected through a variety of court actions. Records include documents, photographs, video recordings, and other materials.
- (b) As a law Enforcement Agency, our actions are guided by a variety of State and Federal Regulations related to Law Enforcement Records and our requirements to safeguard the information contained within them.
- (c) Police and Arrest Reports are some of the records that are created at the Department. They are not presumed to be public records and are required to be safeguarded.

### 810.2 POLICY

The Walnut Creek Police Department is committed to providing public access to records in a manner that is consistent with the California Public Records Act (Government Code § 6250 et seq.).

- (a) The Governor and State Legislature have passed several laws that were designed to increase the transparency of government to the public.
  1. This became law in the State of California in 1968. When passed, the Act declared that access to the information concerning the conduct of the people's business is a fundamental and necessary right of every person in the State. Throughout the years, the courts have enforced the need for government to be forthcoming with information to the public. The courts have also upheld that most law enforcement records are exempt from disclosure under the CPRA. However, other records that we maintain are subject to release, requiring a specific process for the release of records. It is important that only the records that should be released are released.
  2. SB1421, *the Right to Know Act* was passed in 2018 and codified in Penal Code Section 832.7. The Act has established the right of the public to see certain records relating to police misconduct and uses of force involving death or great bodily injury. SB1421 gives the public the right to access three categories related to the investigation and discipline of peace officers:
    - (a) Records related to any incident where a law enforcement officer fired a firearm at a person or used force that resulted in great bodily injury or death.
    - (b) Records related to incidents where the agency sustained findings that an officer committed sexual assault against a member of the public.

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- (c) Records related to incidents where the agency sustained findings that an officer engaged in dishonesty.

#### 810.2.1 PROCESSING OF REQUESTS

##### (a) **Public Records**

1. Public records that are not exempt from disclosure are open to inspection during the regular business hours of the Police Department and every person has a right to inspect any public record, except those exempted from disclosure.
2. Generally, records of complaints to or investigations conducted by the Police Department are exempt under the Public Records Act. However, certain information is subject to disclosure to specified individuals, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in the investigation or would endanger the successful completion of the investigation or a related investigation.
3. Sections IV.B.2 through 7, which follow, describe the release procedures for information from most police records. Procedures for the release of information from public records not otherwise covered in this directive are as follows:
  - (a) Public records requests are processed during business hours, Monday through Friday, from 0800 to 1700 hours
  - (b) When a member of the public requests to inspect or obtain a copy of a public record, Records personnel shall assist the requestor in identifying the proper records, shall describe the information technology and physical location of the records, and shall provide suggestions for overcoming any practical basis for denying access to the requested records. Records personnel shall not be required to assist the requestor pursuant to this subsection if the requested records are deemed to be exempt from disclosure. [6253.1(a) GC]
  - (c) A record shall be maintained with the original report of all such releases of information.
  - (d) The law allows a fee to be charged to recover the cost of duplication of information, if duplication is required. No other fee is allowable by law. The Police Department does not charge for copies of crime reports that are released.
  - (e) Requests for copies of reports are made in writing to the Police Department Records Division. Requests can be accepted by mail, fax, online or over the counter. However, released reports shall only be sent out by mail. (Exception: Reports can be faxed to government agencies that are authorized to receive CORI information.)
  - (f) Records personnel are to respond within 10 days to requests for public records. [6253(c) GC]. Under limited circumstances, a 14-day extension is permitted if: 1) the requested records need to be searched for and collected from an off-site facility; 2) there is a voluminous amount of

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records to search for and collect; 3) there is a need to consult with another agency who has substantial interest in the determination of the request; or 4) there is the need to compile data, to write programming language or a computer program, or to construct a computer report to extract data. Written notification of the extension, its reasons and expected date of delivery shall be made to the requesting party.

- (g) The Department will seek to maintain current records in electronic format and convert historic documents to electronic storage.

### (b) **Incidents and Calls for Service**

- (a) Incidents and Calls-for-Service include only that information given on the daily bulletin.
- (b) The following is public information:
  - (a) The date, time, and location
  - (b) The date and time of report and response times
  - (c) Subject to the restrictions of Penal Code Section 841.5, names, ages, and current addresses of victims, except those covered by Penal Code Sections 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, and 646.9, whose names and addresses cannot be released.
  - (d) The reasons and dispositions of the calls-for-service or incidents
  - (e) General descriptions of injuries, property damage or loss, or weapons involved.
- (c) Procedure for releasing incident and calls-for-service information
  - (a) The daily media report shall be made available to members of the public requesting to see it.
  - (b) The media report shall contain pertinent information releasable to the public, and shall be reviewed by a Police Assistant and/or a supervisor to ensure that no information is released that would endanger the safety of someone or the successful completion of an investigation.
  - (c) Telephone requests about incidents and calls-for-service may be granted; however, names and addresses of those involved should not be given by telephone. It is appropriate to discuss the reasons for, locations of, and times and dates of calls, except in those cases described above or that might endanger someone.

### (c) **Information from Police Reports**

- 1. The following information from police reports shall be released:
  - (a) Names and addresses of persons involved in the incident (except confidential informants)
    - 1. *Note: Victims may request their name and address be withheld under Penal Code Section 293.*



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- (b) Description of any property involved
  - (c) Date, time, and location of the incident
  - (d) All diagrams
  - (e) Statements of parties involved in the incident
  - (f) Statements of witnesses (except confidential informants)
2. The information in (1.) shall be provided to the following:
- (a) The victim
  - (b) An authorized representative of the victim
  - (c) An insurance carrier against whom a claim has been or might be made
  - (d) Any person suffering bodily injury or property damage as a result of the incident
3. Release of information for scholarly or other specific purposes:
- (a) Subject to the restrictions of 841.5 PC, the current address of every individual arrested and the current address of the victim of a crime are required to be released where the requester declares under penalty of perjury that the request is made for scholarly, journalistic, political, or governmental purpose, or that the request is for investigative purposes by a licensed private investigator. The address of any victim of Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code shall remain confidential.
  - (b) The requestor shall execute a declaration under penalty of perjury that address information obtained pursuant to this paragraph shall not be used directly or indirectly to sell a product or service.
4. When copies of police reports are requested, the following procedure will be followed:
- (a) All requests for reports shall be referred to Records. Only employees designated by the Custodian of Records may release WCPD police reports.
  - (b) Identify the requestor
  - (c) Determine that the requestor is authorized to receive the information
  - (d) Have the requestor complete WCPD form 658, "Application for Release of Information." At this time, the Department does not charge a fee for copies of police reports.
  - (e) Under normal circumstances, Records personnel shall respond to public records requests within 10 days of receipt of request. Under limited circumstances and with written notification, the law allows for up to a 14 day extension.

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- (f) Review or have the report reviewed for investigative information that could harm someone or compromise the investigation if the report is released and for investigative conclusions. Parts of the report containing investigative analyses or conclusions or information that may cause harm or compromise the investigation shall be redacted and not be released. Any questions about releasing a report should be brought to the Custodian of Records or designee.
- (g) Reports may be released to other agencies (Probation, District Attorney, Social Services Department, Protective Services, other police departments, or those eligible to receive CORI), when there is a "need to know." Released reports shall have the words "Confidential - Not to be Reproduced" stamped on them.
- (h) The "Application for Release of Information" shall be placed in the original case.

### 810.2.2 GENERAL CASE AND CRIME REPORTS

Reports containing any of the items listed below will not be released:

Victim information - Victims of crimes who have requested that their identifying information be kept confidential, victims who are minors and victims of certain offenses (e.g., sex crimes, Penal Code § 293) shall not be made public. No employee shall disclose to any arrested person or to any person who may be a defendant in a criminal action the address or telephone number of any person who is a victim or witness in the alleged offense, unless it is required by law (Penal Code § 841.5).

Confidential information - Information involving confidential informants, intelligence information, information that would endanger the safety of any person involved or information that would endanger the successful completion of the investigation or a related investigation shall not be made public.

Analysis and conclusions of investigating officers may also be exempt from disclosure.

If it has been noted in any report that any individual wishes to protect his/her right to privacy under the California Constitution, such information may not be subject to public disclosure.

Specific crimes - Certain types of reports involving, but not limited to, child abuse/molestation (Penal Code § 11167.5), elder abuse (Welfare and Institutions Code § 15633) and juveniles (Welfare and Institutions Code § 827) shall not be made public.

General information - Absent statutory exemption to the contrary or other lawful reason to deem information from reports confidential, information from unrestricted agency reports shall be made public as outlined in Government Code § 6254(f).

Deceased juvenile crime victims - The Code of Civil Procedure § 130 limits the dissemination of autopsy and private medical information concerning a murdered child by allowing families to request that the autopsy report of the victim be sealed from public inspection. Such requests shall be honored, with the exceptions that allow dissemination of those reports to law enforcement

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agents, prosecutors, defendants or civil litigants under state and federal discovery laws (Code of Civil Procedure §130).

### **810.2.3 PROCESSING OF REQUESTS**

Any member of the public, including the media and elected officials, may access unrestricted records of this department by submitting a written and signed request for each record sought and paying any associated fees (Government Code § 6253).

The processing of requests is subject to the following limitations:

The employee processing the request shall determine if the requested record is available and, if so, whether the record is exempt from disclosure. Either the requested record or the reason for non-disclosure will be provided promptly, but no later than 10 days from the date of request, unless unusual circumstances preclude doing so. If more time is needed, an extension of up to 14 additional days may be authorized by the Chief of Police or the authorized designee. If an extension is authorized, the Department shall provide written notice of the extension to the requesting party (Government Code § 6253(c)).

SB1421 Requests. Requests for records covered under SB1421, will be processed as defined within this policy (Public Records).

- (a) When a request for materials covered in SB1421 are received, the request will be forwarded to the Administrative Captain for disposition. If appropriate, the following individuals may be provided a copy of the request by the Records Manager:
  - POA President
  - Affected Officer(s)

In accordance with the Public Records Act, the Department is not required to create records that do not otherwise exist in order to accommodate a request under the Act.

Requests by elected officials for records that are not open to public inspection should be referred to the Administration Bureau Commander for a determination as to whether the records will be released.

### **810.3 CUSTODIAN OF RECORDS RESPONSIBILITIES**

The Chief of Police shall designate a Custodian of Records. The responsibilities of the Custodian of Records include but are not limited to:

- (a) Managing the records management system for the Department, including the retention, archiving, release, and destruction of department public records.
- (b) Maintaining and updating the department records retention schedule including:
  1. Identifying the minimum length of time the Department must keep records.
  2. Identifying the department bureau responsible for the original record.
- (c) Establishing rules regarding the inspection and copying of department public records as reasonably necessary for the protection of such records (Government Code § 6253).

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- (d) Identifying records or portions of records that are confidential under state or federal law and not open for inspection or copying.
- (e) Establishing rules regarding the processing of subpoenas for the production of records.
- (f) Ensuring a current schedule of fees for public records as allowed by law is available (Government Code § 6253).
- (g) Determining how the department's website may be used to post public records in accordance with Government Code § 6253.
- (h) Ensuring that all department current standards, policies, practices, operating procedures, and education and training materials are posted on the department website in accordance with Penal Code § 13650.
- (i) Ensuring that public records posted on the Department website meet the requirements of Government Code § 6253.10 including but not limited to posting in an open format where a record may be retrieved, downloaded, indexed, and searched by a commonly used internet search application.
- (j) Ensuring that a list and description, when applicable, of enterprise systems (as defined by Government Code § 6270.5) is publicly available upon request and posted in a prominent location on the Department's website.

### 810.3.1 TRAFFIC COLLISION REPORTS

Traffic collision reports (and related supplemental reports) shall be considered confidential and subject to release only to the California Highway Patrol, Department of Motor Vehicles (DMV), other law enforcement agencies and those individuals and their authorized representatives set forth in Vehicle Code § 20012.

- (a) Per Section 20012 of the California Vehicle Code, the following information shall be released:
  - 1. The entire contents of the accident report and supplemental reports including but not limited to the following:
  - 2. Names of persons involved or injured in or witnesses to the accident
  - 3. Addresses of the above
  - 4. Registration numbers and descriptions of vehicles involved
  - 5. Date, time, location of accident
  - 6. All diagrams
  - 7. Statements of the drivers, injured parties or witnesses
- (b) The information shall be released to:
  - 1. Drivers involved
  - 2. Guardian or conservator thereof

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3. Parent of a minor driver
4. Authorized representative of a driver
5. Persons injured, or owners of vehicles or property damaged
6. Persons who may incur liability
7. Any attorney who represents any of the above

### 810.3.2 ARREST REPORTS

Arrestee information shall be subject to release in the same manner as information contained in other reports as set forth above.

In addition to the restrictions stated above, all requests from criminal defendants and their authorized representatives (including attorneys) shall be referred to the District Attorney, City Attorney or the courts pursuant to Penal Code § 1054.5.

Local criminal history information including, but not limited to, arrest history and disposition, and fingerprints shall only be subject to release to those agencies and individuals set forth in Penal Code § 13300.

### 810.3.3 RELEASE OF POLICE REPORTS

- (a) The release of reports shall conform with the California Public Records Act (Government Code Sections 6250 et seq.).
- (b) All authorized persons and law enforcement or public safety agencies requesting copies of police reports from the Records Unit are required to complete an official request.
- (c) The following police record information may be released to DA's, police officers, or persons who have received authorization from the Records Manager. These records shall be released to the victim, the victim's authorized legal or insurance representatives or, in the case of minors, parents or legal guardians:
  1. Crime Reports.
    - (a) Copies of these reports, minus the investigative supplements, may be released to victims if the arrestee's or suspect's names are deleted. The list and description of stolen, damaged, or missing property may also be released.
    - (b) The entire report may be released to the following persons if it is specifically requested and the need-to-know has been established:
      1. Involved parties of the report or their designated agent after review by the Records Manager or designee for compliance with the Public Records Act. If an investigation is still pending, release authorization by the respective supervisor must first be obtained.
      2. Members of the District Attorney's Office, Walnut Creek Police Officers, and persons authorized by the Records Manager.

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3. Peace officers of other criminal justice agencies. If an investigation is still pending, release authorization by the respective supervisor must first be obtained.

### **810.4 PROCESSING REQUESTS FOR PUBLIC RECORDS**

Any department member who receives a request for any record shall route the request to the Custodian of Records or the authorized designee.

#### **810.4.1 REQUESTS FOR RECORDS**

Any member of the public, including the media and elected officials, may access unrestricted records of this department, during regular business hours by submitting a written and signed request that reasonably describes each record sought and paying any associated fees (Government Code § 6253).

The processing of requests for any record is subject to the following (Government Code § 6253):

- (a) The Department is not required to create records that do not exist.
- (b) Victims of an incident or their authorized representative shall not be required to show proof of legal presence in the United States to obtain department records or information. If identification is required, a current driver's license or identification card issued by any state in the United States, a current passport issued by the United States or a foreign government with which the United States has a diplomatic relationship or current Matricula Consular card is acceptable (Government Code § 6254.30).
- (c) Either the requested record or the reason for non-disclosure will be provided promptly, but no later than 10 days from the date of request, unless unusual circumstances preclude doing so. If more time is needed, an extension of up to 14 additional days may be authorized by the Custodian of Records or the authorized designee. If an extension is authorized, the Department shall provide the requester written notice that includes the reason for the extension and the anticipated date of the response.
  1. When the request does not reasonably describe the records sought, the Custodian of Records shall assist the requester in making the request focused and effective in a way to identify the records or information that would be responsive to the request including providing assistance for overcoming any practical basis for denying access to the records or information. The Custodian of Records shall also assist in describing the information technology and physical location in which the record exists (Government Code § 6253.1).
  2. If the record requested is available on the department website, the requester may be directed to the location on the website where the record is posted. If the requester is unable to access or reproduce the record, a copy of the record shall be promptly provided.
- (d) Upon request, a record shall be provided in an electronic format utilized by the Department. Records shall not be provided only in electronic format unless specifically requested (Government Code § 6253.9).

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- (e) When a record contains material with release restrictions and material that is not subject to release restrictions, the restricted material shall be redacted and the unrestricted material released.
  - 1. A copy of the redacted release should be maintained in the case file for proof of what was actually released and as a place to document the reasons for the redactions. If the record is audio or video, a copy of the redacted audio/video release should be maintained in the department-approved media storage system and a notation should be made in the case file to document the release and the reasons for the redacted portions.
- (f) If a record request is denied in whole or part, the requester shall be provided a written response that includes the statutory exemption for withholding the record or facts that the public interest served by nondisclosure outweighs the interest served by disclosure (Government Code § 6255). The written response shall also include the names, titles or positions of each person responsible for the denial.

#### 810.4.2 DISCRETIONARY RELEASE OF INFORMATION

Information from records that are exempt from disclosure may be disclosed, when not prohibited by law, on a case-by-case basis.

- (a) The Records Supervisor or Services Manager on duty must approve discretionary release.
- (b) Discretionary release shall be based on factors such as:
  - 1. The opportunity for the released information to aid in the investigation of a crime
  - 2. The opportunity for the released information to assist in the arrest of a suspect
  - 3. The necessity to warn the public or an individual of danger

#### 810.4.3 CONDITIONAL RELEASE OF INFORMATION

The Chief of Police, Services Manager, Records Supervisor or Watch Commander must approve the conditional release of information.

- (a) Partial restrictions or release of information may be necessary, when not prohibited by law on a case-by-case basis.
- (b) Death Cases - in cases involving death, the victim's name will not be released until the next of kin has been notified and clearance obtained from the Coroner's Office and Investigations Division Supervisor.
- (c) Injury Cases - in cases involving serious injury, the victim's name will not be released until the next of kin has been notified.
- (d) Suicide Notes - Contents of suicide notes will not be released, but the existence of a suicidal note may be acknowledged.
- (e) Multi-jurisdiction investigations and assisting agencies - inquiries will be referred to the agency with primary jurisdiction.

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### 810.4.4 INFORMATION RELATED TO PENDING LITIGATION

Reports and information developed after the filing date, pertaining to pending litigation to which the City, County, the Department or departmental employee is a party, shall not be released without the approval of the City Attorney and Chief of Police. The City's Risk Manager shall also be notified.

### **810.5 RELEASE RESTRICTIONS**

Examples of release restrictions include:

- (a) Personal identifying information, including an individual's photograph; Social Security and driver identification numbers; name, address, and telephone number; and medical or disability information that is contained in any driver license record, motor vehicle record, or any department record including traffic collision reports, are restricted except as authorized by the Department, and only when such use or disclosure is permitted or required by law to carry out a legitimate law enforcement purpose (18 USC § 2721; 18 USC § 2722).
- (b) Social Security numbers (Government Code § 6254.29).
- (c) Personnel records, medical records, and similar records which would involve an unwarranted invasion of personal privacy except as allowed by law (Government Code § 6254; Penal Code § 832.7; Penal Code § 832.8; Evidence Code § 1043 et seq.).
  - 1. Peace officer personnel records that are deemed confidential shall not be made public or otherwise released to unauthorized individuals or entities absent a valid court order.
  - 2. The identity of any officer subject to any criminal or administrative investigation shall not be released without the consent of the involved officer, prior approval of the Chief of Police, or as required by law.
- (d) Victim information that may be protected by statutes, including victims of certain crimes who have requested that their identifying information be kept confidential, victims who are minors, and victims of certain offenses (e.g., sex crimes or human trafficking, Penal Code § 293). Addresses and telephone numbers of a victim or a witness to any arrested person or to any person who may be a defendant in a criminal action shall not be disclosed, unless it is required by law (Government Code § 6254; Penal Code § 841.5).
  - 1. Victims of certain offenses (e.g., domestic violence, sexual assault, stalking, human trafficking, adult abuse) or their representatives shall be provided, upon request and without charge, one copy of all incident report face sheets, one copy of all incident reports, or both, pursuant to the requirements and time frames of Family Code § 6228.
  - 2. Victims of sexual assault, upon written request, shall be provided a free copy of the initial crime report regardless of whether the report has been closed. Personal identifying information may be redacted (Penal Code § 680.2(b)).
- (e) Video or audio recordings created during the commission or investigation of the crime of rape, incest, sexual assault, domestic violence, or child abuse that depicts the face, intimate body part, or voice of a victim of the incident except as provided by Government Code § 6254.4.5.



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- (f) Information involving confidential informants, intelligence information, information that would endanger the safety of any person involved, or information that would endanger the successful completion of the investigation or a related investigation. This includes analysis and conclusions of investigating officers (Evidence Code § 1041; Government Code § 6254).
  - 1. Absent a statutory exemption to the contrary or other lawful reason to deem information from reports confidential, information from unrestricted agency reports shall be made public as outlined in Government Code § 6254(f).
- (g) Local criminal history information including but not limited to arrest history and disposition, and fingerprints shall only be subject to release to those agencies and individuals set forth in Penal Code § 13300.
  - 1. All requests from criminal defendants and their authorized representatives (including attorneys) shall be referred to the District Attorney, City Attorney, or the courts pursuant to Penal Code § 1054.5.
- (h) Certain types of reports involving but not limited to child abuse and molestation (Penal Code § 11167.5), elder and dependent abuse (Welfare and Institutions Code § 15633), and juveniles (Welfare and Institutions Code § 827).
- (i) Sealed autopsy and private medical information concerning a murdered child with the exceptions that allow dissemination of those reports to law enforcement agents, prosecutors, defendants, or civil litigants under state and federal discovery laws (Code of Civil Procedure §130).
- (j) Information contained in applications for licenses to carry firearms or other files that indicates when or where the applicant is vulnerable or which contains medical or psychological information (Government Code § 6254).
- (k) Traffic collision reports (and related supplemental reports) shall be considered confidential and subject to release only to the California Highway Patrol, Department of Motor Vehicles (DMV), other law enforcement agencies, and those individuals and their authorized representatives set forth in Vehicle Code § 20012.
- (l) Any record created exclusively in anticipation of potential litigation involving this department (Government Code § 6254).
- (m) Any memorandum from legal counsel until the pending litigation has been adjudicated or otherwise settled (Government Code § 6254.25).
- (n) Records relating to the security of the department's electronic technology systems (Government Code § 6254.19).
- (o) A record of a civilian complaint, or the investigations, findings, or dispositions of that complaint if the complaint is frivolous, as defined by Code of Civil Procedure § 128.5, or if the complaint is unfounded (Penal Code § 832.7 (b)(8)).
- (p) Any other record not addressed in this policy shall not be subject to release where such record is exempt or prohibited from disclosure pursuant to state or federal law, including but not limited to provisions of the Evidence Code relating to privilege (Government Code § 6254).

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- (q) Information connected with juvenile court proceedings or the detention or custody of a juvenile. Federal officials may be required to obtain a court order to obtain certain juvenile information (Welfare and Institutions Code § 827.9; Welfare and Institutions Code § 831).

### **810.6 SUBPOENAS AND DISCOVERY REQUESTS**

Any member who receives a subpoena duces tecum or discovery request for records should promptly contact a supervisor and the Custodian of Records for review and processing. While a subpoena duces tecum may ultimately be subject to compliance, it is not an order from the court that will automatically require the release of the requested information.

Generally, discovery requests and subpoenas from criminal defendants and their authorized representatives (including attorneys) should be referred to the District Attorney, City Attorney or the courts.

All questions regarding compliance with any subpoena duces tecum or discovery request should be promptly referred to legal counsel for the Department so that a timely response can be prepared.

### **810.7 RELEASED RECORDS TO BE MARKED**

Each page of any written record released pursuant to this policy should be stamped in a colored ink or otherwise marked to indicate the department name and to whom the record was released.

Each audio/video recording released should include the department name and to whom the record was released.

### **810.8 SEALED RECORD ORDERS**

Sealed record orders received by the Department shall be reviewed for appropriate action by the Custodian of Records. The Custodian of Records shall seal such records as ordered by the court. Records may include but are not limited to a record of arrest, investigation, detention, or conviction. Once the record is sealed, members shall respond to any inquiry as though the record did not exist (Penal Code § 851.8; Welfare and Institutions Code § 781).

When an arrest record is sealed pursuant to Penal Code § 851.87, Penal Code § 851.90, Penal Code § 851.91, Penal Code § 1000.4, or Penal Code § 1001.9, the Records Manager shall ensure that the required notations on local summary criminal history information and police investigative reports are made. Sealed records may be disclosed or used as authorized by Penal Code § 851.92.

### **810.9 SECURITY BREACHES**

The Records Manager shall ensure notice is given anytime there is a reasonable belief an unauthorized person has acquired either unencrypted personal identifying information or encrypted personal information along with the encryption key or security credential stored in any Department information system (Civil Code § 1798.29).

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Notice shall be given as soon as reasonably practicable to all individuals whose information may have been acquired. The notification may be delayed if the Department determines that notification will impede a criminal investigation or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

For the purposes of this requirement, personal identifying information includes an individual's first name or first initial and last name in combination with any one or more of the following:

- Social Security number
- Driver license number, California identification card number, tax identification number, passport number, military identification number, or other unique identification number issued on a government document commonly used to verify the identity of a specific individual
- Account number or credit or debit card number, in combination with any required security code, access code or password that would permit access to an individual's financial account
- Medical information
- Health insurance information
- A username or email address, in combination with a password or security question and answer that permits access to an online account
- Information or data collected by Automated License Plate Reader (ALPR) technology
- Unique biometric data

### 810.9.1 FORM OF NOTICE

- (a) The notice shall be written in plain language, be consistent with the format provided in Civil Code § 1798.29 and include, to the extent possible, the following:
  1. The date of the notice.
  2. Name and contact information for the Walnut Creek Police Department.
  3. A list of the types of personal information that were or are reasonably believed to have been acquired.
  4. The estimated date or date range within which the security breach occurred.
  5. Whether the notification was delayed as a result of a law enforcement investigation.
  6. A general description of the security breach.
  7. The toll-free telephone numbers and addresses of the major credit reporting agencies, if the breach exposed a Social Security number or a driver license or California identification card number.
- (b) The notice may also include information about what the Walnut Creek Police Department has done to protect individuals whose information has been breached

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and may include information on steps that the person whose information has been breached may take to protect him/herself (Civil Code § 1798.29).

- (c) When a breach involves an online account, and only a username or email address in combination with either a password or security question and answer that would permit access to an online account, and no other personal information has been breached (Civil Code § 1798.29):
  - 1. Notification may be provided electronically or in another form directing the person to promptly change either his/her password or security question and answer, as applicable, or to take other appropriate steps to protect the online account with the Department in addition to any other online accounts for which the person uses the same username or email address and password or security question and answer.
  - 2. When the breach involves an email address that was furnished by the Walnut Creek Police Department, notification of the breach should not be sent to that email address but should instead be made by another appropriate medium as prescribed by Civil Code § 1798.29.

### 810.9.2 MANNER OF NOTICE

- (a) Notice may be provided by one of the following methods (Civil Code § 1798.29):
  - 1. Written notice.
  - 2. Electronic notice if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in 15 USC § 7001.
  - 3. Substitute notice if the cost of providing notice would exceed \$250,000, the number of individuals exceeds 500,000 or the Department does not have sufficient contact information. Substitute notice shall consist of all of the following:
    - (a) Email notice when the Department has an email address for the subject person.
    - (b) Conspicuous posting of the notice on the department's webpage for a minimum of 30 days.
  - 4. Notification to major statewide media and the California Information Security Office within the California Department of Technology.
- (b) If a single breach requires the Department to notify more than 500 California residents, the Department shall electronically submit a sample copy of the notification, excluding any personally identifiable information, to the Attorney General.

### **810.10 RELEASE OF AUDIO OR VIDEO RECORDINGS RELATED TO CRITICAL INCIDENTS**

Video and audio recordings related to critical incidents shall be released upon a proper public record request and subject to delayed release, redaction, and other release restrictions as provided by law (Government Code § 6254(f)(4)).

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For purposes of this section, a video or audio recording relates to a critical incident if it depicts an incident involving the discharge of a firearm at a person by an officer, or depicts an incident in which the use of force by an officer against a person resulted in death or in great bodily injury (as defined by Penal Code § 243(f)(4)) (Government Code § 6254(f)(4)).

The Custodian of Records should work as appropriate with the Administration Captain in determining what recordings may qualify for disclosure when a request for a recording is received and if the requested recording is subject to delay from disclosure, redaction, or other release restrictions.

### 810.10.1 DELAY OF RELEASE

Disclosure of critical incident recordings during active criminal or administrative investigations may be delayed as follows if disclosure would substantially interfere with the investigation, such as by endangering the safety of a witness or a confidential source:

- (a) Disclosure may be delayed up to 45 days from the date the Department knew or reasonably should have known about the incident.
- (b) Delay of disclosure may continue after the initial 45 days and up to one year if the Department demonstrates that disclosure would substantially interfere with the investigation.
- (c) Any delay of disclosure longer than one year must be supported by clear and convincing evidence that disclosure would substantially interfere with the investigation (Government Code § 6254(f)(4)).

### 810.10.2 NOTICE OF DELAY OF RELEASE

When there is justification to delay disclosure of a recording, the Custodian of Records (or designee) shall provide written notice to the requester as follows (Government Code § 6254(f)(4)):

- (a) During the initial 45 days, the Custodian of Records (or designee) shall provide the requester with written notice of the specific basis for the determination that disclosure would substantially interfere with the investigation. The notice shall also include the estimated date for the disclosure.
- (b) When delay is continued after the initial 45 days, the Custodian of Records (or designee) shall promptly provide the requester with written notice of the specific basis for the determination that the interest in preventing interference with an active investigation outweighs the public interest in the disclosure, and the estimated date for the disclosure. The Custodian of Records (or designee) should work with the Administration Captain in reassessing the decision to continue withholding a recording and notify the requester every 30 days.

Recordings withheld shall be disclosed promptly when the specific basis for withholding the recording is resolved.

### 810.10.3 REDACTION

If the Custodian of Records, in consultation with the Chief of Police or authorized designee, determines that specific portions of the recording may violate the reasonable expectation of

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privacy of a person depicted in the recording, the Department should use redaction technology to redact portions of recordings made available for release. The redaction should not interfere with the viewer's ability to fully, completely, and accurately comprehend the events captured in the recording, and the recording should not otherwise be edited or altered (Government Code § 6254(f)(4)).

If any portions of a recording are withheld to protect the reasonable expectation of privacy of a person depicted in the recording, the Custodian of Records (or designee) shall provide in writing to the requester the specific basis for the expectation of privacy and the public interest served (Government Code § 6254(f)(4)).

### 810.10.4 RECORDINGS WITHHELD FROM PUBLIC DISCLOSURE

If the reasonable expectation of privacy of a person depicted in the recording cannot adequately be protected through redaction, and that interest outweighs the public interest in disclosure, the Department may withhold the recording from the public, except that the recording, either redacted or unredacted, shall be disclosed promptly, upon request, to any of the following (Government Code § 6254(f)(4)):

- (a) The person in the recording whose privacy is to be protected, or his/her authorized representative.
- (b) If the person is a minor, the parent or legal guardian of the person whose privacy is to be protected.
- (c) If the person whose privacy is to be protected is deceased, an heir, beneficiary, designated immediate family member, or authorized legal representative of the deceased person whose privacy is to be protected.

If the Department determines that this disclosure would substantially interfere with an active criminal or administrative investigation, the Custodian of Records shall provide the requester with written notice of the specific basis for the determination and the estimated date of disclosure (Government Code § 6254(f)(4)).

The Department may continue to delay release of the recording from the public for 45 days with extensions as provided in this policy (Government Code § 6254(f)(4)(A)).

## Chapter 9 - Custody

## Temporary Custody of Adults

### 900.1 PURPOSE AND SCOPE

This policy provides guidelines to address the health and safety of adults taken into temporary custody by members of the Walnut Creek Police Department for processing prior to being released or transferred to a housing or other type of facility.

Temporary custody of juveniles is addressed in the Temporary Custody of Juveniles Policy. Juveniles will not be permitted where adults in custody are being held.

Custodial searches are addressed in the Custodial Searches Policy.

#### 900.1.1 DEFINITIONS

Definitions related to this policy include:

**Holding cell/cell** - Any locked enclosure for the custody of an adult or any other enclosure that prevents the occupants from being directly visually monitored at all times by a member of the Department.

**Safety checks** - Direct, visual observation by a member of this department performed at random intervals, within time frames prescribed in this policy, to provide for the health and welfare of adults in temporary custody.

**Temporary custody** - The time period an adult is in custody at the Walnut Creek Police Department prior to being released or transported to a housing or other type of facility.

### 900.2 POLICY

The Walnut Creek Police Department is committed to releasing adults from temporary custody as soon as reasonably practicable, and to keeping adults safe while in temporary custody at the Department. Adults should be in temporary custody only for as long as reasonably necessary for investigation, processing, transfer or release.

### 900.3 GENERAL CRITERIA AND SUPERVISION

No adult should be in temporary custody for longer than six hours.

#### 900.3.1 INDIVIDUALS WHO SHOULD NOT BE IN TEMPORARY CUSTODY

Individuals who exhibit certain behaviors or conditions should not be in temporary custody at the Walnut Creek Police Department, but should be transported to a jail facility, a medical facility, or another type of facility as appropriate. These include:

- (a) Any individual who is unconscious or has been unconscious while being taken into custody or while being transported.
- (b) Any individual who has a medical condition, including pregnancy, that may require medical attention, supervision, or medication while he/she is in temporary custody.
- (c) Any individual who is seriously injured.



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- (d) Individuals who are a suspected suicide risk (see the Mental Illness Commitments Policy).
  - 1. If the officer taking custody of an individual believes that he/she may be a suicide risk, the officer shall ensure continuous direct supervision until evaluation, release, or a transfer to an appropriate facility is completed (15 CCR 1030).
- (e) Individuals who are obviously in crisis, as defined in the Crisis Intervention Incidents Policy.
- (f) Individuals who are under the influence of alcohol, a controlled substance, or any substance to the degree that may require medical attention, or who have ingested any substance that poses a significant risk to their health, whether or not they appear intoxicated.
- (g) Any individual who has exhibited extremely violent or continuously violent behavior including behavior that results in the destruction of property or demonstrates an intent to cause physical harm to him/herself or others (15 CCR 1053; 15 CCR 1055).
- (h) Any individual who claims to have, is known to be afflicted with, or displays symptoms of any communicable disease that poses an unreasonable exposure risk (15 CCR 1051).
- (i) Any individual with a prosthetic or orthopedic device where removal of the device would be injurious to his/her health or safety.
- (j) Any individual who is obviously developmentally disabled (15 CCR 1057).
- (k) Any individual who appears to be a danger to him/herself or others due to a mental disorder, or who appears gravely disabled (15 CCR 1052).
- (l) Any individual who needs restraint beyond the use of handcuffs or shackles for security reasons (15 CCR 1058).
- (m) Any individual obviously suffering from drug or alcohol withdrawal (15 CCR 1213).

Officers taking custody of a person who exhibits any of the above conditions should notify a supervisor of the situation. These individuals should not be in temporary custody at the Department unless they have been evaluated by a qualified medical or mental health professional, as appropriate for the circumstances.

#### 900.3.2 SUPERVISION IN TEMPORARY CUSTODY

An authorized department member capable of supervising shall be present at all times when an individual is held in temporary custody. The member responsible for supervising should not have other duties that could unreasonably conflict with his/her supervision. Any individual in custody must be able to summon the supervising member if needed. If the person in custody is deaf or hard of hearing or cannot speak, accommodations shall be made to provide this ability (15 CCR 1027).

At least one female department member should be present when a female adult is in temporary custody. In the event that none is readily available, the female in custody should be transported to another facility or released pursuant to another lawful process (15 CCR 1027).

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Absent exigent circumstances, such as a medical emergency or a violent subject, members should not enter the cell of a person of the opposite sex unless a member of the same sex as the person in custody is present (Penal Code § 4021).

No individual in custody shall be permitted to supervise, control or exert any authority over other individuals in custody.

#### **900.3.3 STAFFING PLAN**

The Chief of Police or the authorized designee shall ensure a staffing plan is prepared and maintained, indicating assigned personnel and their duties. The plan should ensure that at least one member who meets the training standards established by the Corrections Standards Authority (CSA) for general fire- and life-safety and is trained in fire- and life-safety procedures relating specifically to the facility is on-duty at all times (15 CCR 1028).

The staffing plan shall be available for biennial review by CSA staff. The review and recommendations of the CSA biennial review shall be forwarded to the City, as required by 15 CCR 1027.

#### **900.3.4 ENTRY RESTRICTIONS**

Entry into any location where a person is held in custody should be restricted to:

- (a) Authorized members entering for official business purposes.
- (b) Emergency medical personnel when necessary.
- (c) Any other person authorized by the Watch Commander.

When practicable, more than one authorized member should be present for entry into a location where a person is held in custody for security purposes and to witness interactions.

#### **900.4 INITIATING TEMPORARY CUSTODY**

The officer responsible for an individual in temporary custody should evaluate the person for any apparent chronic illness, disability, vermin infestation, possible communicable disease or any other potential risk to the health or safety of the individual or others. The officer should specifically ask if the individual is contemplating suicide and evaluate him/her for obvious signs or indications of suicidal intent. If there is any suspicion that the individual may be suicidal, he/she shall be transported to the City jail or the appropriate mental health facility.

The officer should promptly notify the Watch Commander of any conditions that may warrant immediate medical attention or other appropriate action. The Watch Commander shall determine whether the individual will be placed in a cell, immediately released or transported to jail or other facility.

##### **900.4.1 SCREENING AND PLACEMENT**

The officer responsible for an individual in custody shall (15 CCR 1050):

- (a) Advise the Watch Commander of any significant risks presented by the individual (e.g., suicide risk, health risk, violence).

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- (b) Evaluate the following issues against the stated risks in (a) to determine the need for placing the individual in a single cell:
  - 1. Consider whether the individual may be at a high risk of being sexually abused based on all available known information (28 CFR 115.141), or whether the person is facing any other identified risk.
  - 2. Provide any individual identified as being at a high risk for sexual or other victimization with heightened protection. This may include (28 CFR 115.113; 28 CFR 115.141):
    - (a) Continuous, direct sight and sound supervision.
    - (b) Single-cell placement in a cell that is actively monitored on video by a member who is available to immediately intervene.
  - 3. Ensure individuals are separated according to severity of the crime (e.g., felony or misdemeanor).
  - 4. Ensure males and females are separated by sight and sound when in cells.
  - 5. Ensure restrained individuals are not placed in cells with unrestrained individuals.
- (c) Ensure that those confined under civil process or for civil causes are kept separate from those who are in temporary custody pending criminal charges.
- (d) Ensure separation, as appropriate, based on other factors, such as age, criminal sophistication, assaultive/non-assaultive behavior, mental state, disabilities and sexual orientation.

### 900.4.2 CONSULAR NOTIFICATION

Consular notification may be mandatory when certain foreign nationals are arrested. The Patrol Bureau Commander will ensure that the U.S. Department of State's list of countries and jurisdictions that require mandatory notification is readily available to department members. There should also be a published list of foreign embassy and consulate telephone and fax numbers, as well as standardized notification forms that can be transmitted and then retained for documentation. Prominently displayed signs informing foreign nationals of their rights related to consular notification should also be posted in areas used for the temporary custody of adults.

Department members assigned to process a foreign national shall:

- (a) Inform the individual, without delay, that he/she may have his/her consular officers notified of the arrest or detention and may communicate with them.
  - 1. This notification should be documented.
- (b) Determine whether the foreign national's country is on the U.S. Department of State's mandatory notification list.
  - 1. If the country is on the mandatory notification list, then:
    - (a) Notify the country's nearest embassy or consulate of the arrest or detention by fax or telephone.

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- (b) Tell the individual that this notification has been made and inform him/her without delay that he/she may communicate with consular officers.
  - (c) Forward any communication from the individual to his/her consular officers without delay.
  - (d) Document all notifications to the embassy or consulate and retain the faxed notification and any fax confirmation for the individual's file.
2. If the country is not on the mandatory notification list and the individual requests that his/her consular officers be notified, then:
- (a) Notify the country's nearest embassy or consulate of the arrest or detention by fax or telephone.
  - (b) Forward any communication from the individual to his/her consular officers without delay.

### **900.5 SAFETY, HEALTH AND OTHER PROVISIONS**

#### 900.5.1 TEMPORARY CUSTODY LOGS

Any time an individual is in temporary custody at the Walnut Creek Police Department, the custody shall be promptly and properly documented in a custody log, including:

- (a) Identifying information about the individual, including his/her name.
- (b) Date and time of arrival at the Department.
- (c) Any charges for which the individual is in temporary custody and any case number.
- (d) Time of all safety checks (15 CCR 1027; 15 CCR 1027.5).
- (e) Any medical and other screening requested and completed.
- (f) Any emergency situations or unusual incidents.
- (g) Any other information that may be required by other authorities, such as compliance inspectors.
- (h) Date and time of release from the Walnut Creek Police Department.

The Watch Commander should initial the log to approve the temporary custody and should also initial the log when the individual is released from custody or transferred to another facility.

The Watch Commander should make periodic checks to ensure all log entries and safety and security checks are made on time.

#### 900.5.2 DISCIPLINE

Discipline will not be administered to any individual in custody at this facility. Any individual in custody who repeatedly fails to follow directions or facility rules should be transported to the appropriate jail, mental health facility or hospital as soon as practicable. Such conduct should be documented and reported to the receiving facility (15 CCR 1081).

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### 900.5.3 TEMPORARY CUSTODY REQUIREMENTS

Members monitoring or processing anyone in temporary custody shall ensure:

- (a) Safety checks and significant incidents/activities are noted on the log.
- (b) Individuals in custody are informed that they will be monitored at all times, except when using the toilet.
  - 1. There shall be no viewing devices, such as peep holes or mirrors, of which the individual is not aware.
  - 2. This does not apply to surreptitious and legally obtained recorded interrogations.
- (c) There is reasonable access to toilets and wash basins.
- (d) There is reasonable access to a drinking fountain or water.
- (e) There are reasonable opportunities to stand and stretch, particularly if handcuffed or otherwise restrained.
- (f) There is privacy during attorney visits.
- (g) Those in temporary custody are generally permitted to remain in their personal clothing unless it is taken as evidence or is otherwise unsuitable or inadequate for continued wear while in custody.
- (h) Clean blankets are provided as reasonably necessary to ensure the comfort of an individual.
  - 1. The supervisor should ensure that there is an adequate supply of clean blankets.
- (i) Adequate shelter, heat, light and ventilation are provided without compromising security or enabling escape.
- (j) Adequate furnishings are available, including suitable chairs or benches.

### 900.5.4 MEDICAL CARE

First-aid equipment and basic medical supplies should be available to department members (15 CCR 1220). At least one member who has current certification in basic first aid and CPR should be on-duty at all times.

Should a person in custody be injured or become ill, appropriate medical assistance should be sought. A supervisor should meet with those providing medical aid at the facility to allow access to the person. Members shall comply with the opinion of medical personnel as to whether an individual in temporary custody should be transported to the hospital. If the person is transported while still in custody, he/she will be accompanied by an officer.

Those who require medication while in temporary custody should not be at the Walnut Creek Police Department. They should be released or transferred to another facility as appropriate.

### 900.5.5 ORTHOPEDIC OR PROSTHETIC APPLIANCE

Subject to safety and security concerns, individuals shall be permitted to retain an orthopedic or prosthetic appliance. However, if the member supervising the individual has probable cause to believe the possession of the appliance presents a risk of bodily harm to any person or is a risk

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to the security of the facility, the appliance may be removed from the individual unless its removal would be injurious to his/her health or safety.

Whenever a prosthetic or orthopedic appliance is removed, the Watch Commander shall be promptly apprised of the reason. It shall be promptly returned when it reasonably appears that any risk no longer exists (Penal Code § 2656; 15 CCR 1207).

### 900.5.6 TELEPHONE CALLS

Immediately upon being booked and, except where physically impossible, no later than three hours after arrest, an individual in custody has the right to make at least three completed calls to an attorney, bail bondsman, and a relative or other person (Penal Code § 851.5). Additional calls may be made as reasonable and necessary (15 CCR 1067). In providing further access to a telephone beyond that required by Penal Code § 851.5, legitimate law enforcement interests such as officer safety, effect on ongoing criminal investigations and logistics should be balanced against the individual's desire for further telephone access.

- (a) Telephone calls may be limited to local calls, except that long-distance calls may be made by the individual at his/her own expense.
  - 1. The Department should pay the cost of any long-distance calls related to arranging for the care of a child or dependent adult (see the Child and Dependent Adult Safety Policy).
  - 2. The provisions of Penal Code § 851.5 concerning this issue shall be posted in bold, block type in a conspicuous place within the facility.
- (b) The individual should be given sufficient time to contact whomever he/she desires and to make any necessary arrangements, including child or dependent adult care, or transportation upon release.
  - 1. Telephone calls are not intended to be lengthy conversations. The member assigned to monitor or process the individual may use his/her judgment in determining the duration of the calls.
  - 2. Within three hours of the arrest, the member supervising the individual should inquire whether the individual is a custodial parent with responsibility for a minor child, and notify the individual that he/she may make two additional telephone calls to a relative or other person for the purpose of arranging for the care of minor children (Penal Code § 851.5).
- (c) Calls between an individual in temporary custody and his/her attorney shall be deemed confidential and shall not be monitored, eavesdropped upon or recorded (Penal Code § 851.5(b)(1); 15 CCR 1068).

### 900.5.7 RELIGIOUS ACCOMMODATION

Subject to available resources, safety and security, the religious beliefs and needs of all individuals in custody should be reasonably accommodated (15 CCR 1072). Requests for religious accommodation should generally be granted unless there is a compelling security or safety reason and denying the request is the least restrictive means available to ensure security or safety.

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The responsible supervisor should be advised any time a request for religious accommodation is denied.

Those who request to wear headscarves or simple head coverings for religious reasons should generally be accommodated absent unusual circumstances. Head coverings shall be searched before being worn.

Individuals wearing headscarves or other approved coverings shall not be required to remove them while in the presence of or while visible to the opposite sex if they so desire. Religious garments that substantially cover the individual's head and face may be temporarily removed during the taking of any photographs.

### 900.5.8 FIREARMS AND OTHER SECURITY MEASURES

Firearms shall not be permitted in secure areas where individuals are in custody or are processed. They should be properly secured outside of the secure area. An exception may occur only during emergencies, upon approval of a supervisor.

All perimeter doors to secure areas shall be kept locked at all times, except during routine cleaning, when no individuals in custody are present or in the event of an emergency, such as an evacuation.

### 900.5.9 REPORTING PHYSICAL HARM OR SERIOUS THREAT OF PHYSICAL HARM

In addition to a custody log entry, any incident that results in physical harm or serious threat of physical harm to a member, person in custody or any other person shall be documented as stated in the Use of Force or On-Duty Injuries policies, or other applicable reporting process. A copy of all reports generated regarding the above circumstances shall be submitted as soon as reasonably practicable. The Watch Commander will retain a record of these reports for inspection purposes (15 CCR 1044).

### 900.5.10 ATTORNEYS AND BAIL BONDSMEN

- (a) An attorney may visit at the request of the individual in custody or a relative (Penal Code § 825).
- (b) Attorneys and bail bondsmen who need to interview an individual in custody should do so inside a secure interview room.
- (c) The individual in custody as well as the attorney or bail bondsman should be searched for weapons prior to being admitted to the interview room and at the conclusion of the interview.
- (d) Attorneys must produce a current California Bar card as well as other matching appropriate identification.
- (e) Interviews between attorneys and their clients shall not be monitored or recorded (15 CCR 1068).

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### **900.6 USE OF RESTRAINT DEVICES**

Individuals in custody may be handcuffed in accordance with the Handcuffing and Restraints Policy. Unless an individual presents a heightened risk, handcuffs should generally be removed when the person is in a cell.

The use of restraints, other than handcuffs or leg irons, generally should not be used for individuals in temporary custody at the Walnut Creek Police Department unless the person presents a heightened risk, and only in compliance with the Handcuffing and Restraints Policy.

Individuals in restraints shall be kept away from other unrestrained individuals in custody and monitored to protect them from abuse.

#### **900.6.1 PREGNANT ADULTS**

Women who are known to be pregnant should be restrained in accordance with the Handcuffing and Restraints Policy.

### **900.7 PERSONAL PROPERTY**

The personal property of an individual in temporary custody should be removed, inventoried and processed as provided in the Custodial Searches Policy, unless the individual requests a different disposition. For example, an individual may request property (i.e., cash, car or house keys, medications) be released to another person. A request for the release of property to another person must be made in writing. Release of the property requires the recipient's signature on the appropriate form.

Upon release of an individual from temporary custody, his/her items of personal property shall be compared with the inventory, and he/she shall sign a receipt for the property's return. If the individual is transferred to another facility or court, the member transporting the individual is required to obtain the receiving person's signature as notice of receipt. The Department shall maintain a copy of the property receipt.

The Watch Commander shall be notified whenever an individual alleges that there is a shortage or discrepancy regarding his/her property. The Watch Commander shall attempt to prove or disprove the claim.

### **900.8 HOLDING CELLS**

A thorough inspection of a cell shall be conducted before placing an individual into the cell to ensure there are no weapons or contraband and that the cell is clean and sanitary. An inspection also should be conducted when he/she is released. Any damage noted to the cell should be photographed and documented.

The following requirements shall apply:

- (a) The individual shall be searched (see the Custodial Searches Policy), and anything that could create a security or suicide risk, such as contraband, hazardous items, belts, shoes or shoelaces and jackets, shall be removed.



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- (b) The individual's initial placement into and removal from a locked enclosure shall be logged.
- (c) Safety checks by department members shall occur no less than every 15 minutes (15 CCR 1027.5).
  - 1. Safety checks should be at varying times.
  - 2. All safety checks shall be logged.
  - 3. The safety check should involve questioning the individual as to his/her well-being.
  - 4. Individuals who are sleeping or apparently sleeping should be awakened.
  - 5. Requests or concerns of the individual should be logged.

### **900.8.1 VERIFICATION OF PRISONER'S MONEY**

All money belonging to the prisoner and retained by the officer shall be counted in front of the prisoner. When possible, the prisoner should initial the dollar amount on the property sheet. Additionally, all cash money should be placed in a separate clear plastic bag. Negotiable checks or other instruments and foreign currency should also be placed in a clear plastic bag with the amount indicated, but not added to the cash total. All property bags should contain copies of property receipts indicating the contents. Should any money be withdrawn or added to the cash bag, the officer making such change shall enter the amount below the original entry and initial it. The total amount of money in the bag should always be computed and written on the property receipt.

### **900.9 SUICIDE ATTEMPT, DEATH, OR SERIOUS INJURY**

The Patrol Bureau Commander will ensure procedures are in place to address any suicide attempt, death or serious injury of any individual in temporary custody at the Walnut Creek Police Department. The procedures should include the following:

- (a) Immediate request for emergency medical assistance if appropriate
- (b) Immediate notification of the Watch Commander, Chief of Police and Investigation Bureau Commander
- (c) Notification of the spouse, next of kin or other appropriate person
- (d) Notification of the appropriate prosecutor
- (e) Notification of the City Attorney
- (f) Notification of the Coroner
- (g) Evidence preservation
- (h) In-custody death reviews (15 CCR 1046)
- (i) Notification to the Attorney General within 10 days of any death in custody including any reasonably known facts concerning the death (Government Code § 12525)

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### **900.10 RELEASE AND/OR TRANSFER**

When an individual is released or transferred from custody, the member releasing the individual should ensure the following:

- (a) All proper reports, forms and logs have been completed prior to release.
- (b) A check has been made to ensure that the individual is not reported as missing and does not have outstanding warrants.
- (c) It has been confirmed that the correct individual is being released or transported.
- (d) All property, except evidence, contraband or dangerous weapons, has been returned to, or sent with, the individual.
- (e) All pertinent documentation accompanies the individual being transported to another facility (e.g., copies of booking forms, medical records, an itemized list of his/her property, warrant copies).
- (f) The individual is not permitted in any nonpublic areas of the Walnut Creek Police Department unless escorted by a member of the Department.
- (g) Any known threat or danger the individual may pose (e.g., escape risk, suicide potential, medical condition) is documented, and the documentation transported with the individual if he/she is being sent to another facility.
  - 1. The department member transporting the individual shall ensure such risks are communicated to intake personnel at the other facility.
- (h) Generally, persons of the opposite sex, or adults and juveniles, should not be transported in the same vehicle unless they are physically separated by a solid barrier. If segregating individuals is not practicable, officers should be alert to inappropriate physical or verbal contact and take appropriate action as necessary.
- (i) Transfers between facilities or other entities, such as a hospital, should be accomplished with a custodial escort of the same sex as the person being transferred to assist with his/her personal needs as reasonable.

#### **900.10.1 FORM REQUEST FOR PETITION TO SEAL RECORDS**

Upon request, a detained arrestee released from custody shall be provided with the appropriate Judicial Council forms to petition the court to have the arrest and related records sealed (Penal Code § 851.91).

The Department shall display the required signage that complies with Penal Code § 851.91 advising an arrestee of the right to obtain the Judicial Council forms.

### **900.11 ASSIGNED ADMINISTRATOR**

The Patrol Bureau Commander will ensure any reasonably necessary supplemental procedures are in place to address the following issues (15 CCR 1029):

- (a) General security
- (b) Key control
- (c) Sanitation and maintenance

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- (d) Emergency medical treatment (15 CCR 1200)
- (e) Escapes
- (f) Evacuation plans
- (g) Fire- and life-safety, including a fire suppression pre-plan as required by 15 CCR 1032
- (h) Disaster plans
- (i) Building and safety code compliance
- (j) Civil and other disturbances including hostage situations
- (k) Periodic testing of emergency equipment
- (l) Emergency suspension of Title 15 regulations and notice to the Board of State and Community Corrections as required in 15 CCR 1012
- (m) Inspections and operations reviews
- (n) Any other applicable requirements under 15 CCR 1029

Annual review and evaluation of security measures including internal and external security measures, sanitation, safety and maintenance (15 CCR 1280).

These supplemental procedures shall be reviewed and updated no less than every two years and shall be available to all members (15 CCR 1029).

### **900.12 TRAINING**

Department members should be trained and familiar with this policy and any supplemental procedures.

Department members responsible for supervising adults in temporary custody shall complete the Corrections Officer Core Course or eight hours of specialized training within six months of assignment. Such training shall include but not be limited to the following (15 CCR 1024):

- (a) Applicable minimum jail standards
- (b) Jail operations liability
- (c) Inmate segregation
- (d) Emergency procedures and planning, fire safety, and life safety.
- (e) Suicide prevention

Eight hours of refresher training shall be completed once every two years (15 CCR 1024).

The Training Manager shall maintain records of all such training in the member's training file.

## Custodial Searches

### 901.1 PURPOSE AND SCOPE

This policy provides guidance regarding searches of individuals in custody. Such searches are necessary to eliminate the introduction of contraband, intoxicants or weapons into the Walnut Creek Police Department facility. Such items can pose a serious risk to the safety and security of department members, individuals in custody, contractors and the public.

Nothing in this policy is intended to prohibit the otherwise lawful collection of evidence from an individual in custody.

#### 901.1.1 DEFINITIONS

Definitions related to this policy include:

**Custody search** - An in-custody search of an individual and of his/her property, shoes and clothing, including pockets, cuffs and folds on the clothing, to remove all weapons, dangerous items and contraband.

**Physical body cavity search** - A search that includes a visual inspection and may include a physical intrusion into a body cavity. Body cavity means the stomach or rectal cavity of an individual, and the vagina of a female person.

**Strip search** - A search that requires an individual to remove or rearrange some or all of his/her clothing to permit a visual inspection of the underclothing, breasts, buttocks, anus or outer genitalia. This includes monitoring an individual who is changing clothes, where his/her underclothing, buttocks, genitalia or female breasts are visible.

### 901.2 POLICY

All searches shall be conducted with concern for safety, dignity, courtesy, respect for privacy and hygiene, and in compliance with policy and law to protect the rights of those who are subject to any search.

Searches shall not be used for intimidation, harassment, punishment or retaliation.

### 901.3 FIELD AND TRANSPORTATION SEARCHES

An officer should conduct a custody search of an individual immediately after his/her arrest, when receiving an individual from the custody of another, and before transporting a person who is in custody in any department vehicle.

Whenever practicable, a custody search should be conducted by an officer of the same sex as the person being searched. If an officer of the same sex is not reasonably available, a witnessing officer should be present during the search.

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### **901.4 SEARCHES AT POLICE FACILITIES**

Custody searches shall be conducted on all individuals in custody, upon entry to the Walnut Creek Police Department facilities. Except in exigent circumstances, the search should be conducted by a member of the same sex as the individual being searched. If a member of the same sex is not available, a witnessing member must be present during the search.

Custody searches should also be conducted any time an individual in custody enters or re-enters a secure area, or any time it is reasonably believed that a search is necessary to maintain the safety and security of the facility.

#### **901.4.1 PROPERTY**

Members shall take reasonable care in handling the property of an individual in custody to avoid discrepancies or losses. Property retained for safekeeping shall be kept in a secure location until the individual is released or transferred.

Some property may not be accepted by a facility or agency that is taking custody of an individual from this department, such as weapons or large items. These items should be retained for safekeeping in accordance with the Property and Evidence Policy.

All property shall be inventoried by objective description (this does not include an estimated value). The individual from whom it was taken shall be required to sign the completed inventory. If the individual's signature cannot be obtained, the inventory shall be witnessed by another department member. The inventory should include the case number, date, time, member's Walnut Creek Police Department identification number and information regarding how and when the property may be released.

#### **901.4.2 VERIFICATION OF MONEY**

All money shall be counted in front of the individual from whom it was received. When possible, the individual shall initial the dollar amount on the inventory. Additionally, all money should be placed in a separate envelope and sealed. Negotiable checks or other instruments and foreign currency should also be sealed in an envelope with the amount indicated but not added to the cash total. All envelopes should clearly indicate the contents on the front. The department member sealing it should place his/her initials across the sealed flap. Should any money be withdrawn or added, the member making such change shall enter the amount below the original entry and initial it. The amount of money in the envelope should always be totaled and written on the outside of the envelope.

### **901.5 STRIP SEARCHES**

No individual in temporary custody at any Walnut Creek Police Department facility shall be subjected to a strip search unless there is reasonable suspicion based upon specific and articulable facts to believe the individual has a health condition requiring immediate medical attention or is concealing a weapon or contraband. Factors to be considered in determining reasonable suspicion include, but are not limited to:

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- (a) The detection of an object during a custody search that may be a weapon or contraband and cannot be safely retrieved without a strip search.
- (b) Circumstances of a current arrest that specifically indicate the individual may be concealing a weapon or contraband.
  - 1. A felony arrest charge or being under the influence of a controlled substance should not suffice as reasonable suspicion absent other facts.
- (c) Custody history (e.g., past possession of contraband while in custody, assaults on department members, escape attempts).
- (d) The individual's actions or demeanor.
- (e) Criminal history (i.e., level of experience in a custody setting).

No transgender or intersex individual shall be searched or examined for the sole purpose of determining the individual's genital status. If the individual's genital status is unknown, it may be determined during conversations with the person, by reviewing medical records, or as a result of a broader medical examination conducted in private by a medical practitioner (28 CFR 115.115).

### 901.5.1 STRIP SEARCH PROCEDURES

Strip searches at Walnut Creek Police Department facilities shall be conducted as follows (28 CFR 115.115; Penal Code § 4030):

- (a) Written authorization from the Watch Commander shall be obtained prior to the strip search.
- (b) All members involved with the strip search shall be of the same sex as the individual being searched, unless the search is conducted by a medical practitioner.
- (c) All strip searches shall be conducted in a professional manner under sanitary conditions and in a secure area of privacy so that it cannot be observed by those not participating in the search. The search shall not be reproduced through a visual or sound recording.
- (d) Whenever possible, a second member of the same sex should also be present during the search, for security and as a witness to the finding of evidence.
- (e) Members conducting a strip search shall not touch the breasts, buttocks or genitalia of the individual being searched.
- (f) The primary member conducting the search shall prepare a written report to include:
  - 1. The facts that led to the decision to perform a strip search.
  - 2. The reasons less intrusive methods of searching were not used or were insufficient.
  - 3. The written authorization for the search, obtained from the Watch Commander.

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4. The name of the individual who was searched.
  5. The name and sex of the members who conducted the search.
  6. The name, sex and role of any person present during the search.
  7. The time and date of the search.
  8. The place at which the search was conducted.
  9. A list of the items, if any, that were recovered.
  10. The facts upon which the member based his/her belief that the individual was concealing a weapon or contraband.
- (g) No member should view an individual's private underclothing, buttocks, genitalia or female breasts while that individual is showering, performing bodily functions or changing clothes, unless he/she otherwise qualifies for a strip search. However, if serious hygiene or health issues make it reasonably necessary to assist the individual with a shower or a change of clothes, a supervisor should be contacted to ensure reasonable steps are taken to obtain the individual's consent and/or otherwise protect his/her privacy and dignity.
- (h) If the individual has been arrested for a misdemeanor or infraction offense, the written authorization from the Watch Commander shall include specific and articulable facts and circumstances upon which the reasonable suspicion determination for the search was made.
- (i) A copy of the written authorization shall be retained and made available upon request to the individual or the individual's authorized representative. A record of the time, date, place of the search, the name and sex of the person conducting the search, and a statement of the results of the search shall also be retained and made available upon request to the individual or the individual's authorized representative.

### 901.5.2 SPECIAL CIRCUMSTANCE FIELD STRIP SEARCHES

A strip search may be conducted in the field only with Watch Commander authorization and only in exceptional circumstances, such as when:

- (a) There is probable cause to believe that the individual is concealing a weapon or other dangerous item that cannot be recovered by a more limited search.
- (b) There is probable cause to believe that the individual is concealing controlled substances or evidence that cannot be recovered by a more limited search, and there is no reasonable alternative to ensure the individual cannot destroy or ingest the substance during transportation.

These special-circumstance field strip searches shall only be authorized and conducted under the same restrictions as the strip search procedures in this policy, except that the Watch Commander authorization does not need to be in writing.

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### **901.6 PHYSICAL BODY CAVITY SEARCH**

Physical body cavity searches shall be subject to the following (Penal Code § 4030):

- (a) No individual shall be subjected to a physical body cavity search without written approval of the Watch Commander and only upon a search warrant. A copy of any search warrant and the results of the physical body cavity search shall be included with the related reports and made available, upon request, to the individual or authorized representative (except for those portions of the warrant ordered sealed by a court).
- (b) Only a physician, nurse practitioner, registered nurse, licensed vocational nurse or Emergency Medical Technician Level II licensed to practice in California may conduct a physical body cavity search.
- (c) Except for the physician or licensed medical personnel conducting the search, persons present must be of the same sex as the individual being searched. Only the necessary department members needed to maintain the safety and security of the medical personnel shall be present.
- (d) Privacy requirements, including restricted touching of body parts and sanitary condition requirements, are the same as required for a strip search.
- (e) All such searches shall be documented, including:
  - 1. The facts that led to the decision to perform a physical body cavity search of the individual.
  - 2. The reasons less intrusive methods of searching were not used or were insufficient.
  - 3. The Watch Commander's approval.
  - 4. A copy of the search warrant.
  - 5. The time, date and location of the search.
  - 6. The medical personnel present.
  - 7. The names, sex and roles of any department members present.
  - 8. Any contraband or weapons discovered by the search.
- (f) Copies of the written authorization and search warrant shall be retained and shall be provided to the individual who was searched or other authorized representative upon request. A record of the time, date, place of the search, the name and sex of the person conducting the search and a statement of the results of the search shall also be retained and made available upon request to the individual or the individual's authorized representative.

### **901.7 TRAINING**

The Training Manager shall ensure members have training that includes (28 CFR 115.115):



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- (a) Conducting searches of cross-gender individuals.
- (b) Conducting searches of transgender and intersex individuals.
- (c) Conducting searches in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

## Chapter 10 - Personnel

## Recruitment and Selection

### 1000.1 PURPOSE AND SCOPE

This policy provides a framework for employee recruiting efforts and identifying job-related standards for the selection process. This policy supplements the rules that govern employment practices for the Walnut Creek Police Department and that are promulgated and maintained by the Department of Human Resources.

### 1000.2 POLICY

In accordance with applicable federal, state, and local law, the Walnut Creek Police Department provides equal opportunities for applicants and employees, regardless of actual or perceived race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, age, disability, pregnancy, genetic information, veteran status, marital status, or any other protected class or status. The Department does not show partiality or grant any special status to any applicant, employee, or group of employees unless otherwise required by law.

The Department will recruit and hire only those individuals who demonstrate a commitment to service and who possess the traits and characteristics that reflect personal integrity and high ethical standards.

### 1000.3 RECRUITMENT

The Administration Bureau Commander should employ a comprehensive recruitment and selection strategy to recruit and select employees from a qualified and diverse pool of candidates.

The strategy should include:

- (a) Identification of racially and culturally diverse target markets.
- (b) Use of marketing strategies to target diverse applicant pools.
- (c) Expanded use of technology and maintenance of a strong internet presence. This may include an interactive department website and the use of department-managed social networking sites, if resources permit.
- (d) Expanded outreach through partnerships with media, community groups, citizen academies, local colleges, universities, and the military.
- (e) Employee referral and recruitment incentive programs.
- (f) Consideration of shared or collaborative regional testing processes.

The Administration Bureau Commander shall avoid advertising, recruiting and screening practices that tend to stereotype, focus on homogeneous applicant pools or screen applicants in a discriminatory manner.

The Department should strive to facilitate and expedite the screening and testing process, and should periodically inform each candidate of his/her status in the recruiting process.

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### **1000.4 SELECTION PROCESS**

The Department shall actively strive to identify a diverse group of candidates who have in some manner distinguished themselves as being outstanding prospects. Minimally, the Department should employ a comprehensive screening, background investigation, and selection process that assesses cognitive and physical abilities and includes review and verification of the following:

- (a) A comprehensive application for employment (including previous employment, references, current and prior addresses, education, military record)
- (b) Driving record
- (c) Reference checks
- (d) Employment eligibility, including U.S. Citizenship and Immigration Services (USCIS) Employment Eligibility Verification Form I-9 and acceptable identity and employment authorization documents consistent with Labor Code § 1019.1. This required documentation should not be requested until a candidate is hired. This does not prohibit obtaining documents required for other purposes.
- (e) Information obtained from public internet sites
- (f) Financial history consistent with the Fair Credit Reporting Act (FCRA) (15 USC § 1681 et seq.)
- (g) Local, state, and federal criminal history record checks
- (h) Lie detector test (when legally permissible) (Labor Code § 432.2)
- (i) Medical and psychological examination (may only be given after a conditional offer of employment)
- (j) Review board or selection committee assessment

#### **1000.4.1 VETERAN'S PREFERENCE**

Qualifying veterans of the United States Armed Forces who receive a passing score on an entrance examination shall be ranked in the top rank of any resulting eligibility list. The veteran's preference shall also apply to a widow or widower of a veteran or a spouse of a 100 percent disabled veteran (Government Code § 18973.1).

### **1000.5 BACKGROUND INVESTIGATION**

Every candidate shall undergo a thorough background investigation to verify his/her personal integrity and high ethical standards, and to identify any past behavior that may be indicative of the candidate's unsuitability to perform duties relevant to the operation of the Walnut Creek Police Department (11 CCR 1953).

The narrative report and any other relevant background information shall be shared with the psychological evaluator. Information shall also be shared with others involved in the hiring process if it is relevant to their respective evaluations (11 CCR 1953).

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#### 1000.5.1 NOTICES

Background investigators shall ensure that investigations are conducted and notices provided in accordance with the requirements of the FCRA and the California Investigative Consumer Reporting Agencies Act (15 USC § 1681d; Civil Code § 1786.16).

#### 1000.5.2 STATE NOTICES

If information disclosed in a candidate's criminal offender record information (CORI) is the basis for an adverse employment decision, a copy of the CORI shall be provided to the applicant (Penal Code § 11105).

#### 1000.5.3 REVIEW OF SOCIAL MEDIA SITES

Due to the potential for accessing unsubstantiated, private, or protected information, the Administration Bureau Commander shall not require candidates to provide passwords, account information, or access to password-protected social media accounts (Labor Code § 980).

The Administration Bureau Commander should consider utilizing the services of an appropriately trained and experienced third party to conduct open source, internet-based searches, and/or review information from social media sites to ensure that:

- (a) The legal rights of candidates are protected.
- (b) Material and information to be considered are verified, accurate, and validated.
- (c) The Department fully complies with applicable privacy protections and local, state, and federal law.

Regardless of whether a third party is used, the Administration Bureau Commander should ensure that potentially impermissible information is not available to any person involved in the candidate selection process.

#### 1000.5.4 DOCUMENTING AND REPORTING

The background investigator shall summarize the results of the background investigation in a narrative report that includes sufficient information to allow the reviewing authority to decide whether to extend a conditional offer of employment. The report shall not include any information that is prohibited from use, including that from social media sites, in making employment decisions. The report and all supporting documentation shall be included in the candidate's background investigation file (11 CCR 1953).

#### 1000.5.5 RECORDS RETENTION

The background report and all supporting documentation shall be maintained for a minimum of two years and in accordance with the established records retention schedule (Government Code § 12946; 11 CCR 1953).

#### 1000.5.6 BACKGROUND INVESTIGATION UPDATE

A background investigation update may, at the discretion of the Chief of Police, be conducted in lieu of a complete new background investigation on a peace officer candidate who is reappointed

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within 180 days of voluntary separation from the Walnut Creek Police Department, or who is an interim police chief meeting the requirements contained in 11 CCR 1953(f).

### **1000.6 DISQUALIFICATION GUIDELINES**

As a general rule, performance indicators and candidate information and records shall be evaluated by considering the candidate as a whole, and taking into consideration the following:

- Age at the time the behavior occurred
- Passage of time
- Patterns of past behavior
- Severity of behavior
- Probable consequences if past behavior is repeated or made public
- Likelihood of recurrence
- Relevance of past behavior to public safety employment
- Aggravating and mitigating factors
- Other relevant considerations

A candidate's qualifications will be assessed on a case-by-case basis, using a totality-of-the-circumstances framework.

### **1000.7 EMPLOYMENT STANDARDS**

All candidates shall meet the minimum standards required by state law (Government Code § 1029; Government Code § 1031; 11 CCR 1950 et seq.). Candidates will be evaluated based on merit, ability, competence, and experience, in accordance with the high standards of integrity and ethics valued by the Department and the community. The California Commission on Peace Officer Standards and Training (POST) developed a Job Dimensions list, which is used as a professional standard in background investigations.

Validated, job-related, and nondiscriminatory employment standards shall be established for each job classification and shall minimally identify the training, abilities, knowledge, and skills required to perform the position's essential duties in a satisfactory manner. Each standard should include performance indicators for candidate evaluation. The Department of Human Resources should maintain validated standards for all positions.

#### **1000.7.1 STANDARDS FOR OFFICERS**

Candidates shall meet the minimum standards established by POST (Government Code § 1029; Government Code § 1031; 11 CCR 1950 et seq.):

- (a) Free of any felony convictions
- (b) Citizen of the United States, or permanent resident alien eligible for and has applied for citizenship

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## *Recruitment and Selection*

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- (c) At least 18 years of age
- (d) Fingerprinted for local, state and national fingerprint check
- (e) Good moral character as determined by a thorough background investigation (11 CCR 1953)
- (f) High school graduate, passed the GED or other high school equivalency test or obtained a two-year, four-year or advanced degree from an accredited or approved institution
- (g) Free from any physical, emotional, or mental condition which might adversely affect the exercise of police powers (11 CCR 1954; 11 CCR 1955)
- (h) Candidates must also satisfy the POST selection requirements, including (11 CCR 1950 et seq.):
  1. Reading and writing ability assessment (11 CCR 1951)
  2. Oral interview to determine suitability for law enforcement service (11 CCR 1952)

In addition to the above minimum POST required standards, candidates may be subjected to additional standards established by the Department (Penal Code § 13510(d)).

### **1000.7.2 STANDARDS FOR DISPATCHER**

Candidates shall satisfy the POST selection requirements, including (11 CCR 1956):

- (a) A verbal, reasoning, memory, and perceptual abilities assessment (11 CCR 1957)
- (b) An oral communication assessment (11 CCR 1958)
- (c) A medical evaluation (11 CCR 1960)

### **1000.8 PROBATIONARY PERIODS**

The Administration Bureau Commander should coordinate with the Walnut Creek Department of Human Resources to identify positions subject to probationary periods and procedures for:

- (a) Appraising performance during probation.
- (b) Assessing the level of performance required to complete probation.
- (c) Extending probation.
- (d) Documenting successful or unsuccessful completion of probation.

## Honor Guard

### 1001.1 POLICY

The Walnut Creek Police Department maintains a Police Honor Guard consisting of qualified sworn personnel.

#### 1001.1.1 PURPOSE

The purpose of this policy is to establish specific guidelines, under which the Police Honor Guard Detail shall be formed, trained, deployed, equipped and maintained.

### 1001.2 PROCEDURES

#### 1001.2.1 THE POLICE HONOR GUARD

The Police Honor Guard shall consist of a police sergeant and a minimum of six sworn officers. The sergeant is responsible for providing training, coordinating scheduling of events and day-to-day supervision of the team. The Chief of Police will assign the sergeant to the position on the Police Honor Guard. Management of the Police Honor Guard is the responsibility of the Operations Manager.

Selection to the Police Honor Guard and will be conducted in accordance with Special Assignment Policy 1005.

#### 1001.2.2 TRAINING

The Police Honor Guard shall receive special training in military bearing, marching, movements, color guard and funeral detail. This training will be conducted on an ongoing basis established by the sergeant assigned to the Police Honor Guard.

#### 1001.2.3 VEHICLES

The Police Honor Guard shall use marked police duty vehicles when going to/from a detail, and when possible the Police Honor Guard will use police vehicles without a light bar and cage. These vehicles will be cleaned prior to transportation to a detail.

#### 1001.2.4 EQUIPMENT

The Department provides specialized uniform items to the officers necessary to perform their assignment while a member of the Police Honor Guard. This equipment is the property of the Department and upon completion of the assignment the officer will return the equipment to the supervisor assigned to the Honor Guard. The following items will be issued to members of the department Honor Guard:

- Dark Blue Stratton Hat (Navy blue, gold braid)
- WCPD gold Hat Badge
- Corofram Shoes



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## *Honor Guard*

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- High-collar dress coat with gold trim
- Dress trousers
- White gloves
- High gloss belt, shoulder strap, and holster.

### 1001.2.5 DEPLOYMENT

The Police Honor Guard's primary focus will be to deploy to police officer's funerals, police officer memorials or other significant events as requested or directed. These significant events may include Character Counts graduations, civic events involving City Government, and official Department ceremonies.

The primary area of deployment will be the nine Bay Area counties. The Chief of Police may authorize the Police Honor Guard to respond outside the nine Bay Area counties.

Funeral deployment of the Police Honor Guard should be restricted to the funerals of officers who have died in the line of duty and memorials for fallen officers. However, at the discretion of the Chief of Police, the Police Honor Guard may deploy for officer's funerals whom have died outside the line of duty, retired Walnut Creek Police officers, and funerals of significance to the law enforcement community.

The presence of Police Honor Guard does not preclude other officers or employees of the Department from attending the aforementioned events, however the Police Honor Guard shall deploy as a unit, separate from the other officers in attendance.

### 1001.2.6 INSPECTION

The supervisor assigned to the Honor Guard will be responsible for inspecting all participants prior to deployment.

## Evaluation of Employees

### 1002.1 PURPOSE AND SCOPE

The Department's employee performance evaluation system is designed to record work performance for both the Department and the employee, providing recognition for good work and developing a guide for improvement.

### 1002.2 POLICY

Employee performance evaluations will be written based on job related factors specific to the position occupied by the employee without regard to sex, race, color, or creed. Each evaluation will cover a specific period and should be based on performance during that period. The employee's immediate supervisor will complete each evaluation. Other supervisors directly familiar with the employee's performance during the rating period should be consulted by the immediate supervisor for their input.

All sworn and civilian supervisory personnel shall be sent to a POST approved supervisory course that includes training on the completion of performance evaluations within one year of the supervisory appointment.

Each supervisor should discuss the tasks of the position, standards of performance expected, and the evaluation rating criteria with each employee at the beginning of the rating period. When a non-probationary employee's job performance falls below the established standards of the job, the supervisor should, as soon as practical, advise the employee in writing in order to provide an opportunity for the employee to improve performance. The involved employee will be provided the opportunity to initial any such writing and respond in writing within 30 days, if desired. Failure to meet established performance standards is justification for an unsatisfactory rating. Rating factors that are not observed are assumed to be performed at a standard level.

### 1002.3 RESERVE OFFICER EVALUATIONS

Reserve officer evaluations are covered under Policy Manual § 350.

### 1002.4 FULL TIME PROBATIONARY PERSONNEL

Civilian personnel are on probation for 12 months before being eligible for certification as permanent employees. Probationary employees are evaluated every three months during the probationary period.

Civilian employees who work in the capacity as a Police Assistant are on probation for 18 months before being eligible for certification as permanent employees. Probationary Police Assistants are evaluated daily, weekly and monthly during the probationary period.

Sworn personnel are on probation for 18 months before being eligible for certification as permanent employees. Probationary officers are evaluated daily, weekly and monthly during the probationary period.

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## *Evaluation of Employees*

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### **1002.5 FULL-TIME PERMANENT STATUS PERSONNEL**

Permanent employees are subject to performance evaluation on the following dates:

Sworn personnel assigned to patrol shall receive an Employee Performance Evaluation at the end of every shift cycle by the employee's immediate supervisor.

Sworn personnel in a special assignment shall receive an Employee Performance Evaluation once a year by the employee's immediate supervisor.

Civilian personnel shall receive an Employee Performance Evaluation once a year by the employee's immediate supervisor.

Per diem employees will receive evaluations at the same intervals as permanent employees.

#### **1002.5.1 RATINGS**

When completing the Employee Performance Evaluation, the rater will place a check mark in the column that best describes the employee's performance. The definition of each rating category is as follows:

**Exceeds Standards** - Represents performance that is better than expected of a fully competent employee.

**Meets Standards** - Is the performance of a fully competent employee. It means satisfactory performance that meets the standards required of the position.

**Needs Improvement** - Is a level of performance less than that expected of a fully competent employee and less than standards required of the position. A needs improvement rating must be thoroughly discussed with the employee.

Space for written comments is provided at the end of the evaluation in the rater comments section. This section allows the rater to document the employee's strengths, weaknesses, and suggestions for improvement. Any rating under any job dimension marked unsatisfactory or outstanding shall be substantiated in the rater comments section.

#### **1002.6 EVALUATION INTERVIEW**

When the supervisor has completed the preliminary evaluation, arrangements shall be made for a private discussion of the evaluation with the employee. The supervisor should discuss the results of the just completed rating period and clarify any questions the employee may have. If the employee has valid and reasonable protests of any of the ratings, the supervisor may make appropriate changes to the evaluation. Areas needing improvement and goals for reaching the expected level of performance should be identified and discussed. The supervisor should also provide relevant counseling regarding advancement, specialty positions and training opportunities. The supervisor and employee will sign and date the evaluation. Employees may also write comments in the Employee Comments section of the performance evaluation report.

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## *Evaluation of Employees*

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### **1002.7 EVALUATION REVIEW**

After the supervisor finishes the discussion with the employee, the signed performance evaluation is forwarded to the rater's supervisor (Bureau Commander). The Bureau Commander shall review the evaluation for fairness, impartiality, uniformity, and consistency.

### **1002.8 EVALUATION DISTRIBUTION**

The original performance evaluation shall be maintained in the employee's personnel file in the office of the Chief of Police for the tenure of the employee's employment. A copy will be given to the employee and a copy will be forwarded to City of Walnut Creek Department of Human Resources until the employee reaches top step.

# Recognition, Awards and Commendation Program

## 1003.1 POLICY

It is the policy of the Walnut Creek Police Department to provide the community with outstanding and professional service and to recognize both members of the organization and citizens who make significant contributions.

### 1003.1.1 PURPOSE

The purpose of this Directive is to establish an awards program to recognize Police Department employees and citizens who have distinguished themselves by performing significant acts in support of the Department's mission.

## 1003.2 DEPARTMENT AWARDS

### 1003.2.1 EMPLOYEES

- (a) All Department employees, including Reserve Police Officers, those employed part-time and those who serve as volunteers, are eligible to receive Department awards.
- (b) Award classifications:
  - o **MEDAL OF VALOR** - The Medal of Valor may be awarded to the employee, reserve, or volunteer who distinguishes himself/herself by performing a courageous act at the risk of his/her life, above and beyond the call of duty.
  - o **DISTINGUISHED SERVICE MEDAL** - The Distinguished Service Medal may be awarded to an employee, reserve, or volunteer who distinguishes himself/herself by conspicuous bravery or courageous conduct in the performance of his/her duties under unusual, complicated, or hazardous conditions where the employee, reserve or volunteer accomplished a specific police mission.
  - o **MERITORIOUS SERVICE MEDAL** - The Meritorious Service Medal may be awarded to the employee, reserve, or volunteer who has performed effective, efficient, and valuable service to the Department. Such service may be of a single act or it may be an outstanding performance exceeding general duties over an extended period of time. Such acts may be but are not limited to:
    - (a) Developing projects, programs, and processes that have a significant effect on public safety;
    - (b) Suggesting changes in policy/procedures which are implemented and which result in improving the overall efficiency and productivity (cost savings) to the Department;
    - (c) Performing superior quality work at a high level of productivity;

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## *Recognition, Awards and Commendation Program*

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- (d) Using extraordinary initiative in the solution of a crime or crimes.
- **LIFE SAVING MEDAL** - The Life Saving Medal may be awarded to the employee, reserve, or volunteer who performs exceptional acts under emergency and/or extraordinary conditions which result in the saving or attempt to save a human life.

### 1003.2.2 DEPARTMENT COMMENDATIONS

The purpose of the Department Commendations is to provide timely and appropriate recognition in a public setting (e.g. lineup) to the employee for his/her actions. These commendations do not require the review by the awards committee. The commendation will be written and submitted directly to the Chief of Police using the format attached.

- **CHIEF'S CERTIFICATE OF COMMENDATION** - The Chief's Certificate of Commendation may be awarded to the employee, reserve, or volunteer for an outstanding act or achievement which brings great credit to the Department and involves performance above and beyond that required by their assignment.
- **SUPERVISOR'S COMMENDATION** - A Supervisor's Commendation may be awarded to any employee, reserve, or volunteer for acts of service deserving of Department recognition. See attached template for format.

### 1003.2.3 COMMUNITY MEMBERS

Community members who have performed acts of valor or who have made significant contributions to public safety may be recognized by the Walnut Creek Police Department.

#### **Award classifications**

- **CITIZEN'S MEDAL OF VALOR** - the Citizen's Medal of Valor may be awarded to any citizen who has performed an exceptional act under emergency conditions and who has displayed extreme courage and bravery under unusual, complicated or hazardous circumstances to assist Walnut Creek Police Personnel.
- **CHIEF'S AWARD** - The Chief's Award may be awarded to any citizen who has performed a meritorious act in order to either assist law enforcement, save human life or to prevent the loss or destruction of property.
- **CITIZEN'S COMMENDATION AWARD** - The Citizen's Commendation Award may be awarded to a citizen deserving special recognition for their unique efforts and contributions to the law enforcement profession.

### 1003.3 AWARDS REVIEW COMMITTEE

The Awards Review Committee (ARC) shall be comprised of (1) Captain, (1) Sergeant, (3) Officers, and (2) civilian employees. The ARC coordinator will be a Master Officer II, who is appointed by the Chief of Police or his designee for a one year term. The ARC coordinator will

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request volunteers for assignment to the ARC. The Chief of Police or his designee will then appoint the committee members from this list of volunteers.

The purpose of the ARC is to review award nominations and make recommendations to the Chief regarding recipients and specific awards to be given.

### **1003.4 PROCEDURE FOR RECOMMENDATION**

#### **(a) Nominations for:**

##### **1. Police Department Employees, Reserves, and Volunteers**

(a) Employees, reserves, and volunteers may be nominated for recognition by any member of the Walnut Creek Police Department. Nominations are submitted by completion of an interoffice memo to the nominee's direct supervisor.

##### **2. Citizens**

(a) Any Police Department employee, reserve and/or volunteer may nominate a member of the community for recognition by the Police Department. Citizen recommendations will be sent directly to the Awards Review Committee (ARC).

#### **(b) Review and Recommendations:**

(a) The supervisor will review the nominations, make his/her recommendation and attach any police reports, statements, documents or other pertinent information. The package should then be forwarded to the ARC.

(b) The ARC will review the package and make their recommendation to the Chief of Police. This recommendation will include the award to be given and will be based on the facts of the incident. The package will then be sent, within 30 days of the date of receipt, to the Chief of Police for final review and disposition.

(c) The Chief's Certificate of Commendation and Supervisor's Certificate of Commendation recommendations do not require review by the ARC and will be sent to the Chief of Police via the chain of command for review and approval.

### **1003.5 MEDALS, RIBBONS, CERTIFICATES**

(a) The Medal of Valor, the Distinguished Service Medal, the Meritorious Service Medal, and Life Saving Medal awards shall consist of (1) a Medal with neck ribbon, (2) a uniform and/or lapel pin, (3) a certificate with citation.

(b) The Chief's Certificate of Commendation will be awarded in memorandum format and framed for presentation. It will be presented by the chief of police or his/her designee. The Supervisor's Commendation will be awarded in memorandum format and presented by the recipient's immediate supervisor.

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- (c) Wearing of Medals and Pins
  - 1. Medals
    - (a) The Medals may be worn with the Class A jacket.
  - 2. Uniform Pins
    - (a) The uniform pins may be worn on the top seam of the left breast pocket on the uniform shirt. If more than one pin is authorized, the pins will be worn in a single line with the highest award pin on the right. Multiple awards of the same medal will be designated by numbers on the pin.
  - 3. Lapel Pins
    - (a) Non-uniformed personnel and off-duty personnel may wear the lapel pin on the left lapel of a coat or shirt.

### **1003.6 OFFICER OF THE YEAR AWARD**

#### **Officer of the Year – Criteria**

The Walnut Creek Police Department Officer of the Year recipient is a police officer who has distinguished himself/herself during the past year by:

- (a) consistently producing superior quality work, or by
- (b) demonstrating extraordinary initiative in solving crimes, or by
- (c) working collaboratively with others to develop and implement projects or processes that significantly impact the quality of life of the citizens of Walnut Creek

#### **Officer of the Year – Eligibility and Nomination Process**

- (a) Officers must be employed by the department for at least one year
- (b) All Monthly Top Cop winners in the past year (May – April) will automatically be nominated (except those who do not meet the one year tenure requirement)
- (c) Anyone from the Department can nominate an Officer (a reminder email will be sent out in late March). All non-Top Cop nominations require a brief write-up in support of the Officer based on the Officer of the Year criteria
- (d) A list of nominees will be generated and distributed to Department employees. Employees will vote on the Officer who they believe is most deserving
- (e) The previous years Officer of the Year winner(s) will not be considered for the award
- (f) The Chief of Police will review the merits of the top 3 eligible candidates and select the winner(s) from that list of 3
- (g) The Officer of the Year recipient is announced and awarded at the Awards and Recognition Ceremony (typically in May)



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## *Recognition, Awards and Commendation Program*

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### **Officer of the Year – Award**

- (a) Officer Plaque – The recipient will be given an Officer of the Year plaque at the Awards Ceremony
- (b) Department Plaque – An Officer of the Year department plaque will be engraved with the names of past recipients and the years in which they won and be prominently displayed at the police station
- (c) The recipient has the option of attending a Peace Officer Standards and Training (P.O.S.T) course or P.O.S.T equivalent course of his/her choosing
- (d) The Officer of the Year receives \$500 in appreciation for his/her dedicated service

### **1003.7 PROFESSIONAL EMPLOYEE OF THE YEAR AWARD**

#### **Professional Employee of the Year – Criteria**

The Walnut Creek Police Department Professional Employee of the Year recipient is a full-time employee who has distinguished himself/herself during the past year by:

- (a) consistently producing superior quality work, or by
- (b) demonstrating extraordinary initiative in solving problems, or by
- (c) working collaboratively with others to develop and implement projects or processes that significantly improve the effectiveness and efficiency of the department

#### **Professional Employee of the Year – Eligibility and Nomination Process**

- (a) Employees must be employed by the department for at least one year
- (b) All Monthly All Star winners in the past year (May – April) will automatically be nominated (except those who do not meet the one year tenure requirement)
- (c) Anyone from the Department can nominate an Employee (a reminder email will be sent out in late March). All non-All Star nominations require a brief write-up in support of the Employee based on the Professional Employee of the Year criteria
- (d) A list of nominees will be generated and distributed to Department employees. Employees will vote on the employee who they believe is most deserving
- (e) The previous years Professional Employee of the Year winner(s) will not be considered for the award
- (f) The Chief of Police will review the merits of the top 3 eligible candidates and select the winner(s) from that list of 3
- (g) The Professional Employee of the Year recipient is announced and awarded at the Awards and Recognition Ceremony (typically in May)

#### **Professional Employee of the Year – Award**

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- (a) Employee Plaque – The recipient will be given a Professional Employee of the Year plaque at the Awards Ceremony
- (b) Department Plaque – A Professional Employee of the Year department plaque will be engraved with the names of past recipients and the years in which they won and be prominently displayed at the police station
- (c) The recipient has the option of attending a Peace Officer Standards and Training (P.O.S.T) course or P.O.S.T equivalent course of his/her choosing
- (d) The Professional Employee of the Year receives \$500 in appreciation for his/her dedicated service

## Special Assignments

### 1004.1 POLICY

To provide the opportunity for all personnel to experience a variety of assignments and to develop personnel so that service to the community will be enhanced.

#### 1004.1.1 PURPOSE

To establish guidelines for the selection and assignment of personnel to special assignment positions.

#### 1004.1.2 BACKGROUND

Special assignment positions are made to help the Police Department carry out its mission.

#### 1004.1.3 DEFINITIONS

Assignment Categories:

There are two categories of special assignments that include, but are not limited to:

- (a) **Duty Assignments** --- Temporary reassignment to a specialty unit or job function.
  - 1. (a) Officers:
    - (a) Investigator
    - (b) Traffic Officer
    - (c) Special Enforcement Team (SET)
    - (d) Canine Handler
    - (e) Recruit Training Officer for Police Academy
    - (f) Broadway District Officer
    - (g) Mental Health Evaluation Team (MHET)
  - (b) Police Services Officers:
    - (a) Property and Evidence
    - (b) Patrol PSO
- (b) **Work Assignments** --- Training responsibilities that are duty specific:
  - (a) Officer:
    - (a) Field Training Officer (must be assigned to patrol)
  - (b) Police Assistant:
    - (a) Communications Training Officer ( must be assigned to dispatch)
- (c) **Collateral Assignments** --- Responsibilities that are not duty assignment specific:
  - 1. Special Weapons and Tactics

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## *Special Assignments*

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2. Crisis Negotiation Team
  3. Bomb Squad
  4. Firearms Training Instructor
  5. Driver Training Instructor
  6. Defensive Tactics Instructor
  7. First Aid/CPR Instructor
  8. Radar Instructor
  9. Hazardous Materials Instructor
  10. Crime Scene Investigation Team
  11. Police Information Technology Team
  12. Motorcycle Riding Instructor
  13. Recruitment Team
  14. Special Olympics Coordinator
  15. Honor Guard
  16. Tactical Dispatch
  17. Bicycle Instructor
  18. MAIT (Major Accident Investigation Team)
- (d) **Assignment Manager** -The person charged with the primary responsibility for the special assignment.

NOTE: A "Master Officer" designation is not a special assignment position.

### 1004.1.4 RETENTION OF RECORDS

All written records pertaining to any of the special assignment processes will be kept in a separate "Special Assignment" file that is maintained by the Chief's Office. These records may include: the announcement(s); all applications, including those submitted by ineligible employees; all special assignment evaluations; grouping of candidates; the basic questions asked; the memorandum to the Chief of Police with the recommendation(s) for appointment(s). These files will be maintained according to directive on records destruction.

Employees holding special assignment positions will have that information recorded in their personnel files. The entries will include the position held and the date assigned.

When an employee leaves a special assignment position, the ending date will be added to the file.

### 1004.2 DURATION

The duration employees serve in duty, work, or collateral assignments vary, but continued involvement in any special assignment is always dependent upon the employee meeting

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### *Special Assignments*

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performance standards. Employees, whose performance does not meet standards, may not be allowed to continue in that special assignment. The duration of a special assignment is also dependent Position upon the needs of the department, the availability of trained personnel, and the scheduling needs of Patrol and the affected unit(s). All employees in special assignments serve at the discretion of the Chief of Police. It is intended that duty assignments be made concurrent with patrol shift rotations whenever practical. Work and collateral assignments may be made as necessary.

- (a) "Duty Assignments" Employees may remain in these assignments for the specified duration as long as they meet the assignment's standards. Rotations out of the assignments should occur at a shift change. If a scheduled shift change results in an employee serving less than his/her specified time, the reassignment will be delayed until the following shift change.
  - 1. Assignments to the Investigations Bureau may be for four or five years, depending on position.
    - (a) High Tech Positions - 5 Years
    - (b) All Other Positions - 4 Years
  - 2. Assignments to the Traffic Team may be for five years.
  - 3. The Canine Handler assignment may be for the duration of the serviceability of the dog.
  - 4. The RTO position should be for the duration of the academy class.
  - 5. Broadway District Officer will be for 1 year with a possibility of 1 year extensions if approved by the Chief of Police.
  - 6. Patrol PSO is for 3 years.
- (b) "**Work Assignments**" - Employees may remain in the work assignment as long as they meet the assignment's standards and continue to work in the assignment that is required for the position. For example, if an FTO leaves patrol, the employee can no longer be an FTO.
- (c) "**Collateral Assignments**" - Employees may stay in these assignments indefinitely, as long as they meet the assignment's standards and the department still has a need for the assignment. A minimum time commitment is required and shall be listed in the collateral assignment announcement.

#### **1004.3 ELIGIBILITY**

- (a) For work and collateral assignments\*, it is highly desirable, but not required, that applicants be off probation, to apply. For duty assignments, applicants must be off probation before the start date of the assignment. Possession of a Basic Post Certificate is required for all sworn positions.
  - \* For the Field Training Officer position, applicants must be off probation and have a minimum of (3) years of employment with WCPD or a combined three

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## *Special Assignments*

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(3) years of police experience with WCPD and another police agency. Two of the years of police experience must be in Patrol duty.

- (b) Employees must have "meets standards" or "exceeds standards" ratings in all performance dimensions for the year and half prior to being appointed to a position. Employees must be capable of performing all the essential functions of the position for which they are appointed.

### **1004.4 APPLICATION PROCESS FOR WORK/DUTY ASSIGNMENTS**

- (a) Announcement

- The assignment manager responsible for the special assignment position(s) or their designee will notify employees of the opening(s). This notification will include:
  - The title of the position
  - A general description of job duties and responsibilities
  - Any special requirements
  - Desired competencies - these should be clearly described and assignment-specific
  - The anticipated assignment start date
  - The number of positions available
  - The anticipated duration commitment of the assignment
  - Where the application form may be obtained
  - To whom the applications should be returned
  - The closing date and time for submitting applications
  - Special testing requirements
  - Anticipated test and/or interview dates
- All employees will be notified by a general announcement that a special assignment position is available. Announcements for special assignment positions will be posted for a minimum of two weeks prior to the closing date for application.

- (b) Application

- Applications must be submitted on the special assignment application form. Each applicant will include his/her last two performance evaluations with his/her application. These evaluations can be obtained from the Chief's Office.

- (c) Application Review

- Applications will be reviewed by the assignment manager to ensure applicants meet the eligibility requirements. The assignment manager will notify each applicant if he/she will or will not continue in the process.

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## *Special Assignments*

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### **1004.5 SELECTION PROCESS FOR WORK/DUTY ASSIGNMENTS**

The assignment manager or their designee will be responsible for coordinating and scheduling the selection process, which will include the following:

- (a) Physical/Aptitude Testing
  - Some assignments require physical and/or aptitude testing. This testing may be completed before or after the remainder of the selection process. If there is physical/aptitude testing, the specific minimum requirements of the testing will be posted at the time of the announcement of the position.
- (b) Evaluation
  - Prior to convening an interview panel, the assignment manager will distribute special assignment evaluation forms to the applicant's last two supervisors. The purpose of these evaluations is to solicit comments from supervisors for each applicant regarding his/her competencies for the position.
    - (a) The special assignment evaluation will be job specific and may include some of the following categories:
      - Job-related competencies/skills
      - Motivation/creativity in problem solving
      - Ability to work with others
      - Interactions/partnerships with other agencies/other City departments/ Community
      - Commitment to departmental vision/mission/goals and Crime View Model
      - Work ethic
      - Other categories as required
    - (b) Supervisors must complete and return these evaluation forms to the assignment manager or their designee.
- (c) Interview Panel
  1. The assignment manager or their designee will assemble an interview panel comprised of the Assignment manager, assignment supervisor and an additional supervisor; the additional supervisor can be from any assignment. An employee from Human Resources may sit in on the interviews to monitor the process.
  2. The assignment manager or their designee will schedule the applicant interviews. The goal of the interview process is to give applicants an opportunity to discuss individual competencies and other information the applicant believes are important. All applicants will be asked the same (basic) questions, however, the questions will be based on the application, performance evaluations, and

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## *Special Assignments*

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special assignment evaluations. Follow up/clarification questions may be asked and can vary from applicant to applicant.

3. After the interviews are complete, the panel will review and discuss the applicants' competencies and readiness for the special assignment. Some of the considerations which should be used by the panel to make its recommendations are:
  - Information from special evaluation forms completed by supervisors, including technical skills, work habits, support of departmental goals, etc.
  - Information from applications
  - Information developed through the interview
  - Special skills, past experience, and tenure of each applicant
  - Will the assignment help broaden the applicant's experience?
  - How will each applicant benefit from a specific employee being recommended?
  - How the organization will benefit from a specific employee being recommended?
  - Are there specific needs of the assignment that need to be considered?
4. The panel, using all of the available information, will list the applicants in a qualified or unqualified category. Panel members will rank the applicants from the qualified list, in a recommended order of selection. Unqualified applicants will not be considered for a position. The assignment manager or designee will notify applicants if they are in the qualified or unqualified category.
5. The assignment manager or designee will submit a memo about the process to the Chief and Captains, which will include the ranking of all applicants, and identifying those who are not qualified.

### **1004.6 APPLICATION/SELECTION PROCESS FOR COLLATERAL POSITIONS**

- (a) The process is the same as duty assignments with these exceptions:
  1. The assignment manager, supervisor and/or team members of the assignment will develop a special application pertinent to the position. The questions asked on the application need to be detailed enough to gather sufficient information on the candidate.
  2. There will be no supervisor or employee evaluations used in the process. The information gathered from the application and interview will be used to develop a list of qualified and unqualified candidates. The assignment manager or supervisor will notify the applicant of their qualified or unqualified status.
  3. The interview panel will be comprised of the assignment manager/supervisor or both and one additional team member from the team filling the position. The



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assignment manager may assign additional persons to the panel as needed. Any person may serve on this type of panel, as there is no privileged information used to make selections.

4. There will be no proctor or monitor for this process

### **1004.7 APPOINTMENT**

#### (a) Appointment

1. The assignment manager will present findings of the process to the appropriate Division Captain who will make the appointment after consultation with the Chief of Police.. Any applicants remaining in the qualified category will be placed on a six-month eligibility list.
2. If no applications are submitted for a special assignment, the Chief of Police may assign employees to fill the position for up to one year.

### **1004.8 APPLICANT FEEDBACK**

After the interview process has been completed for a position, the assignment manager or designee shall arrange for the applicants who were interviewed to receive feedback on their presentation from the interview panel. Each applicant will have an opportunity to look at the information used by the interview panel and to ask questions. Applicants may decline feedback on the process. Applicants who choose to participate in this part of the process will be provided with feedback on each segment of the selection process.

### **1004.9 RESIGNATION FROM A DUTY/WORK OR COLLATERAL ASSIGNMENT**

When an employee wants to resign from an assignment they must notify the assignment manager or assignment supervisor in writing requesting a resignation and reason. Not all resignations will be accepted at time of request and will be granted when the needs of the assignment are met. These needs of the assignment may depend on an appropriate level of staffing or expertise within the assignment. The final decision of any resignation will rest with the Chief or the Chief's designee.

### **1004.10 SUPERVISORY AND MANAGEMENT EMPLOYEES**

The Chief of Police may assign supervisors and managers to any position in any of the special assignment categories. There is no requirement for announcements, applications or selection processes for supervisory or management positions.

## Grievance Procedure

### 1005.1 PURPOSE AND SCOPE

It is the policy of this department that all grievances be handled quickly and fairly without discrimination against employees who file a grievance whether or not there is a basis for the grievance. Our Department's philosophy is to promote a free verbal communication between employees and supervisors.

#### 1005.1.1 GRIEVANCE DEFINED

A grievance is any difference of opinion concerning terms or conditions of employment or the dispute involving the interpretation or application of any of the following documents by the person(s) affected:

- The employee bargaining agreement (Memorandum of Understanding)
- This Policy Manual
- City rules & regulations covering personnel practices or working conditions

Grievances may be brought by an individual affected employee or by a group representative.

Specifically outside the category of grievance are complaints related to alleged acts of sexual, racial, ethnic or other forms of unlawful harassment, as well as complaints related to allegations of discrimination on the basis of sex, race, religion, ethnic background and other lawfully protected status or activity. Those complaints are subject to the complaint options set forth in Policy Manual § 328, and personnel complaints consisting of any allegation of misconduct or improper job performance against any department employee that, if true, would constitute a violation of department policy, federal, state or local law set forth in Policy Manual §1020.

### 1005.2 PROCEDURE

Except as otherwise required under a collective bargaining agreement, if an employee believes that he or she has a grievance as defined above, then that employee shall observe the following procedure:

- (a) Attempt to resolve the issue through informal discussion with immediate supervisor.
- (b) If after a reasonable amount of time, generally seven days, the grievance cannot be settled by the immediate supervisor, the employee may request an interview with the Bureau Commander of the affected bureau or bureaus.
- (c) If a successful resolution is not found with the Bureau Commander, the employee may request a meeting with the Chief of Police.
- (d) If the employee and the Chief of Police are unable to arrive at a mutual solution, then the employee shall proceed as follows:

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1. Submit a written statement of the grievance and deliver one copy to the Chief of Police and another copy to the immediate supervisor and include the following information:
  - (a) The basis for the grievance (i.e., what are the facts of the case?).
  - (b) Allegation of the specific wrongful act and the harm done.
  - (c) The specific policies, rules or regulations that were violated.
  - (d) What remedy or goal is being sought by this grievance.
- (e) The employee shall receive a copy of the acknowledgment signed by the supervisor including the date and time of receipt.
- (f) The Chief of Police will receive the grievance in writing. The Chief of Police and the City Manager will review and analyze the facts or allegations and respond to the employee within 14 calendar days. The response will be in writing, and will affirm or deny the allegations. The response shall include any remedies if appropriate. The decision of the City Manager is considered final.

### **1005.3 EMPLOYEE REPRESENTATION**

Employees are entitled to have representation during the grievance process. The representative may be selected by the employee from the appropriate employee bargaining group.

### **1005.4 GRIEVANCE RECORDS**

At the conclusion of the grievance process, all documents pertaining to the process shall be forwarded to the Administrative Captain for inclusion into a secure file for all written grievances. A second copy of the written grievance will be maintained by the City Manager's office to monitor the grievance process.

### **1005.5 GRIEVANCE AUDITS**

The lieutenant responsible for departmental training shall perform an annual audit of all grievances filed the previous calendar year to evaluate whether or not any policy/procedure changes or training may be appropriate to avoid future filings of grievances. The Training Manager shall record these findings in a confidential and generic memorandum to the Chief of Police without including any identifying information from any individual grievance. If the audit identifies any recommended changes or content that may warrant a critical revision to this policy manual, the Training Manager should promptly notify the Chief of Police.

## After-Action Reports

### 1006.1 POLICY

It is the policy of the Walnut Creek Police Department to complete after-action reports for critical incidents and special events.

#### 1006.1.1 PURPOSE

This directive establishes procedures to ensure an objective review of critical incidents.

After-action reports:

- Determine specific facts about the incident.
- Assess policy compliance.
- Assess training needs.
- Assess the need for policy and/or procedure modification.

#### 1006.1.2 BACKGROUND

After-action reports are required by policy and are considered part of the normal course of duty. During inquiries of this type, a supervisor is permitted to ask questions of involved officers and witnesses and collect evidence. After-action reports differ from the formal administrative investigation process because they are fact-gathering reports about incidents rather than inquiries into alleged rule violations.

### 1006.2 PROCEDURES

The bureau commander is responsible for completing the after-action report. If no bureau commander is available, the supervisor is responsible for completing the after action report. If the bureau commander/supervisor, is an actor, his/her supervisor shall complete the after action report.

After-action reports will be completed on:

- All City owned vehicle accidents, when operated by a Police Department employee
- Reportable force incidents (as defined in Policy 300).
- Vehicle pursuits as defined in Directive No. 5, other than those involving the subject driving in a legal manner but failing to yield to an officer's signal to stop.
- The discharge of any firearm, with the exception of the use of bomb squad disrupter cannons when used in bomb squad operations.
- Custody injuries or death.
- Police action that results in injury to an employee or citizen.
- Special events that require other than normal police response.
- Labor Actions requiring other than normal police response.

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### 1006.2.1 FORMAT

The after-action report should be done in memorandum form and submitted through the chain-of-command to the appropriate Division Commander. After-action reports shall include the following information:

- **Date, time and case number of the incident**
- **Synopsis** --- a brief description of what occurred.
- **Name of involved employees**
- **Name and identifying information of suspect(s)** --- list their disposition (e.g. arrested, cited, taken to hospital, etc.)
- **Name and identifying information of other involved citizens**
- **Injuries sustained by any of the involved people** --- list their disposition (e.g. hospitalized, treated and released etc.)
- **Summary** --- the specific facts of the incident, all interviews and all other inquiries made into the incident.
- **Conclusions** --- based on the facts, the conclusions if policy procedures were followed, if the involved parties were in compliance, and/or if policies or procedures need to be modified.
- **Action taken or recommended** --- if all policies are properly applied, then no further action is necessary. If there are minor transgressions in policy identify action taken and/or if further action is required.
- **Attachments** --- any police reports, photos, tape recordings or other pertinent information should be attached.

### 1006.2.2 DISPOSITIONS

After-action reports should be completed as soon as possible after the incident, and they must be completed within five days unless the Division Commander approves a delay.

If minor issues involving policy compliance or training are identified, the bureau commander/supervisor may provide training to the involved employee(s). Training resulting from After Action review is considered non-disciplinary.

If during the inquiry it is apparent there are serious policy violations, the supervisor shall stop further inquiry into the incident and forward the information to the appropriate Division Commander. The Division Commander may then assign an administrative investigation as provided for in Policy 1020.

If the need for policy and/or procedure modifications is identified, recommendations will be forwarded to the Division Commander for disposition.

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### **1006.3 RETENTION**

After action reports are not part of an officer's personnel file and are retained in a separate administrative file maintained in the Office of the Chief.

After-action reports will be purged as provided for in the City of Walnut Creek Administrative Policy 80-3.

## Master Officer Program

### 1007.1 PURPOSE AND SCOPE

The Master Officer program is designed to encourage officers of the Walnut Creek Police Department to make an extraordinary contribution to this community, and to recognize and reward those officers who are making such a contribution.

#### 1007.1.1 PROGRAM BASIS

This program is intended to develop Master Officers by providing both developmental opportunities and additional responsibility. This program is not intended as a reward for seniority or time in service.

### 1007.2 MASTER OFFICER LEVELS

The program will provide three levels of Master Officers. These positions will be designated Senior Officer, Master Officer I and Master Officer II.

#### 1007.2.1 YEARS REQUIRED FOR EACH LEVEL

Each level will require a specific number of years of peace officer service as well as other requirements.

- The Senior Officer level will require 9 years with at least 2 years of service as a Police Officer with the Walnut Creek Police Department.
- The Master Officer I level will require 15 years with at least 3 years of service as a Police Officer with the Walnut Creek Police Department.
- The Master Officer II level will require 20 years with at least

#### 1007.2.2 MASTER OFFICER PROGRAM PARTICIPATION

Participation in the Program is voluntary. To qualify for positions within the Program, Officers must meet minimum requirements and the approval of the Chief of Police or his designee. Master Officers serve at the discretion of the Chief of Police.

#### 1007.2.3 CONTINUING PARTICIPATION REQUIREMENT

All officers participating in this Program must be active in at least one special assignment, special project or community service project to maintain the benefits of this Program. The Chief or his designee may assign qualifying projects or community service choices. Participation is mandatory. All participants will have their applications reviewed annually to assure continued participation. The Project Review Panel will conduct this review and make recommendations regarding continuance or termination to the Chief of Police or his designee. Loss of eligibility from this Program is not a disciplinary act and is not subject to appeal under the City's personnel rules. Compensation that may be associated with this Program must be approved by separate action of the City Council. Participants who fail to complete a qualifying project, or who resign from or are asked to leave a special assignment, must notify the Chief of Police in writing within 10 days of the occurrence.

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### 1007.2.4 DURATION OF APPOINTMENT

Subject to the pleasure of the Chief of Police, appointments to Master Officer positions will normally continue as long as the officer maintains an overall "meets standard" evaluation, satisfactorily performs his/her duties, continues to meet the requirements of this Directive for this position, or voluntarily chooses to leave the program.

### **1007.3 MASTER OFFICER PROGRAM REVIEW PANELS**

The Master Officer Program will have two panels: Application Review Panel and Special Projects Review Panel. All participants in the Master Officer Program, at all levels, must make themselves available for panel assignment, and serve on a panel if assigned by the Chief of Police or his designee.

All Officers assigned to a "panel" will serve for a term of three (3) years. The minimum number of Panel members, on either panel, will be three but can be increased by two officers, as workload requires. This maintains an odd number of panel members.

New members of the panels will be chosen from volunteers or participants selected in a random process. If no officers volunteer for vacant panel positions, then all participants will be entered in a random selection process administered by the manager of the program.

The Application Review Panel will consist of three (3) officers. Officers may be from any of the three Program levels and the Panel can consist of any combination of levels. The Application Review Panel will: (1) review applications and make recommendations for appointments to the Program levels to the Chief of Police or his designee; (2) track the schools needed to meet the MO II level and those schools requested by Officers at the various levels; and (3) hear appeals on the appointment application process. All actions and recommendations by the Application Review Panel will be subject to approval by the Chief of Police or his designee.

Members of the Application Review Panel will be responsible for maintaining documentation, which supports the appointment and retention of master officers in this program.

The Project Review Panel will consist of three (3) officers from any of the three levels. The Project Review Panel will: (1) review Special Projects and make recommendations to the Chief of Police or his designee; (2) review "Unique Educational Experiences" and make recommendations to the Chief of Police or his designee; (3) hear appeals on the Special Projects and Educational Experiences submitted to the Project Review Panel; (4) review of these projects will be restricted to the following: Does the project/educational experience benefit the community and/or the police department?; (5) conduct a review of the program and participants each year, as described below.

The Project Review Panel will conduct a review of the program in December of each year, or shortly thereafter, to determine if all officers participating in this Program are active in at least one special assignment, special project, or community service project to maintain the benefits of this Program. Upon conducting this review, the panel will make recommendations regarding continuance or termination to the Chief of Police or his designee. The Application Review Panel will route their recommendations through the Lieutenant or Manager to verify they all meet rating standards.



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Staffing or other considerations are not the charge of the Project Review Panel.

### 1007.3.1 MANAGEMENT OVERVIEW

A Lieutenant/Manager will oversee the Master Officer Program to ensure compliance with this directive. The Lieutenant/Manager will also determine if applicants and current master officers meet or exceed performance standards.

### 1007.3.2 SPECIAL ASSIGNMENT REQUIREMENT

Appointment to a work or duty assignment and a minimum of one year's service in each of two special assignments, (including collateral assignments), will be required to satisfy the "special assignment" requirement for Senior Officer. Three years of service in two different special assignments are required for Master Officer I, and three years of service in three different special assignments are required for Master Officer II. Consecutive assignments to the same special assignment will be considered as separate assignments. Master Officer candidates should include all qualifying information and justifications on their applications when using multiple assignments to the same position as a qualifier.

Lateral applicants may count one duty or work assignment, commensurate to the similar Walnut Creek Police Department special assignment, which was held for a period of three years in the Department of prior employment toward entry into the Program. The use of this prior assignment will be subject to Application Review Panel approval.

### 1007.3.3 UNIQUE EDUCATIONAL EXPERIENCE

The Unique Educational Experience is meant to be challenging and unique and shall benefit the individual and the Community. Examples of Unique Educational Experiences are the following:

- Bomb School
- Accident Reconstruction School
- FBI Academy
- Federal Law Enforcement Training Center
- Polygraph School
- Various seminars and symposiums

These are examples only and do not limit the opportunities

### 1007.3.4 SPECIAL PROJECT

To be acceptable, the Special Project must benefit the Department, the City or the Community. Examples of Special Projects are development of seminars/symposiums, development of high tech computer investigation projects, child safety seat inspection project, development of the K-9 program, development of the Bomb Squad, and development of the Officer Leadership Institute. These are examples only and do not limit the opportunities.

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### 1007.3.5 SPECIAL PROJECT/UNIQUE EDUCATIONAL EXPERIENCE RESOURCES

Officers participating in this Program are encouraged to seek out Supervisors, Managers and other resources to assist in designing, facilitating and/or development of Special Projects and Unique Educational Experiences.

### 1007.4 SENIOR OFFICER

(a) Qualifications:

1. Officers with 9 years service including at least 2 years with the Walnut Creek Police Department.
2. No discipline consisting of a written reprimand or greater during the twelve (12) months prior to application.
3. Must be eligible and have applied for an Intermediate POST certificate.
4. At time of application, must have been appointed to a "duty" or "work" assignment, (see Special Assignments list), and agree to serve a minimum of two years in that assignment. Must also have a minimum of one-year service in each of two special assignments, including any of the collateral assignments.
5. Continued overall ratings of "meets standard" or above, in all categories, for the year prior to application and during participation. Officers participating in the program who receive "needs improvement" ratings in two consecutive rating periods will be removed from the program and will not be allowed to participate in the Program until their overall rating is again "meets standard." Removal from the Program will result in the loss of any compensable amount of pay associated with the Program.
6. Must complete a Senior Officer application. Applications will be reviewed by the Application Review Panel.
7. Concurrence by the Chief of Police or his designee.

(b) Uniform: Senior Officers shall change the silver uniform accessories to gold, and shall wear a 10k gold badge with name ribbon, a gold star on both uniform sleeves and a gold name plate without title designation.

(c) Development Opportunity: Officers participating in this program will be eligible to attend up to 4 weeks of elective training. This training shall be job related and approval by the Chief of Police or his designee will be required. It will be the responsibility of officers participating in this program to request training.

### 1007.5 MASTER OFFICER I

(a) Qualifications:

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1. Officers with 15 years service including at least 3 years with the Walnut Creek Police Department.
  2. Officers must have satisfied the requirements for Senior Officer Status and must be eligible and have applied for an Advanced POST certificate.
  3. Must have served at least three (3) years each in two (2) different special assignments prior to application (see Special Assignments list). The service may be concurrent and must be with the Walnut Creek Police Department. One of the assignments must be current to within three (3) years prior to application.
  4. Continued overall ratings of "meets standard" or above, in all categories, for the year prior to application and during participation. Officers participating in the program who receive "needs improvement" ratings in two consecutive rating periods will be removed from the Program and will not be allowed to participate in the Program until their overall rating is again "meets standard." Removal from the Program will result in the loss of any compensable amount of pay associated with the Program.
  5. Officers must have participated in a qualifying special project or community service during the three years immediately prior to application. See attached list of qualifying projects.
  6. No discipline consisting of a written reprimand or greater during the twelve (12) months prior to application.
  7. Must complete a Master Officer application. Applications will be reviewed by the Application Review Panel.
  8. Concurrence by the Chief of Police or his designee.
- (b) Uniform: A single stripe with a single star on each shirt sleeve and a gold nameplate without title designation will be the mandatory uniform designation for Master Officer I.
- (c) Development Opportunity:
1. Officers participating in this program will be eligible to attend up to four (4) weeks of elective training. This training shall be job related and approval by the Chief of Police or his designee will be required. It will be the responsibility of officers participating in this program to request training. This training opportunity may be used to fulfill requirements for reaching MOII level. **OR**
  2. Officers will be allowed to participate in "unique educational experiences." These experiences must be job related and must be approved by the Projects Panel and the Chief of Police or his designee. **OR**

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3. Officers will be allowed to develop "Special Projects" of their choosing. These projects shall be reviewed by the Project Review Panel and approved by the Chief of Police or his designee.
- (d) Educational Development: MOIs will be eligible to attend one school from each of three developmental categories of the schools, which are required for the MOII position. If the officer has already completed these schools then they will be allowed to choose a job related educational experience.

### **1007.6 MASTER OFFICER II**

(a) Qualifications:

1. Officers with 20 years service including at least 5 years with the Walnut Creek Police Department.
2. Officers must have satisfied the requirements for Senior Officer and Master Officer I status.
3. Must have served at least three (3) years each in three (3) different special assignments prior to application, (see Special Assignments list). The service may be concurrent and must be with the Walnut Creek Police Department. Special assignments while employed at another agency will apply if previously approved by the Application Review Panel and the Chief of Police or his designee. At least one of the assignments must be current to within three (3) years prior to application.
4. Must have attended and completed at least one school in each of the three groups of the "Master Officer Program Required Schools."
5. Continued overall ratings of "meets standard" or above, in all categories, for the year prior to application and during participation. Officers participating in the program who receive "needs improvement" ratings in two consecutive rating periods will be removed from the program and will not be allowed to participate in the Program until their overall rating is again "meets standard." Removal from the Program will result in the loss of any compensable amount of pay associated with the Program.
6. Officers must have participated in a qualifying special project or community service during the three years immediately prior to application. See attached list of qualifying projects.
7. No discipline consisting of a written reprimand or greater during the twelve (12) months prior to application.
8. Must have applied to attend a POST supervisory course.
9. Must be eligible and have applied for an Advanced POST certificate.

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10. Must complete the Master Officer II application. Applications will be reviewed by the Application Review Panel to verify officer's eligibility.
  11. Concurrence by the Chief of Police or his designee.
- (b) Uniform: Two stripes with a single star on each sleeve and a gold nameplate with title designation will be the mandatory uniform designation for Master Officer II.
- (c) Role: Master Officer II participants may be assigned additional responsibilities as part of their role. Master Officer IIs are expected to accept these responsibilities if they are assigned to them. Officers performing these responsibilities may be evaluated on how they perform their duties by the supervisor in charge of said responsibility. Appointment of these additional responsibilities will be made by the managing supervisor of the assignment.
1. These additional responsibilities may include:
    - Serving as the acting supervisor of a team
    - Serving as the assistant team leader for special assignments (e.g., Driving Team, SWAT, Bomb Squad, Character Counts, Canine Unit, Defensive Tactics Team, Firearms Team, First Aid/CPR Team, Hostage Negotiation Team, MIT, START, Haz Mat, and FTO Program.
    - Field Training Officer
    - Serving as a committee chair
    - Serving as the project manager for special projects
    - Drill Instructor at the Police Academy (when opportunity arises)
    - Member of Review Panel for the Master Officer Program
    - New Officer Training Classes on a variety of topics
    - Training - Mock Crime Scene Investigation
    - Training on selected topics (as assigned)
    - Updating the Long Range Plan
    - Serve on City-wide Committees
    - Coordination of regular case law updates
    - Development of line-up training outlines
    - Liaison to Downtown Businesses
    - New Officer Orientation
    - Equipment maintenance (Tasers, PAS devices, radar guns, shotguns, radios, etc.)

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- Report Review
- Funeral Coordinator / Honor Guard
- Officer Recruitment
- Court and DA Liaison
- ERMA Training / Compliance
- Long range training plans for all officers in the MO program
- Dance Permits
- FFLs and CCWs
- RERC case review and reports
- Sector Coordinator (for each sector)
- Surveillance Van
- Other assignments defined by the Chief of Police or his designee.

(d) Development Opportunity:

1. MOIIs will be allowed to develop "unique educational experiences." These experiences will be job related and must be reviewed by the Project Review Panel and approved by the Chief of Police or his designee.
2. If the MOII does not choose to develop a unique educational experience then he/she may be allowed to develop special projects. These projects need to be work related and they need to be reviewed by the Project Review Panel and approved by the Chief of Police, or his designee.
3. If the MOII does not choose to develop a special project, they may choose to select four (4) weeks of elective school. The time frame for completion of schools shall be five (5) years from date of appointment to MOII, and subject to Department approval.
4. The Project Review Panel will complete a Special Project Review Form on all proposals for unique educational experiences, special projects, or elective schools. This form will be used to document the review of the proposal. This form will be filed along with a copy of the proposal in the Officer's Master Officer File.

### **1007.7 CONTINUED ELIGIBILITY**

The manager in charge of the program shall determine if officers continue to achieve overall ratings of "meets standards" in all categories on their performance evaluations. If an officer participating in the program receives needs improvement ratings in two consecutive rating periods, the program manager shall recommend to the Division Captain that the officer be removed from the program.

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Officers who are removed from the program as a result of needs improvement ratings may seek an administrative review conducted by the Chief of Police.

### 1007.7.1 APPLYING FOR SCHOOLS

It will be the responsibility of the Master Officer to identify and apply for the schools of their choice to meet the requirements of this program. To request a school for the Master Officer Program, officers shall use the School Request Tracking Form. The School Request Forms shall be forwarded through their supervisor to the Training Manager. The officer requesting the school shall make arrangements with their supervisor to attend the school.

The Training Manager will make the necessary arrangements for the Officer to attend the school, if the budget and staffing allow. The Training Manager will keep a file of the pending school requests made by Master Officers. When an officer completes a school as part of the Master Officer Program, the Training Manager will forward a copy of the request to the Lieutenant/Manager in charge of the Master Officer Program. The request and notice of the completed school will be included in the Officer's Master Officer File.

### 1007.8 SPECIAL ASSIGNMENTS

These categories are consistent with the Special Assignment Policy

- (a) Duty Assignments:
  - Traffic Officer
  - Detective
  - Community Policing Officer
  - Canine Handler
  - Recruit Training Officer for Police Academy
- (b) Work Assignments:
  - Field Training Officer
- (c) Collateral Assignments:
  - Character Counts
  - Bomb Squad Technician/Assistant
  - Recruitment Team Member
  - Motorcycle Training Instructor
  - Honor Guard
  - Special Weapons and Tactics
  - Hostage Team Negotiator
  - Crime Scene Investigation Team Member

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- o Polygraph Examiner
- o Firearms Instructor
- o Driver Training Instructor
- o First Aid/CPR Instructor
- o Defensive Tactics Instructor
- o Radar Instructor
- o Hazardous Materials Instructor
- o High Tech Computer Crime Investigation Team Member
- o Special Olympics Coordinator
- o Police Information Technology Team Member
- o Bicycle Instructor

### **1007.9 MASTER OFFICER PROGRAM REQUIRED SCHOOLS**

ONE SCHOOL FROM EACH GROUP REQUIRED

- GROUP I: (Emphasis on developing basic investigation skills)
  - o Evidence collection and processing
  - o Crime scene photography
  - o Interviewing techniques
  - o Basic traffic accident investigation
  - o Other approved courses
- GROUP II: (Emphasis on developing specialized investigation skills)
  - o Homicide investigation
  - o Sexual assault investigation
  - o Advanced accident investigation
  - o Narcotics investigation
  - o Robbery investigation
  - o Auto Theft investigation
  - o Computer crimes investigation
  - o Fraud/forgery investigation
  - o Advanced evidence investigation



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- Other approved courses
- GROUP III: (Emphasis on updating current skills and developing specialized skills)
  - Legal education (update)
  - Ethics facilitator
  - Leadership courses
  - Supervision courses
  - Computer in Law Enforcement
  - Other approved courses

### **1007.10 MASTER OFFICER PROGRAM QUALIFYING PROJECTS OR COMMUNITY SERVICE PROJECTS**

To qualify for Master Officer I or Master Officer II, officers must have completed a Qualifying Project or Community Service Project. Qualifying Projects or Community Service Projects shall consist of activities that benefit the Walnut Creek Police Department and/or the community. Projects designated as Qualifying should be voluntary activities performed in addition to the officer's normal responsibilities. Some examples of Qualifying or Community Service Projects are:

- (a) Community Service Projects:
  - Creek clean-up
  - Coaching youth sports
  - Involvement in a juvenile reading program
  - Serving as a "Big Brother" or "Big Sister"
  - Membership in a community service club or organization
  - Volunteer work as a mentor for the CC Police Athletic Association
  - Volunteer work for a non-profit organization
  - Other projects approved by the Chief of Police or his designee
- (b) Department Projects:
  - Maintaining and updating Department Directives and/or Training Bulletins for a minimum of one year
  - Approved Projects that improve the effectiveness and/or efficiency of operations
  - "Special Projects" as defined in the Master Officer Program Directive
  - All Police Department Committees for a full term
  - Master Officer Review Panels

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- (c) City Projects
  - o Internship with City Manager's Office
  - o Participation on city-wide committees
- (d) Manage the following Programs:
  - o The Every 15 Minutes Program
  - o The Citizen's Academy
  - o The Explorer Program
  - o Character Counts
  - o The Leadership Program
  - o The Master Officer Program
  - o The Department's Web Page
  - o The taxi permit program
  - o The K9 program
  - o Coordinating Special Events and/or the Walnut Festival
  - o Develop and manage monthly New Officer Training Classes
  - o Develop and manage a Mentoring Program for officers on probation
  - o Develop and manage Advanced Field Training Program for Officers

## Reporting of Employee Convictions

### 1008.1 PURPOSE AND SCOPE

Convictions of certain offenses may restrict or prohibit an employee's ability to properly perform official duties. Therefore, all employees shall be required to promptly notify the Department of any past and current criminal convictions.

The Administration Division shall submit in a timely manner a notice to the Commission on Peace Officer Standards and Training (POST) of any appointment, termination, reinstatement, name change or status change regarding any peace officer, reserve peace officer, public safety dispatcher and records supervisor employed by this department (11 CCR 1003).

The Administration Division shall submit in a timely manner a notice to POST of a felony conviction or Government Code § 1029 reason that disqualifies any current peace officer employed by this department or any former peace officer if this department was responsible for the investigation (11 CCR 1003).

### 1008.2 DOMESTIC VIOLENCE CONVICTIONS, OUTSTANDING WARRANTS AND RESTRAINING ORDERS

California and federal law prohibit individuals convicted of, or having an outstanding warrant for, certain offenses and individuals subject to certain court orders from lawfully possessing a firearm. Such convictions and court orders often involve allegations of the use or attempted use of force or threatened use of a weapon on any individual in a domestic relationship (e.g., spouse, cohabitant, parent, child) (18 USC § 922; Penal Code § 29805).

All members are responsible for ensuring that they have not been disqualified from possessing a firearm by any such conviction or court order and shall promptly report any such conviction or court order to a supervisor, as provided in this policy.

### 1008.3 OTHER CRIMINAL CONVICTIONS AND COURT ORDERS

Government Code § 1029 prohibits any person convicted of a felony from being a peace officer in the State of California. This prohibition applies regardless of whether the guilt was established by way of a verdict, guilty or nolo contendere plea.

Convictions of certain violations of the Vehicle Code and other provisions of law may also place restrictions on an employee's ability to fully perform the duties of the job.

Outstanding warrants as provided in Penal Code § 29805 also place restrictions on a member's ability to possess a firearm.

Moreover, while legal restrictions may or may not be imposed by statute or by the courts upon conviction of any criminal offense, criminal conduct by members of this department may be inherently in conflict with law enforcement duties and the public trust.

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## *Reporting of Employee Convictions*

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### **1008.4 REPORTING PROCEDURE**

All members of this department and all retired officers with an identification card issued by the Department shall promptly notify their immediate supervisor (or the Chief of Police in the case of retired officers) in writing of any past or current criminal arrest, outstanding warrant or conviction regardless of whether or not the matter is currently on appeal and regardless of the penalty or sentence, if any.

All members and all retired officers with an identification card issued by the Department shall further promptly notify their immediate supervisor (or the Chief of Police in the case of retired officers) in writing if the member or retiree becomes the subject of a domestic violence restraining order or similar court order or becomes the subject of an outstanding warrant.

Any member whose criminal conviction unduly restricts or prohibits that member from fully and properly performing his/her duties may be disciplined including, but not limited to, being placed on administrative leave, reassignment and/or termination. Any effort to remove such disqualification or restriction shall remain entirely the responsibility of the member on his/her own time and expense.

Any member failing to provide prompt written notice pursuant to this policy shall be subject to discipline.

### **1008.5 PROCEDURE FOR RELIEF**

Pursuant to Penal Code § 29855, a peace officer may petition the court for permission to carry a firearm following a conviction under state law. Federal law, however, does not provide for any such similar judicial relief and the granting of a state court petition under Penal Code § 29855 will not relieve one of the restrictions imposed by federal law. Therefore, relief for any employee falling under the restrictions imposed by federal law may only be obtained by expungement of the conviction. Each employee shall seek relief from firearm restrictions on their own time and through their own resources.

Pursuant to Family Code § 6389(h), an individual may petition the court for an exemption to any restraining order, which would thereafter permit the individual to carry a firearm as a part of their employment. Relief from any domestic violence or other restriction shall also be pursued through the employee's own resources and on the employee's own time.

Pending satisfactory proof of relief from any legal restriction imposed on an employee's duties, the employee may be placed on administrative leave, reassigned or disciplined. The Department may, but is not required to return an employee to any assignment, reinstate any employee or reverse any pending or imposed discipline upon presentation of satisfactory proof of relief from any legal restriction set forth in this policy.

## Drug- and Alcohol-Free Workplace

### 1009.1 PURPOSE AND SCOPE

The intent of this policy is to deter the misuse or abuse of legal or illegal substances that create a threat to the safety and health of any employee or member of the public. The Walnut Creek Police Department discourages alcohol and drug abuse and strives to achieve a workforce free from the influence of drugs and alcohol.

### 1009.2 POLICY

It is the policy of this department to provide a drug- and alcohol-free workplace for all members.

#### 1009.2.1 PURCHASE OR POSSESSION OF DRUGS OR ALCOHOL ON DUTY

Department employees shall not purchase or possess alcohol or other controlled substances on City property, at work, or while on duty except as specifically authorized by the Chief of Police (or his designee) relative to criminal investigations.

Department employees shall not illegally manufacture any alcohol or drugs while on duty, on City property or at any other time.

#### 1009.2.2 USE OF PRESCRIBED MEDICATIONS

Any employee who is required to take any medication with side effects which might impair his/her ability to fully and safely perform all requirements of the position shall report the need for such medication to their immediate supervisor prior to commencing any on-duty status. No employee shall be permitted to work or drive a department-owned or department-leased vehicle while taking such potentially impairing medication without a written release from his/her physician.

Possession of medical marijuana or being under the influence of marijuana on- or off-duty is prohibited and may lead to disciplinary action.

### 1009.3 GENERAL GUIDELINES

Alcohol and drug use in the workplace or on department time can endanger the health and safety of department members and the public. Such use shall not be tolerated (41 USC § 8103).

Members who have consumed an amount of an alcoholic beverage or taken any medication, or combination thereof, that would tend to adversely affect their mental or physical abilities shall not report for duty. Affected members shall notify the Watch Commander or appropriate supervisor as soon as the member is aware that he/she will not be able to report to work. If the member is unable to make the notification, every effort should be made to have a representative contact the supervisor in a timely manner. If the member is adversely affected while on-duty, he/she shall be immediately removed and released from work (see Work Restrictions in this policy).

#### 1009.3.1 USE OF MEDICATIONS

Members should avoid taking any medications that will impair their ability to safely and completely perform their duties. Any member who is medically required or has a need to take any such

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## *Drug- and Alcohol-Free Workplace*

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medication shall report that need to his/her immediate supervisor prior to commencing any on-duty status.

No member shall be permitted to work or drive a vehicle owned or leased by the Department while taking any medication that has the potential to impair his/her abilities, without a written release from his/her physician.

### 1009.3.2 USE OF MARIJUANA

Possession of marijuana, including medical marijuana, or being under the influence of marijuana on- or off-duty is prohibited and may lead to disciplinary action.

### 1009.4 MEMBER RESPONSIBILITIES

Members shall report for work in an appropriate mental and physical condition. Members are prohibited from purchasing, manufacturing, distributing, dispensing, possessing or using controlled substances or alcohol on department premises or on department time (41 USC § 8103). The lawful possession or use of prescribed medications or over-the-counter remedies is excluded from this prohibition.

Members who are authorized to consume alcohol as part of a special assignment shall not do so to the extent of impairing on-duty performance.

Members shall notify a supervisor immediately if they observe behavior or other evidence that they believe demonstrates that a fellow member poses a risk to the health and safety of the member or others due to drug or alcohol use.

Members are required to notify their immediate supervisors of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction (41 USC § 8103).

### 1009.5 EMPLOYEE ASSISTANCE PROGRAM

There may be available a voluntary employee assistance program to assist those who wish to seek help for alcohol and drug problems (41 USC § 8103). Insurance coverage that provides treatment for drug and alcohol abuse also may be available. Employees should contact the Department of Human Resources, their insurance providers or the employee assistance program for additional information. It is the responsibility of each employee to seek assistance before alcohol or drug problems lead to performance problems.

#### 1009.5.1 ADDITIONAL SCREENING TESTS FOR OFFICERS

The Department may request an employee to submit to a screening test if the employee:

- (a) Is a law enforcement officer and, during the performance of his/her duties, discharges a firearm other than by accident.
- (b) During the performance of his/her duties, drives a motor vehicle in such a manner as to cause bodily injury to him/herself or another person or substantial damage to property.

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## *Drug- and Alcohol-Free Workplace*

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### 1009.5.2 SCREENING TEST REFUSAL

An employee is subject to disciplinary action if he/she:

- (a) Fails or refuses to submit to a screening test as requested.
- (b) After taking a screening test that indicates the presence of a controlled substance, fails to provide proof, within 72 hours after being requested by his/her supervisor, that he/she took the controlled substance as directed, pursuant to a current and lawful prescription issued in his/her name.

### 1009.6 WORK RESTRICTIONS

If a member informs a supervisor that he/she has consumed any alcohol, drug or medication that could interfere with a safe and efficient job performance, the member may be required to obtain clearance from his/her physician before continuing to work.

If the supervisor reasonably believes, based on objective facts, that a member is impaired by the consumption of alcohol or other drugs, the supervisor shall prevent the member from continuing work and shall ensure that he/she is safely transported away from the Department.

### 1009.7 REQUESTING SCREENING TESTS

The supervisor may request an employee to submit to a screening test under the following circumstances:

- (a) The supervisor reasonably believes, based upon objective facts, that the employee is under the influence of alcohol or drugs that are impairing his/her ability to perform duties safely and efficiently.
- (b) The employee discharges a firearm, other than by accident, in the performance of his/her duties.
- (c) During the performance of his/her duties, the employee drives a motor vehicle and becomes involved in an incident that results in bodily injury to him/herself or another person, or substantial damage to property.

#### 1009.7.1 SUPERVISOR RESPONSIBILITY

The supervisor shall prepare a written record documenting the specific facts that led to the decision to request the test, and shall inform the employee in writing of the following:

- (a) The test will be given to detect either alcohol or drugs, or both.
- (b) The result of the test is not admissible in any criminal proceeding against the employee.
- (c) The employee may refuse the test, but refusal may result in dismissal or other disciplinary action.

#### 1009.7.2 SCREENING TEST REFUSAL

An employee may be subject to disciplinary action if he/she:

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- (a) Fails or refuses to submit to a screening test as requested.
- (b) After taking a screening test that indicates the presence of a controlled substance, fails to provide proof, within 72 hours after being requested, that he/she took the controlled substance as directed, pursuant to a current and lawful prescription issued in his/her name.
- (c) Violates any provisions of this policy.

### **1009.8 COMPLIANCE WITH THE DRUG-FREE WORKPLACE ACT**

No later than 30 days following notice of any drug statute conviction for a violation occurring in the workplace involving a member, the Department will take appropriate disciplinary action, up to and including dismissal, and/or requiring the member to satisfactorily participate in a drug abuse assistance or rehabilitation program (41 USC § 8104).

### **1009.9 CONFIDENTIALITY**

The Department recognizes the confidentiality and privacy due to its members. Disclosure of any information relating to substance abuse treatment, except on a need-to-know basis, shall only be with the express written consent of the member involved or pursuant to lawful process.

The written results of any screening tests and all documents generated by the employee assistance program are considered confidential medical records and shall be maintained separately from the employee's other personnel files.



## Sick Leave

### 1010.1 PURPOSE AND SCOPE

This policy provides general guidance regarding the use and processing of sick leave. The accrual and terms of use of sick leave for eligible employees are detailed in the City personnel manual or applicable collective bargaining agreement.

This policy is not intended to cover all types of sick or other leaves. For example, employees may be entitled to additional paid or unpaid leave for certain family and medical reasons as provided for in the Family and Medical Leave Act (FMLA) (29 USC § 2601 et seq.) and the California Family Rights Act, and leave related to domestic violence, sexual assault, stalking or for organ or bone marrow donor procedures (29 CFR 825; Government Code § 12945.2; Labor Code § 230.1; Labor Code § 1510).

### 1010.2 EMPLOYEE RESPONSIBILITIES

General leave may be used for absences caused by illness, injury, temporary disability (including pregnancy/maternity), or for medical, dental or vision exams or medical treatment of the employee or the employee's immediate family when it is not possible to schedule such appointments during non-working hours.

Upon return to work, employees shall complete and submit a leave request describing the type of leave used and the specific amount of time taken.

### 1010.3 USE OF SICK LEAVE

Sick leave is intended to be used for qualified absences. Sick leave is not considered vacation. Abuse of sick leave may result in discipline, denial of sick leave benefits, or both.

Employees on sick leave shall not engage in other employment or self-employment or participate in any sport, hobby, recreational activity or other activity that may impede recovery from the injury or illness (see Outside Employment Policy).

Qualified appointments should be scheduled during a member's non-working hours when it is reasonable to do so.

#### 1010.3.1 NOTIFICATION

All members should notify the Watch Commander or appropriate supervisor as soon as they are aware that they will not be able to report to work and no less than one hour before the start of their scheduled shifts. If, due to an emergency, a member is unable to contact the supervisor, every effort should be made to have a representative for the member contact the supervisor (Labor Code § 246 ).

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## *Sick Leave*

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When the necessity to be absent from work is foreseeable, such as planned medical appointments or treatments, the member shall, whenever possible and practicable, provide the Department with no less than 30 days' notice of the impending absence (Labor Code § 246).

Upon return to work, members are responsible for ensuring their time off was appropriately accounted for, and for completing and submitting the required documentation describing the type of time off used and the specific amount of time taken.

### **1010.4 EXTENDED ABSENCE**

Members absent from duty for more than three consecutive days may be required to furnish a statement from a health care provider supporting the need to be absent and/or the ability to return to work. Members on an extended absence shall, if possible, contact their supervisor at specified intervals to provide an update on their absence and expected date of return.

Nothing in this section precludes a supervisor from requiring, with cause, a health care provider's statement for an absence of three or fewer days after the first three days of paid sick leave are used in a 12-month period.

### **1010.5 SUPERVISOR RESPONSIBILITIES**

The responsibilities of supervisors include, but are not limited to:

- (a) Monitoring and regularly reviewing the attendance of those under their command to ensure that the use of sick leave and absences is consistent with this policy.
- (b) Attempting to determine whether an absence of four or more days may qualify as family medical leave and consulting with legal counsel or the Department of Human Resources as appropriate.
- (c) Addressing absences and sick leave use in the member's performance evaluation when excessive or unusual use has:
  1. Negatively affected the member's performance or ability to complete assigned duties.
  2. Negatively affected department operations.
- (d) When appropriate, counseling members regarding excessive absences and/or inappropriate use of sick leave.
- (e) Referring eligible members to an available employee assistance program when appropriate.

# Communicable Diseases

## 1011.1 PURPOSE AND SCOPE

This policy provides general guidelines to assist in minimizing the risk of department members contracting and/or spreading communicable diseases.

### 1011.1.1 DEFINITIONS

Definitions related to this policy include:

**Communicable disease** - A human disease caused by microorganisms that are present in and transmissible through human blood, bodily fluid, tissue, or by breathing or coughing. These diseases commonly include, but are not limited to, hepatitis B virus (HBV), HIV and tuberculosis.

**Exposure** - When an eye, mouth, mucous membrane or non-intact skin comes into contact with blood or other potentially infectious materials, or when these substances are injected or infused under the skin; when an individual is exposed to a person who has a disease that can be passed through the air by talking, sneezing or coughing (e.g., tuberculosis), or the individual is in an area that was occupied by such a person. Exposure only includes those instances that occur due to a member's position at the Walnut Creek Police Department. (See the exposure control plan for further details to assist in identifying whether an exposure has occurred.)

## 1011.2 PROCEDURES FOR EXPOSURE TO BLOOD, BODILY FLUIDS OR AEROSOL TRANSMISSIBLE DISEASES

All department personnel who are exposed to another person's blood, bodily fluids or an aerosol transmissible disease (e.g., during an altercation or while attending to any injured person) shall follow these procedures and guidelines.

Exposure to blood or other potentially infectious materials includes, but is not limited to, the contact of such substances with the eye, mouth, other mucous membranes, non-intact skin, needle sticks, human bites, cuts or abrasions or any exposure that otherwise qualifies under Health and Safety Code § 121060.1 or 8 CCR § 5193.

Exposure to an aerosol transmissible disease is any event in which all of the following have occurred (8 CCR 5199):

- (a) An employee has been exposed to an individual who is a case or a suspected case of a reportable aerosol transmissible disease, or to a work area or to equipment that is reasonably expected to contain aerosol transmissible pathogens associated with a reportable aerosol transmissible disease.
- (b) The exposure occurred without the benefit of applicable exposure controls required by this policy.
- (c) It reasonably appears from the circumstances of the exposure that transmission of disease is sufficiently likely to require medical evaluation.

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## *Communicable Diseases*

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### 1011.2.1 EXPOSURE CONTROL OFFICER

Department supervisors shall work directly with any affected employees to ensure that the proper exposure control procedures are followed.

### 1011.2.2 UNIVERSAL PRECAUTIONS

All human blood and body fluids such as saliva, urine, semen, and vaginal secretions are to be treated as if they are known to be infectious. Where it is not possible to distinguish between body fluid types, all body fluids are to be assumed potentially infectious.

### 1011.2.3 PERSONAL PROTECTIVE EQUIPMENT

Personal protective equipment is the last line of defense against communicable disease. Therefore, the following equipment is provided for all personnel to assist in the protection against such exposures:

- Disposable latex gloves
- Safety glasses or goggles
- Rescue mask with a one-way valve
- Sanitizing liquid or wipes kept in PD vehicles and in several locations throughout the PD (ex: Purell)

The protective equipment is to be inspected at the start of each shift and replaced immediately upon returning to the station if used or damaged during the shift, or as otherwise needed.

### 1011.2.4 IMMUNIZATIONS

All department personnel who, in the line of duty, may be exposed to or have contact with a communicable disease shall be offered appropriate treatment immunization.

### 1011.2.5 WORK PRACTICES

All personnel shall use the appropriate barrier precautions to prevent skin and mucous membrane exposure whenever contact with blood or body fluid is anticipated.

Disposable gloves should be worn on all medical emergency responses. Disposable gloves should be worn before making physical contact with any patient and/or when handling items (e.g., evidence, transportation vehicle) soiled with blood or other body fluids. Should one's disposable gloves become contaminated with blood or other body fluids, the gloves shall be disposed of. Care should be taken to avoid touching other items (e.g., pens, books, and personal items in general) while wearing the disposable gloves in a potentially contaminated environment.

All procedures involving blood or other potentially infectious materials shall be done in a way to minimize splashing, spraying, or otherwise generating droplets of those materials.

Eating, drinking, smoking, applying lip balm, and handling contact lenses should be avoided when a risk of exposure is present.

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### 1011.3 AEROSOL TRANSMITTABLE DISEASE PLAN FOR SWORN POLICE STAFF AND RESERVE OFFICERS

- (a) This program shall include the following elements:
  - Designation of an Administrator
  - Establishment of procedures
  - Identification of job positions/tasks with occupational exposure
  - Source control procedures
  - Screening and referral procedures
  - Interim risk reduction procedures
  - Cleaning and disinfection procedures
  - Employee medical services
  - Employee training
  - Record-keeping
- (b) Designation of an Administrator/Infection Control Officer:
  - The Risk Manager has been designated as the administrator of this program and is responsible for the establishment, implementation and maintenance of effective written infection control procedures to control the risk of transmission of aerosol transmissible diseases (ATD's). The Risk Manager has the authority to perform this function and is knowledgeable in infection control principles as they apply specifically to this operation.
  - When the Administrator is unavailable, the Chief of Police has been designated to act as the Administrator.
- (c) Establishment of Procedures:
  - The procedures to reduce occupational exposures are reviewed at least annually by the Administrator and other employees. If any part of these procedures is found to be ineffective, the procedures will be revised.
- (d) Identification of job positions/tasks with occupational exposure:
  - Occupational exposure is defined as exposure from work activity or working conditions that is reasonably anticipated to create an elevated risk of contracting any disease caused by aerosol transmissible pathogens if protective measures are not in place.
  - The following job positions/tasks have been determined to have occupational exposure to ATD's:
    - Administration of first-aid and other basic emergency medical techniques
    - Placing restraints on a suspect
    - Searching a suspect
    - Defending self during an altercation

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- Chase, wrestle, apprehend a combative suspect
  - Moving persons to safety
  - Transporting people
  - Being in close proximity to a subject in a confined area
- (e) Source Control:
- Our source control procedures include:
  - Visual Alerts
    - The following visual alerts have been posted at the following locations:
    - Notice to patients to report Flu symptoms ([Http://www.cdc.gov/ncidod/dhqp/pdf/Infdis/RespiratoryPoster.pdf](http://www.cdc.gov/ncidod/dhqp/pdf/Infdis/RespiratoryPoster.pdf))
    - Cover your cough ([Http://www.cdc.gov/flu/protect/covercough.htm](http://www.cdc.gov/flu/protect/covercough.htm))
  - Respiratory Hygiene/cough etiquette:
  - At the point of close contact with any potentially infected person, within reason, staff advises suspects/respondees/visitors to:
    - Cover the nose/mouth when coughing or sneezing.
    - Use tissues to contain respiratory secretions and dispose of them in a waste receptacle.
    - Perform hand hygiene after having contact with respiratory secretions and contaminated objects.
  - Respiratory protection:
    - All staff with occupational exposure to ATD's will be issued or have readily available to them N95 respirators.
- (f) Screening and referral procedures:
- Screening will be provided by:
    - Police staff (by readily observing signs and the self-report of patients or clients). Staff have been trained in the criteria for referrals which includes:
      - Having an unexplained cough for more than three weeks.
      - Exhibit signs and symptoms of a flu like illness during March through October. Or exhibiting these signs and symptoms for a period longer than two weeks any time of the year.
      - State that they have a transmittable respiratory disease, excluding the common cold or flu.
      - State that they have been exposed to an infectious ATD case other than seasonal influenza.
    - In addition to TB, other vaccine preventable aerosol transmissible diseases including pertussis, measles, mumps, rubella and chicken pox

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should be considered when non-medical personal screen individuals in non-health care facilities. The following is a brief list of some finding that should prompt referral to a health care provider for further evaluation:

- Severe cough spasms, especially if persistent
- Fever, headache, muscle aches, tiredness, poor appetite, painful or swollen salivary glands
- Fever, chills, cough, runny nose, watery eyes associated with the onset of an unexplained rash
- Fever, headache, stiff neck and a possible mental status change
- Any client who exhibits any of the above described findings and reports contact with individuals known to have any transmissible illness in the past 2-4 weeks should promptly be evaluated by a health care provider.
- Health officials may issue alerts for community outbreaks of other diseases. They will provide screening criteria and people must be referred to medical providers as recommended by the health officer.
- Transfers:
  - All transfers will occur within 5 hours of the identification of the case or suspected case. The exceptions to this are:
    - The case was identified between the hours of 3:30 PM and 7:00 AM. The transfer will occur by 11:00 AM.
    - After contacting the local health officer, it has been determined that there is no facility that can provide appropriate care.
- (g) Interim risk reduction procedures:
  - While awaiting transfer of a case or suspected case to another facility (see section F), the following procedures will be used to reduce exposure to employees:
    - Ensure source control procedures are fully implemented as described in section E.
    - If feasible, the case or suspected case will be placed in a separate cell/ area.
    - Employees will use respiratory protection when entering the room or area if the case or suspected case is not compliant with the source control measures.
    - Those transporting the case or suspected case will wear respiratory protection.
- (h) Cleaning and disinfection procedures:
  - Work areas, vehicles and equipment that have been contaminated with ATD's and pose an infection risk to employees will be cleaned and decontaminated. All disinfectants used will be EPA registered for efficiency for the influenza A virus.

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### *Communicable Diseases*

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- (i) Employee medical services:
  - The City of Walnut Creek shall provide as required under this standard, medical services for tuberculosis and other ATD's, in accordance with applicable public health guidelines. In order to stay current with constantly changing types of ATD's, the Program Administrator or designee, shall contact the local Public Health Department annually to ensure that employees are being provided with the appropriate medical services.
  - The following medical services are to be provided at no cost to the employee:
    - Vaccinations: Sworn Police staff and Reserve Officers will be provided vaccinations against seasonal influenza during the designated period at no cost to the employee. These vaccinations will be arranged by the City of Walnut Creek Police Department Training Coordinator and/or the Declination Statement shall be completed by employees who are offered vaccinations.
- (j) Employee training:
  - Employees are trained at the following times:
    - Initially
    - Annually
    - Whenever there are changes in the workplace or when there are changes to procedures that could affect the worker's exposure.
  - Training includes the following topics:
    - A general explanation of ATD's including the signs and symptoms that require further medical evaluation.
    - Screening methods and criteria for persons who require referral.
    - Source control measures and how these measures will be communicated to persons the employees contact.
    - Procedures for making referrals.
    - Procedures for temporary risk reduction measures prior to transfer.
    - Training including respiratory protection.
    - Medical services.
    - Information on vaccines the employer will make available, including the seasonal influenza vaccine.
    - How employees can access the written procedures and how employees can participate in reviewing the effectiveness of these procedures.
- (k) Record-keeping:
  - The following records will be maintained:
    - Training records including the date of the training, the contents, the name of the trainer and the name of persons being trained.



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## *Communicable Diseases*

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- Vaccination records are maintained by Human Resources and Muir/Diablo Occupational Medicine. For the seasonal flu vaccine, only the most recent declination form must be maintained.
- Exposure records are maintained by Human Resources. Records will include:
  - Date of exposure
  - Names of any employees included in the exposure
  - The disease or pathogen which employees may have been exposed to
  - The name and job title of the person performing the evaluation
  - The identity of any local medical facility consulted
  - The date of the evaluation

### **1011.4 TRAINING**

All members shall participate in training regarding communicable diseases commensurate with the requirements of their position. The training (8 CCR 5193):

- (a) Shall be provided at the time of initial assignment to tasks where an occupational exposure may take place and at least annually after the initial training.
- (b) Shall be provided whenever the member is assigned new tasks or procedures affecting his/her potential exposure to communicable disease.
- (c) Should provide guidance on what constitutes an exposure, what steps can be taken to avoid an exposure and what steps should be taken if a suspected exposure occurs.

### **1011.5 CONFIDENTIALITY OF REPORTS**

Medical information shall remain in confidential files and shall not be disclosed to anyone without the member's written consent (except as required by law). Test results from persons who may have been the source of an exposure are to be kept confidential as well.

### **1011.6 POLICY**

The Walnut Creek Police Department is committed to providing a safe work environment for its members. Members should be aware that they are ultimately responsible for their own health and safety.

### **1011.7 EXPOSURE PREVENTION AND MITIGATION**

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### 1011.7.1 GENERAL PRECAUTIONS

All members are expected to use good judgment and follow training and procedures related to mitigating the risks associated with communicable disease. This includes, but is not limited to (8 CCR 5193):

- (a) Stocking disposable gloves, antiseptic hand cleanser, CPR masks or other specialized equipment in the work area or department vehicles, as applicable.
- (b) Wearing department-approved disposable gloves when contact with blood, other potentially infectious materials, mucous membranes and non-intact skin can be reasonably anticipated.
- (c) Washing hands immediately or as soon as feasible after removal of gloves or other PPE.
- (d) Treating all human blood and bodily fluids/tissue as if it is known to be infectious for a communicable disease.
- (e) Using an appropriate barrier device when providing CPR.
- (f) Using a face mask or shield if it is reasonable to anticipate an exposure to an airborne transmissible disease.
- (g) Decontaminating non-disposable equipment (e.g., flashlight, control devices, clothing and portable radio) as soon as possible if the equipment is a potential source of exposure.
  1. Clothing that has been contaminated by blood or other potentially infectious materials shall be removed immediately or as soon as feasible and stored/decontaminated appropriately.
- (h) Handling all sharps and items that cut or puncture (e.g., needles, broken glass, razors, knives) cautiously and using puncture-resistant containers for their storage and/or transportation.
- (i) Avoiding eating, drinking, smoking, applying cosmetics or lip balm, or handling contact lenses where there is a reasonable likelihood of exposure.
- (j) Disposing of biohazardous waste appropriately or labeling biohazardous material properly when it is stored.

### 1011.7.2 IMMUNIZATIONS

Members who could be exposed to HBV due to their positions may receive the HBV vaccine and any routine booster at no cost (8 CCR 5193).

## **1011.8 POST EXPOSURE**

### 1011.8.1 INITIAL POST-EXPOSURE STEPS

Members who experience an exposure or suspected exposure shall:

- (a) Begin decontamination procedures immediately (e.g., wash hands and any other skin with soap and water, flush mucous membranes with water).
- (b) Obtain medical attention as appropriate.

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- (c) Notify a supervisor as soon as practicable.

### 1011.8.2 REPORTING REQUIREMENTS

The supervisor on-duty shall investigate every exposure or suspected exposure that occurs as soon as possible following the incident. The supervisor shall ensure the following information is documented (8 CCR 5193):

- (a) Name and Social Security number of the member exposed
- (b) Date and time of the incident
- (c) Location of the incident
- (d) Potentially infectious materials involved and the source of exposure (e.g., identification of the person who may have been the source)
- (e) Work being done during exposure
- (f) How the incident occurred or was caused
- (g) PPE in use at the time of the incident
- (h) Actions taken post-event (e.g., clean-up, notifications)

The supervisor shall advise the member that disclosing the identity and/or infectious status of a source to the public or to anyone who is not involved in the follow-up process is prohibited. The supervisor should complete the incident documentation in conjunction with other reporting requirements that may apply (see the Occupational Disease and Work-Related Injury Reporting Policy).

### 1011.8.3 COUNSELING

The Department shall provide the member, and his/her family if necessary, the opportunity for counseling and consultation regarding the exposure (8 CCR 5193).

### 1011.8.4 MEDICAL CONSULTATION, EVALUATION AND TREATMENT

Department members shall have the opportunity to have a confidential medical evaluation immediately after an exposure and follow-up evaluations as necessary (8 CCR 5193).

The ECO should request a written opinion/evaluation from the treating medical professional that contains only the following information:

- (a) Whether the member has been informed of the results of the evaluation.
- (b) Whether the member has been notified of any medical conditions resulting from exposure to blood or other potentially infectious materials which require further evaluation or treatment.

No other information should be requested or accepted by the ECO.

### 1011.8.5 SOURCE TESTING

Testing a person for communicable diseases when that person was the source of an exposure should be done when it is desired by the exposed member or when it is otherwise appropriate

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(8 CCR 5193). Source testing is the responsibility of the ECO. If the ECO is unavailable to seek timely testing of the source, it is the responsibility of the exposed member's supervisor to ensure testing is sought.

Source testing may be achieved by:

- (a) Obtaining consent from the individual.
- (b) Complying with the statutory scheme of Health and Safety Code § 121060. This includes seeking consent from the person who was the source of the exposure and seeking a court order if consent is not given.
- (c) Testing the exposed member for evidence of a communicable disease and seeking consent from the source individual to either access existing blood samples for testing or for the source to submit to testing (Health and Safety Code § 120262).
- (d) Taking reasonable steps to immediately contact the County Health Officer and provide preliminary information regarding the circumstances of the exposure and the status of the involved individuals to determine whether the County Health Officer will order testing (Penal Code § 7510).
- (e) Under certain circumstances, a court may issue a search warrant for the purpose of HIV testing a person when the exposed member qualifies as a crime victim (Penal Code § 1524.1).

Since there is the potential for overlap between the different manners in which source testing may occur, the ECO is responsible for coordinating the testing to prevent unnecessary or duplicate testing.

The ECO should seek the consent of the individual for testing and consult the City Attorney to discuss other options when no statute exists for compelling the source of an exposure to undergo testing if he/she refuses.

### **1011.9 EXPOSURE CONTROL OFFICER**

The Chief of Police will assign a person as the Exposure Control Officer (ECO). Some of these duties may be covered by other City departments/personnel. The ECO shall develop an exposure control plan that includes:

- (a) Exposure-prevention and decontamination procedures.
- (b) Procedures for when and how to obtain medical attention in the event of an exposure or suspected exposure.
- (c) The provision that department members will have no-cost access to the appropriate personal protective equipment (PPE) (e.g., gloves, face masks, eye protection, pocket masks) for each member's position and risk of exposure.
- (d) Evaluation of persons in custody for any exposure risk and measures to separate them (15 CCR 1051; 15 CCR 1207).
- (e) Compliance with all relevant laws or regulations related to communicable diseases, including:

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1. Responding to requests and notifications regarding exposures covered under the Ryan White law (42 USC § 300ff-133; 42 USC § 300ff-136).
2. Bloodborne pathogen mandates including (8 CCR 5193):
  - (a) Sharps injury log.
  - (b) Needleless systems and sharps injury protection.
3. Airborne transmissible disease mandates including (8 CCR 5199):
  - (a) Engineering and work practice controls related to airborne transmissible diseases.
  - (b) Distribution of appropriate personal protective equipment to minimize exposure to airborne disease.
4. Promptly notifying the county health officer regarding member exposures (Penal Code § 7510).
5. Establishing procedures to ensure that members request exposure notification from health facilities when transporting a person that may have a communicable disease and that the member is notified of any exposure as required by Health and Safety Code § 1797.188.
6. Informing members of the provisions of Health and Safety Code § 1797.188 (exposure to communicable diseases and notification).
  - (f) Provisions for acting as the designated officer liaison with health care facilities regarding communicable disease or condition exposure notification. The designated officer should coordinate with other department members to fulfill the role when not available. The designated officer shall ensure that the name, title and telephone number of the designated officer is posted on the Department website (Health and Safety Code § 1797.188).

The ECO should also act as the liaison with the Division of Occupational Safety and Health (Cal/OSHA) and may request voluntary compliance inspections. The ECO shall annually review and update the exposure control plan and review implementation of the plan (8 CCR 5193).

## Smoking Policy

### 1012.1 PURPOSE AND SCOPE

This policy establishes limitations on smoking and the use of tobacco products by members and others while on-duty or while in Walnut Creek Police Department facilities or vehicles.

For the purposes of this policy, smoking and tobacco use includes, but is not limited to, any tobacco product, such as cigarettes, cigars, pipe tobacco, snuff, tobacco pouches and chewing tobacco, as well as any device intended to simulate smoking, such as an electronic cigarette or personal vaporizer.

### 1012.2 POLICY

The Walnut Creek Police Department recognizes that tobacco use is a health risk and can be offensive to others.

Smoking and tobacco use also presents an unprofessional image for the Department and its members. Therefore smoking and tobacco use is prohibited by members and visitors in all department facilities, buildings and vehicles, and as is further outlined in this policy (Government Code § 7597; Labor Code § 6404.5).

### 1012.3 SMOKING AND TOBACCO USE

Smoking and tobacco use by members is prohibited anytime members are in public view representing the Walnut Creek Police Department.

It shall be the responsibility of each member to ensure that no person under his/her supervision smokes or uses any tobacco product inside City facilities and vehicles.

### 1012.4 ADDITIONAL PROHIBITIONS

No person shall use tobacco products within 20 feet of a main entrance, exit or operable window of any public building (including any department facility), or buildings on the campuses of the University of California, California State University and California community colleges, whether present for training, enforcement or any other purpose (Government Code § 7596 et seq.).

#### 1012.4.1 NOTICE

The Chief of Police or the authorized designee should ensure that proper signage is posted at each entrance to the Department facility (Labor Code § 6404.5).

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## Police Department Building Security

### 1013.1 PURPOSE

The purpose of this policy, for the safety of personnel and the integrity of our records, is to ensure only readily identified and authorized persons are inside the secure area of the Police Department.

### 1013.2 POLICY

It is the policy of the Walnut Creek Police Department to provide for the safety of personnel and for the integrity of criminal records. As such, all Police Department personnel, City personnel, and other visitors will wear visible identification while inside the police department.

### 1013.3 DEFINITIONS

**Police Personnel:** full-time, temporary or part-time persons, who are employed by or volunteer for the Police Department and who are CLETS certified.

**City Personnel:** full-time, temporary or part-time persons who are employed by or volunteer for the City of Walnut Creek.

**Authorized Contractors:** persons who work with the City to provide services on a contractual basis such as vendors, repair persons, consultants, etc. whose fingerprints have been submitted to the Department of Justice, and have been authorized by the Police Department to enter its secure areas.

**Visitors:** persons who are not employed or volunteer directly for the City of Walnut Creek. Visitors include all persons who work with the City to provide services on a contractual basis such as, vendors, contractors, consultants, etc. and whose fingerprints have not been submitted to the Department of Justice.

**Official Identification:** picture identification card, police badge, uniform, or a visitor identification card issued and authorized by the Walnut Creek Police Department or the City of Walnut Creek, or official uniform, picture identification card, or badge from another police department.

### 1013.4 PROCEDURES

All Police Personnel inside the secured area of the Police Department will wear official identification at all times.

City Personnel, unless accompanied by Police Personnel, will check in at the reception area prior to entering the secure area of the Police Department. City Personnel authorized to enter the secure area of the Police Department will wear official identification at all times.

Authorized contractors will check in at the reception area prior to entering the secure area of the Police Department. Those authorized to enter the secure area of the Police Department will wear official identification at all times.

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Visitors must check-in at the second floor reception area. Those visitors that are authorized to enter the secure area of the Police Department will be issued Visitor Identification Cards. All visitors will be subject to immediate supervision by Police or City Personnel and must wear the issued identification card at all times. Immediate supervision means within visual contact of Police or City Personnel, or authorized contractor.

A witness, subject, suspect, or any other member of the public, during the course of an interview or other type of investigative activity, while under the direct supervision of a Police Department employee, is not required to provide the reception personnel with a valid form of identification, and is not required to display a Visitor Identification Card.

Visitor Identification Cards will be maintained at the first and second floor reception areas and will be numbered. A logbook will be maintained at both reception areas to record the name of the person, the date and time the identification card was issued, and the date and time the card was returned. All visitors will be required to provide a valid form of government-issued or school identification, which will be held in a secure area at the first and second floor reception counters. Upon returning the Visitor Identification Card, the visitor will receive his/her identification back. In the event that a visitor must leave the Police Department after the normal business hours of the reception areas, it will be the sole responsibility of the Police or City employee accompanying the visitor to obtain the visitor's identification prior to the closing time of the reception area. At that time, the employee will write his/her name and the time in the logbook upon taking possession of the identification. The Police or City employee will keep the identification in his/her custody until the Visitor Identification Card is returned, at which time the visitor will receive his/her identification back. The employee will be responsible for the return of the Visitor Identification Card to the reception area. It will be the responsibility of the receptionists to ensure that all Visitor Identification Cards are in the reception areas each morning, and any missing Visitor Identification Cards must be reported to the receptionist's supervisor immediately.



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## Personnel Complaints

### 1014.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members of the Walnut Creek Police Department. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigation.

### 1014.2 POLICY

The Walnut Creek Police Department takes seriously all complaints regarding the service provided by the Department and the conduct of its members.

The Department will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state and local law, municipal and county rules and the requirements of any collective bargaining agreements.

It is also the policy of this department to ensure that the community can report misconduct without concern for reprisal or retaliation.

### 1014.3 PERSONNEL COMPLAINTS

Personnel complaints include any allegation of misconduct or improper job performance that, if true, would constitute a violation of department policy or of federal, state or local law, policy or rule. Personnel complaints may be generated internally or by the public.

Inquiries about conduct or performance that, if true, would not violate department policy or federal, state or local law, policy or rule may be handled informally by a supervisor and shall not be considered a personnel complaint. Such inquiries generally include clarification regarding policy, procedures or the response to specific incidents by the Department.

#### 1014.3.1 COMPLAINT CLASSIFICATIONS

Personnel complaints shall be classified in one of the following categories:

**Informal** - A matter in which the Watch Commander is satisfied that appropriate action has been taken by a supervisor of rank greater than the accused member.

**Formal** - A matter in which a supervisor determines that further action is warranted. Such complaints may be investigated by a supervisor of rank greater than the accused member Internal Affairs Unit..

**Incomplete** - A matter in which the complaining party either refuses to cooperate or becomes unavailable after diligent follow-up investigation. At the discretion of the assigned supervisor/Internal Affairs Unit., such matters may be further investigated depending on the seriousness of the complaint and the availability of sufficient information.

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**Service Complaints** - Complaints that pertain to established departmental and/or City policies, procedures or practices that the complainant believes are inappropriate. In these types of complaints, the employee properly applied policies or procedures but the complainant takes issue with the policy/procedure applied.

**Service Inquiries** - Complaints are to be distinguished from service inquiries. Service inquiries are questions addressed to the department about the actions of departmental personnel or departmental policies. These inquiries seek information about the propriety of conduct of department personnel or about department policies or procedures.

### 1014.3.2 SOURCES OF COMPLAINTS

The following applies to the source of complaints:

- (a) Individuals from the public may make complaints in any form, including in writing, by email, in person or by telephone.
- (b) Any department member becoming aware of alleged misconduct shall immediately notify a supervisor.
- (c) Supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging misconduct that, if true, could result in disciplinary action.
- (d) Anonymous and third-party complaints should be accepted and investigated to the extent that sufficient information is provided.
- (e) Tort claims and lawsuits may generate a personnel complaint.

### 1014.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

All complaints will be accepted and our policy will be available to the public.

#### 1014.4.1 ACCEPTANCE

All complaints will be courteously accepted by any department member and promptly given to the appropriate supervisor. Although written complaints are preferred, a complaint may also be filed orally, either in person or by telephone. Such complaints will be directed to a supervisor. If a supervisor is not immediately available to take an oral complaint, the receiving member shall obtain contact information sufficient for the supervisor to contact the complainant. The supervisor, upon contact with the complainant, shall complete and submit a complaint form as appropriate.

Although not required, complainants should be encouraged to file complaints in person so that proper identification, signatures, photographs or physical evidence may be obtained as necessary.

A complainant shall be provided with a copy of his/her statement at the time it is filed with the Department (Penal Code § 832.7).

#### 1014.4.2 AVAILABILITY OF WRITTEN PROCEDURES

The Department shall make available to the public a written description of the investigation procedures for complaints (Penal Code § 832.5).

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### **1014.5 DOCUMENTATION**

Supervisors shall ensure that all formal, informal and service complaints are documented in the Guardian software system. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

On an annual basis, the Department should audit the Guardian tracking system for complaints and report the findings to the Chief of Police or the authorized designee.

### **1014.6 ADMINISTRATIVE INVESTIGATIONS**

Allegations of misconduct will be administratively investigated as follows.

#### **1014.6.1 SUPERVISOR RESPONSIBILITIES**

In general, the primary responsibility for the investigation of a personnel complaint shall rest with the member's immediate supervisor, unless the supervisor is the complainant, or the supervisor is the ultimate decision-maker regarding disciplinary action or has any personal involvement regarding the alleged misconduct. The Chief of Police or the authorized designee may direct that another supervisor investigate any complaint.

A supervisor who becomes aware of alleged misconduct shall take reasonable steps to prevent aggravation of the situation.

The responsibilities of supervisors include but are not limited to:

- (a) Ensuring that upon receiving or initiating any formal complaint, a complaint form is completed.
  - (a) The original complaint form will be directed to the Watch Commander of the accused member, via the chain of command, who will take appropriate action and/or determine who will have responsibility for the investigation.
  - (b) In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant is at issue, a supervisor shall orally report the matter to the member's Bureau Commander or the Chief of Police, who will initiate appropriate action.
- (b) Responding to all complainants in a courteous and professional manner.
- (c) Resolving those personnel complaints that can be resolved immediately.
  - 1. Follow-up contact with the complainant should be made within 24 hours of the Department receiving the complaint.
  - 2. If the matter is resolved and no further action is required, the supervisor will note the resolution on a complaint form and forward the form to the Watch Commander.
- (d) Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the Watch Commander and the Chief of Police are notified via the chain of command as soon as practicable.

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- (e) Promptly contacting the Department of Human Resources and the Watch Commander for direction regarding their roles in addressing a complaint that relates to sexual, racial, ethnic or other forms of prohibited harassment or discrimination.
- (f) Forwarding unresolved personnel complaints to the Watch Commander, who will determine whether to contact the complainant or assign the complaint for investigation.
- (g) Informing the complainant of the investigator's name and the complaint number within three days after assignment.
- (h) Investigating a complaint as follows:
  - 1. Making reasonable efforts to obtain names, addresses and telephone numbers of witnesses.
  - 2. When appropriate, ensuring immediate medical attention is provided and photographs of alleged injuries and accessible uninjured areas are taken.
- (i) Ensuring that the procedural rights of the accused member are followed (Government Code § 3303 et seq.).
- (j) Ensuring interviews of the complainant are generally conducted during reasonable hours.

### 1014.6.2 ADMINISTRATIVE INVESTIGATION PROCEDURES

Whether conducted by a supervisor or a member of the Internal Affairs Unit, the following applies to members covered by the Public Safety Officers Procedural Bill of Rights Act (POBR) (Government Code § 3303):

- (a) Interviews of an accused member shall be conducted during reasonable hours and preferably when the member is on-duty. If the member is off-duty, he/she shall be compensated.
- (b) Unless waived by the member, interviews of an accused member shall be at the Walnut Creek Police Department or other reasonable and appropriate place.
- (c) No more than two interviewers should ask questions of an accused member.
- (d) Prior to any interview, a member shall be informed of the nature of the investigation, the name, rank and command of the officer in charge of the investigation, the interviewing officers and all other persons to be present during the interview.
- (e) All interviews shall be for a reasonable period and the member's personal needs should be accommodated.
- (f) No member should be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers.
- (g) Any member refusing to answer questions directly related to the investigation may be ordered to answer questions administratively and may be subject to discipline for failing to do so.
  - 1. A member should be given an order to answer questions in an administrative investigation that might incriminate the member in a criminal matter only after the member has been given a *Lybarger* advisement. Administrative investigators

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should consider the impact that compelling a statement from the member may have on any related criminal investigation and should take reasonable steps to avoid creating any foreseeable conflicts between the two related investigations. This may include conferring with the person in charge of the criminal investigation (e.g., discussion of processes, timing, implications).

2. No information or evidence administratively coerced from a member may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.
  - (h) The interviewer should record all interviews of members and witnesses. The member may also record the interview. If the member has been previously interviewed, a copy of that recorded interview shall be provided to the member prior to any subsequent interview.
  - (i) All members subjected to interviews that could result in discipline have the right to have an uninvolved representative present during the interview. However, in order to maintain the integrity of each individual's statement, involved members shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.
  - (j) All members shall provide complete and truthful responses to questions posed during interviews.
  - (k) No member may be requested or compelled to submit to a polygraph examination, nor shall any refusal to submit to such examination be mentioned in any investigation (Government Code § 3307).

No investigation shall be undertaken against any officer solely because the officer has been placed on a prosecutor's *Brady* list or the name of the officer may otherwise be subject to disclosure pursuant to *Brady v. Maryland*. However, an investigation may be based on the underlying acts or omissions for which the officer has been placed on a *Brady* list or may otherwise be subject to disclosure pursuant to *Brady v. Maryland* (Government Code § 3305.5).

### 1014.6.3 ADMINISTRATIVE INVESTIGATION FORMAT

Formal investigations of personnel complaints shall be thorough, complete and essentially follow this format:

**Introduction** - Include the identity of the members, the identity of the assigned investigators, the initial date and source of the complaint.

**Synopsis** - Provide a brief summary of the facts giving rise to the investigation.

**Summary** - List the allegations separately, including applicable policy sections, with a brief summary of the evidence relevant to each allegation. A separate recommended finding should be provided for each allegation.

**Evidence** - Each allegation should be set forth with the details of the evidence applicable to each allegation provided, including comprehensive summaries of member and witness statements. Other evidence related to each allegation should also be detailed in this section.

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**Conclusion** - A recommendation regarding further action or disposition should be provided.

**Exhibits** - A separate list of exhibits (e.g., recordings, photos, documents) should be attached to the report.

### 1014.6.4 DISPOSITIONS

Each personnel complaint shall be classified with one of the following dispositions:

**Unfounded** - When the investigation discloses that the alleged acts did not occur or did not involve department members. Complaints that are determined to be frivolous will fall within the classification of unfounded (Penal Code § 832.8).

**Exonerated** - When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper.

**Not sustained** - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member.

**Sustained** - A final determination by an investigating agency, commission, board, hearing officer, or arbitrator, as applicable, following an investigation and opportunity for an administrative appeal pursuant to Government Code § 3304 and Government Code § 3304.5 that the actions of an officer were found to violate law or department policy (Penal Code § 832.8).

If an investigation discloses misconduct or improper job performance that was not alleged in the original complaint, the investigator shall take appropriate action with regard to any additional allegations.

### 1014.6.5 COMPLETION OF INVESTIGATIONS

Every investigator or supervisor assigned to investigate a personnel complaint or other alleged misconduct shall proceed with due diligence in an effort to complete the investigation within one year from the date of discovery by an individual authorized to initiate an investigation (Government Code § 3304).

In the event that an investigation cannot be completed within one year of discovery, the assigned investigator or supervisor shall ensure that an extension or delay is warranted within the exceptions set forth in Government Code § 3304(d) or Government Code § 3508.1.

## 1014.7 ADMINISTRATIVE SEARCHES

Assigned lockers, storage spaces and other areas, including desks, offices and vehicles, may be searched as part of an administrative investigation upon a reasonable suspicion of misconduct.

Lockers and storage spaces may only be administratively searched in the member's presence, with the member's consent, with a valid search warrant or where the member has been given reasonable notice that the search will take place (Government Code § 3309).

All other areas may be searched any time by a supervisor for non-investigative purposes, such as obtaining a needed report, radio or other document or equipment.

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### 1014.7.1 DISCLOSURE OF FINANCIAL INFORMATION

An employee may be compelled to disclose personal financial information under the following circumstances (Government Code § 3308):

- (a) Pursuant to a state law or proper legal process
- (b) Information exists that tends to indicate a conflict of interest with official duties
- (c) If the employee is assigned to or being considered for a special assignment with a potential for bribes or other improper inducements

### 1014.8 ADMINISTRATIVE LEAVE

When a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Department, the Chief of Police or the authorized designee may temporarily assign an accused employee to administrative leave. Any employee placed on administrative leave:

- (a) May be required to relinquish any department badge, identification, assigned weapons and any other department equipment.
- (b) Shall be required to continue to comply with all policies and lawful orders of a supervisor.
- (c) May be temporarily reassigned to a different shift, generally a normal business-hours shift, during the investigation. The employee may be required to remain available for contact at all times during such shift, and will report as ordered.

### 1014.9 CRIMINAL INVESTIGATION

Where a member is accused of potential criminal conduct, a separate supervisor or investigator shall be assigned to investigate the criminal allegations apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.

The Chief of Police shall be notified as soon as practicable when a member is accused of criminal conduct. The Chief of Police may request a criminal investigation by an outside law enforcement agency.

A member accused of criminal conduct shall be advised of his/her constitutional rights (Government Code § 3303(h)). The member should not be administratively ordered to provide any information in the criminal investigation.

The Walnut Creek Police Department may release information concerning the arrest or detention of any member, including an officer, that has not led to a conviction. No disciplinary action should be taken until an independent administrative investigation is conducted.

### 1014.10 RETENTION OF PERSONNEL INVESTIGATION FILES

All personnel complaints shall be maintained in accordance with the established records retention schedule and as described in the Personnel Records Policy.

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### **1014.11 PROBATIONARY EMPLOYEES AND OTHER MEMBERS**

At-will and probationary employees and those members other than non-probationary employees may be released from employment for non-disciplinary reasons (e.g., failure to meet standards) without adherence to the procedures set forth in this policy or any right to appeal. However, any probationary officer subjected to an investigation into allegations of misconduct shall be entitled to those procedural rights, as applicable, set forth in the POBR (Government Code § 3303; Government Code § 3304).

At-will, probationary employees and those other than non-probationary employees subjected to discipline or termination as a result of allegations of misconduct shall not be deemed to have acquired a property interest in their position, but shall be given the opportunity to appear before the Chief of Police or authorized designee for a non-evidentiary hearing for the sole purpose of attempting to clear their name or liberty interest. There shall be no further opportunity for appeal beyond the liberty interest hearing and the decision of the Chief of Police shall be final.

### **1014.12 POST-DISCIPLINE APPEAL RIGHTS**

Non-probationary employees have the right to appeal a suspension without pay, punitive transfer, demotion, reduction in pay or step, or termination from employment. The employee has the right to appeal using the procedures established by any collective bargaining agreement, Memorandum of Understanding and/or personnel rules.

In the event of punitive action against an employee covered by the POBR, the appeal process shall be in compliance with Government Code § 3304 and Government Code § 3304.5.

During any administrative appeal, evidence that an officer has been placed on a *Brady* list or is otherwise subject to *Brady* restrictions may not be introduced unless the underlying allegations of misconduct have been independently established. Thereafter, such *Brady* evidence shall be limited to determining the appropriateness of the penalty (Government Code § 3305.5).

### **1014.13 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE**

In the event that a member tenders a written resignation or notice of retirement prior to the imposition of discipline, it shall be noted in the file. The tender of a resignation or retirement by itself shall not serve as grounds for the termination of any pending investigation or discipline.

### **1014.14 PRE-DISCIPLINE EMPLOYEE RESPONSE**

The pre-discipline process is intended to provide the accused employee with an opportunity to present a written or oral response to the Chief of Police after having had an opportunity to review the supporting materials and prior to imposition of any recommended discipline. The employee shall consider the following:

- (a) The response is not intended to be an adversarial or formal hearing.
- (b) Although the employee may be represented by an uninvolved representative or legal counsel, the response is not designed to accommodate the presentation of testimony or witnesses.



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- (c) The employee may suggest that further investigation could be conducted or the employee may offer any additional information or mitigating factors for the Chief of Police to consider.
- (d) In the event that the Chief of Police elects to cause further investigation to be conducted, the employee shall be provided with the results prior to the imposition of any discipline.
- (e) The employee may thereafter have the opportunity to further respond orally or in writing to the Chief of Police on the limited issues of information raised in any subsequent materials.

### **1014.15 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES**

Upon completion of a formal investigation, an investigation report should be forwarded to the Chief of Police through the chain of command. Each level of command should review the report and include his/her comments in writing before forwarding the report. The Chief of Police may accept or modify any classification or recommendation for disciplinary action.

#### **1014.15.1 DIVISION COMMANDER RESPONSIBILITIES**

Upon receipt of any completed personnel investigation, the Bureau Commander of the involved member shall review the entire investigative file, the member's personnel file and any other relevant materials.

The Bureau Commander may make recommendations regarding the disposition of any allegations and the amount of discipline, if any, to be imposed.

Prior to forwarding recommendations to the Chief of Police, the Bureau Commander may return the entire investigation to the assigned investigator or supervisor for further investigation or action.

When forwarding any written recommendation to the Chief of Police, the Bureau Commander shall include all relevant materials supporting the recommendation. Actual copies of a member's existing personnel file need not be provided and may be incorporated by reference.

#### **1014.15.2 CHIEF OF POLICE RESPONSIBILITIES**

Upon receipt of any written recommendation for disciplinary action, the Chief of Police shall review the recommendation and all accompanying materials. The Chief of Police may modify any recommendation and/or may return the file to the Bureau Commander for further investigation or action.

Once the Chief of Police is satisfied that no further investigation or action is required by staff, the Chief of Police shall determine the amount of discipline, if any, that should be imposed. In the event disciplinary action is proposed, the Chief of Police shall provide the member with a pre-disciplinary procedural due process hearing (*Skelly*) by providing written notice of the charges, proposed action and reasons for the proposed action. Written notice shall be provided within one year from the date of discovery of the misconduct (Government Code § 3304(d)). The Chief of Police shall also provide the member with:

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- (a) Access to all of the materials considered by the Chief of Police in recommending the proposed discipline.
- (b) An opportunity to respond orally or in writing to the Chief of Police within five days of receiving the notice.
  - 1. Upon a showing of good cause by the member, the Chief of Police may grant a reasonable extension of time for the member to respond.
  - 2. If the member elects to respond orally, the presentation may be recorded by the Department. Upon request, the member shall be provided with a copy of the recording.

Once the member has completed his/her response or if the member has elected to waive any such response, the Chief of Police shall consider all information received in regard to the recommended discipline. The Chief of Police shall render a timely written decision to the member and specify the grounds and reasons for discipline and the effective date of the discipline. Once the Chief of Police has issued a written decision, the discipline shall become effective.

### 1014.15.3 NOTICE OF FINAL DISPOSITION TO THE COMPLAINANT

The Chief of Police or the authorized designee shall ensure that the complainant is notified of the disposition (i.e., sustained, not sustained, exonerated, unfounded) of the complaint (Penal Code § 832.7(f)).

### 1014.15.4 NOTICE REQUIREMENTS

The disposition of any civilian's complaint shall be released to the complaining party within 30 days of the final disposition. This release shall not include what discipline, if any, was imposed (Penal Code § 832.7(f)).

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## Seat Belts

### 1015.1 PURPOSE AND SCOPE

This policy establishes guidelines for the use of seat belts and child restraints. This policy will apply to all members operating or riding in department vehicles (Vehicle Code § 27315.5).

#### 1015.1.1 DEFINITIONS

Definitions related to this policy include:

**Child restraint system** - An infant or child passenger restraint system that meets Federal Motor Vehicle Safety Standards (FMVSS) and Regulations set forth in 49 CFR 571.213.

### 1015.2 WEARING OF SAFETY RESTRAINTS

All members shall wear properly adjusted safety restraints when operating or riding in a seat equipped with restraints, in any vehicle owned, leased or rented by this department while on- or off-duty, or in any privately owned vehicle while on-duty. The member driving such a vehicle shall ensure that all other occupants, including non-members, are also properly restrained.

Exceptions to the requirement to wear safety restraints may be made only in exceptional situations where, due to unusual circumstances, wearing a seat belt would endanger the member or the public. Members must be prepared to justify any deviation from this requirement.

### 1015.3 TRANSPORTING PRISONERS

Whenever possible, prisoners should be secured in the prisoner restraint system in the rear seat of the patrol vehicle or, when a prisoner restraint system is not available, by seat belts. The prisoner should be in seating position for which seat belts have been provided by the vehicle manufacturer. The prisoner restraint system is not intended to be a substitute for handcuffs or other appendage restraints.

Officers should restrain prisoners in the rear seat of the vehicle using the vehicle's seat belts as described above. An exception is, if the prisoner is so combative as to create a potential for injury to the officer or the prisoner, the belt need not be used. Another exception is prisoners being transported in the prisoner van which does not have seat belts.

### 1015.4 INOPERABLE SEAT BELTS

Department vehicles shall not be operated when the seat belt in the driver's position is inoperable. Persons shall not be transported in a seat in which the seat belt is inoperable.

Department vehicle seat belts shall not be modified, removed, deactivated or altered in any way, except by the vehicle maintenance and repair staff, who shall do so only with the express authorization of the Chief of Police.

Members who discover an inoperable restraint system shall report the defect to the appropriate supervisor. Prompt action will be taken to replace or repair the system.

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## *Seat Belts*

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### **1015.5 POLICY**

It is the policy of the Walnut Creek Police Department that members use safety and child restraint systems to reduce the possibility of death or injury in a motor vehicle collision.

### **1015.6 TRANSPORTING CHILDREN**

Children under the age of 8 shall be transported in compliance with California's child restraint system requirements (Vehicle Code § 27360; Vehicle Code § 27363).

Rear seat passengers in a cage-equipped vehicle may have reduced clearance, which requires careful seating and positioning of seat belts. Due to this reduced clearance, and if permitted by law, children and any child restraint system may be secured in the front seat of such vehicles provided this positioning meets federal safety standards and the vehicle and child restraint system manufacturer's design and use recommendations. In the event that a child is transported in the front seat of a vehicle, the seat should be pushed back as far as possible and the passenger-side airbag should be deactivated. If this is not possible, members should arrange alternate transportation when feasible. A child shall not be transported in a rear-facing child restraint system in the front seat in a vehicle that is equipped with an active frontal passenger airbag (Vehicle Code § 27363).

### **1015.7 VEHICLES MANUFACTURED WITHOUT SEAT BELTS**

Vehicles manufactured and certified for use without seat belts or other restraint systems are subject to the manufacturer's operator requirements for safe use.

### **1015.8 VEHICLE AIRBAGS**

In all vehicles equipped with airbag restraint systems, the system will not be tampered with or deactivated, except when transporting children as written elsewhere in this policy. All equipment installed in vehicles equipped with airbags will be installed as per the vehicle manufacturer specifications to avoid the danger of interfering with the effective deployment of the airbag device.

## Body Armor

### 1016.1 PURPOSE AND SCOPE

The purpose of this policy is to provide law enforcement officers with guidelines for the proper use of body armor.

### 1016.2 POLICY

It is the policy of the Walnut Creek Police Department to maximize officer safety through the use of body armor in combination with prescribed safety procedures. While body armor provides a significant level of protection, it is not a substitute for the observance of officer safety procedures.

#### 1016.2.1 USE OF SOFT BODY ARMOR

Ballistic vests **shall** be worn by all uniformed personnel assigned to enforcement duties.

All personnel **shall** wear ballistic vests when servicing search warrants, arrest warrants, during probation or parole searches or on any other high-risk activity.

Personnel may be excluded from wearing a ballistic vest with written approval from the Chief of Police or his/her designee.

Officers who wish to purchase a ballistic vest other than those purchased by the department may do so as long as such vest meets the specifications outlined in this policy.

### 1016.3 ISSUANCE OF BODY ARMOR

The Training Coordinator shall ensure that body armor is issued to all officers when the officer begins service at the Walnut Creek Police Department and that, when issued, the body armor meets or exceeds the standards of the National Institute of Justice.

The Training Coordinator shall establish a body armor replacement schedule and ensure that replacement body armor is issued pursuant to the schedule or whenever the body armor becomes worn or damaged to the point that its effectiveness or functionality has been compromised.

#### 1016.3.2 INSPECTIONS OF BODY ARMOR

Supervisors should ensure that body armor is worn and maintained in accordance with this policy through routine observation and periodic documented inspections. Annual inspections of body

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armor should be conducted by supervisors for fit, cleanliness, and signs of damage, abuse and wear.

### 1016.3.3 CARE AND MAINTENANCE OF SOFT BODY ARMOR

Soft body armor should never be stored for any period of time in an area where environmental conditions (e.g., temperature, light, humidity) are not reasonably controlled (e.g., normal ambient room temperature/humidity conditions), such as in automobiles or automobile trunks.

Soft body armor should be cared for and cleaned pursuant to the manufacturer's care instructions provided with the soft body armor. The instructions can be found on labels located on the external surface of each ballistic panel. The carrier should also have a label that contains care instructions. Failure to follow these instructions may damage the ballistic performance capabilities of the armor. If care instructions for the soft body armor cannot be located, contact the manufacturer to request care instructions.

Soft body armor should not be exposed to any cleaning agents or methods not specifically recommended by the manufacturer, as noted on the armor panel label.

Soft body armor should be replaced in accordance with the manufacturer's recommended replacement schedule.

### 1016.4 FIREARMS TEAM RESPONSIBILITIES

The Firearms Team should:

- (a) Monitor technological advances in the body armor industry for any appropriate changes to Department approved body armor.
- (b) Assess weapons and ammunition currently in use and the suitability of approved body armor to protect against those threats.
- (c) Provide training that educates officers about the safety benefits of wearing body armor.

## Personnel Records

### 1017.1 PURPOSE AND SCOPE

This policy governs maintenance and access to personnel records. Personnel records include any file maintained under an individual member's name.

### 1017.2 POLICY

It is the policy of this department to maintain personnel records and preserve the confidentiality of personnel records pursuant to the Constitution and the laws of California (Penal Code § 832.7). We will use the Guardian software system to document and store these files in an electronic format.

### 1017.3 DEPARTMENT FILE

The department file shall be maintained as a record of a person's employment/appointment with this department. The department file should contain, at a minimum:

- (a) Personal data, including photographs, marital status, names of family members, educational and employment history, or similar information. A photograph of the member should be permanently retained.
- (b) Election of employee benefits.
- (c) Personnel action reports reflecting assignments, promotions, and other changes in employment/appointment status. These should be permanently retained.
- (d) Original performance evaluations. These should be permanently maintained.
- (e) Discipline records, including copies of sustained personnel complaints.
  - 1. Disciplinary action resulting from sustained internally initiated complaints or observation of misconduct shall be maintained pursuant to the established records retention schedule and at least two years (Government Code § 26202; Government Code § 34090).
  - 2. Disciplinary action resulting from a sustained civilian's complaint shall be maintained pursuant to the established records retention schedule and at least five years (Penal Code § 832.5).
- (f) Adverse comments such as supervisor notes or memos may be retained in the department file after the member has had the opportunity to read and initial the comment (Government Code § 3305).
  - 1. Once a member has had an opportunity to read and initial any adverse comment, the member shall be given the opportunity to respond in writing to the adverse comment within 30 days (Government Code § 3306).
  - 2. Any member response shall be attached to and retained with the original adverse comment (Government Code § 3306).

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3. If a member refuses to initial or sign an adverse comment, at least one supervisor should note the date and time of such refusal on the original comment and the member should sign or initial the noted refusal. Such a refusal, however, shall not be deemed insubordination, nor shall it prohibit the entry of the adverse comment into the member's file (Government Code § 3305).
- (g) Commendations and awards.
  - (h) Any other information, the disclosure of which would constitute an unwarranted invasion of personal privacy.

### 1017.4 CONFIDENTIALITY OF ALL PERSONNEL FILES

Pursuant to Penal Code § 832.7, all of the above-defined personnel records shall be deemed confidential and shall not be subject to disclosure except pursuant to the discovery procedures set forth in Evidence Code § 1043, et seq. or in accordance with applicable federal discovery laws. Nothing in this section is intended to preclude review of personnel files by the City Manager, City Attorney or other attorneys or representatives of the City in connection with official business.

### 1017.5 TRAINING FILE

An individual training file shall be maintained by the Training Manager for each member. Training files will contain records of all training; original or photocopies of available certificates, transcripts, diplomas and other documentation; and education and firearms qualifications. Training records may also be created and stored remotely, either manually or automatically (e.g., Daily Training Bulletin (DTB) records).

- (a) The involved member is responsible for providing the Training Manager or immediate supervisor with evidence of completed training/education in a timely manner.
- (b) The Training Manager or supervisor shall ensure that copies of such training records are placed in the member's training file.

#### 1017.5.1 RELEASE OF CONFIDENTIAL INFORMATION

Except as provided by this policy or pursuant to lawful process, no information contained in any confidential peace officer personnel file shall be disclosed to any unauthorized person(s) without the express consent of the involved officer or written authorization of the Chief of Police or his or her designee.

Any person who maliciously, and with the intent to obstruct justice or the due administration of the laws, publishes, disseminates, or otherwise discloses the residence address or telephone number of any member of this department may be guilty of a misdemeanor (Penal Code § 146e).

Pursuant to Penal Code § 832.7(e), the disposition of any citizen's complaint shall be released to the complaining party within 30 days of the final disposition. This release shall be limited to the disposition and shall not include what discipline, if any was imposed.

The Department may also release any factual information concerning a disciplinary investigation if the officer who is the subject of the investigation (or the officer's representative) publicly makes



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a statement which is published in the media and which the officer (or representative) knew to be false. The disclosure of such information, if any, shall be limited to facts that refute any such false statement (Penal Code § 832.7(d)).

### **1017.6 INTERNAL AFFAIRS FILE**

Internal affairs files shall be maintained under the exclusive control of the Internal Affairs Unit in conjunction with the office of the Chief of Police. Access to these files may only be approved by the Chief of Police or the Internal Affairs Unit supervisor.

These files shall contain the complete investigation of all formal complaints of member misconduct, regardless of disposition (Penal Code § 832.12). Investigations of complaints that result in the following findings shall not be placed in the member's file but will be maintained in the internal affairs file:

- (a) Not sustained
- (b) Unfounded
- (c) Exonerated

Investigation files arising out of civilian's complaints shall be maintained pursuant to the established records retention schedule and for a period of at least five years. Investigations that resulted in other than a sustained finding may not be used by the Department to adversely affect an employee's career (Penal Code § 832.5).

Investigation files arising out of internally generated complaints shall be maintained pursuant to the established records retention schedule and for at least two years (Government Code § 26202; Government Code § 34090).

### **1017.7 MEDICAL FILE**

A medical file shall be maintained separately from all other personnel records and shall contain all documents relating to the member's medical condition and history, including but not limited to:

- (a) Materials relating to a medical leave of absence, including leave under the Family and Medical Leave Act (FMLA).
- (b) Documents relating to workers' compensation claims or the receipt of short- or long-term disability benefits.
- (c) Fitness-for-duty examinations, psychological and physical examinations, follow-up inquiries and related documents.
- (d) Medical release forms, doctor's slips and attendance records that reveal a member's medical condition.
- (e) Any other documents or materials that reveal the member's medical history or medical condition, including past, present or future anticipated mental, psychological or physical limitations.

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### 1017.7.1 DEPARTMENT FILE

The Department file should contain, but is not limited to, the following:

- (a) Performance evaluation reports regularly completed by appropriate supervisor and signed by the affected employee shall be permanently maintained.
- (b) Records of all training (original or photocopies of available certificates, transcripts, diplomas and other documentation) and education shall be maintained.
  1. It shall be the responsibility of the involved employee to provide the Training Manager with evidence of completed training/education in a timely manner.
  2. The Employee shall ensure that copies of such training records are placed in the employee's department file.
- (c) Disciplinary action:
  1. Disciplinary action resulting from sustained internally initiated complaints or observation of misconduct shall be maintained in the individual employee's department file at least two years (Government Code § 34090).
  2. Disciplinary action resulting from a sustained citizen's complaint shall be maintained in the individual employee's department file at least five years (Penal Code § 832.5).
  3. Investigations of complaints which result in a finding of not-sustained, unfounded or exonerated shall not be placed in the employee's department file, but will be separately maintained for the appropriate retention period in the internal affairs file.
- (d) Adverse comments such as supervisor log entries may be retained in the department file or division file after the employee has had the opportunity to read and initial the comment and for a period up to two years (Government Code § 3305).
  1. Once an employee has had an opportunity to read and initial any adverse comment prior to entry into a file, the employee shall be given the opportunity to respond in writing to such adverse comment within 30 days (Government Code § 3306).
  2. Any such employee response shall be attached to and retained with the original adverse comment.
  3. If an employee refuses to initial or sign an adverse comment, at least one supervisor should note the date and time of such refusal on the original comment. Such a refusal, however, shall not be deemed insubordination nor shall it prohibit the entry of the adverse comment into the employee's file.
- (e) Commendations shall be retained in the employee's department file, with a copy provided to the involved employee.

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- (f) Personnel Action Reports reflecting assignments, promotions and other changes in the employee's employment status shall be permanently retained.

### 1017.7.2 DIVISION FILE

The Division File should contain, but is not limited to, the following:

- (a) Supervisor log entries, notices to correct and other materials intended to serve as a foundation for the completion of timely Performance Evaluations
  1. All materials intended for this interim file shall be provided to the employee prior to being placed in the file in accordance with Government Code §§ 3305 and 3306.
  2. Duplicate copies of items that will also be included in the employee's department file may be placed in this interim file in anticipation of completing any upcoming performance evaluation.
  3. Once the permanent performance evaluation form has been made final, the underlying foundational material(s) and/or duplicate copies may be purged in accordance with this policy.
- (b) All rules of confidentiality and disclosure shall apply equally to the division file.

### 1017.7.3 INTERNAL AFFAIRS FILE

Internal affairs files shall be maintained under the exclusive control of the office of the Chief of Police. Access to these files may only be approved by the Chief of Police or a Captain. These files shall contain:

- (a) The complete investigation of all formal complaints of employee misconduct, regardless of disposition
  1. Each investigation file shall be sequentially numbered within a calendar year (e.g., yy-001, yy-002).
  2. Each investigation file arising out of a formal citizen's complaint or a complaint involving a discriminatory harassment or hostile work environment shall be maintained no less than five years (Penal Code § 832.5(b)). Investigation files arising out of other internally generated complaints shall be maintained no less than two years (Government Code § 34090).
- (b) Investigations that result in other than a sustained finding shall be maintained for the minimum statutory period but may not be used by the Department to adversely affect an employee's career (Penal Code § 832.5 (c)).

### 1017.7.4 TRAINING FILES

An individual training file shall be maintained by the Chief's Office for each employee. Training files will contain records of all training (original or photocopies of available certificates, transcripts, diplomas and other documentation) and education.

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- (a) It shall be the responsibility of the involved employee to provide the Chief's secretary with evidence of outside training/education in a timely manner
- (b) The Training Manager shall ensure that copies of such training records are placed in the employee's Training File

### 1017.7.5 MEDICAL FILE

An On the Job Injury file (OJI) shall be kept by the Chief's Office. This file shall contain documents and doctor's slips relating to an employee's work status. Generally, medical information will be managed and stored by the Human Resources Department at the City of Walnut Creek.

### 1017.8 SECURITY

Personnel records should be maintained in a secured location and locked either in a cabinet or access-controlled room. Personnel records maintained in an electronic format should have adequate password protection.

Personnel records are subject to disclosure only as provided in this policy, the Records Maintenance and Release Policy or according to applicable discovery procedures.

Nothing in this policy is intended to preclude review of personnel records by the City Manager, City Attorney or other attorneys or representatives of the City in connection with official business.

### 1017.9 BRADY MATERIAL IN PERSONNEL FILES

The purpose of this section is to establish a procedure for releasing potentially exculpatory information (so-called Brady material) contained within confidential peace officer personnel files.

#### 1017.9.1 DEFINITIONS

**Brady Material** - In the Brady v. Maryland decision ( 373 U.S. 83 (1963)) the United States Supreme Court held that the prosecution has an affirmative duty to disclose to the defendant evidence which is both favorable and material to the guilt and/or punishment of the defendant.

**The Prosecution** - Refers to the District Attorney and all investigative agencies involved in the criminal prosecution of a defendant, including this department.

**Penal Code § 1054.1** - California law also establishes a criminal defendant's right to access potentially exculpatory evidence.

#### 1017.9.2 RELEASE OF PERSONNEL FILES TO DISTRICT ATTORNEY

Pursuant to Penal Code § 832.7(a), the only time the District Attorney (Attorney General or Grand Jury) is entitled to access confidential peace officer personnel files without filing a so-called Pitchess motion (Evidence Code § 1043 et seq.) is when they are investigating the conduct of an officer or this department. Such access shall not be considered a waiver of the confidentiality of the information contained in these files.

Absent a specific investigation of identified officer(s) or a specific investigation of this department (or the consent of an involved officer), no confidential information from any officer's personnel file

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shall be released to the District Attorney or Grand Jury without full compliance with the Pitchess process. The prosecution of a criminal defendant is not considered an investigation of any involved officer.

Should an officer's credibility or other issues related to an officer's personnel file arise in the context of an officer acting as a witness for the prosecution, access to that officer's personnel file by either the District Attorney or the criminal defendant shall be limited to that which is authorized by the process set forth in Evidence Code § 1043, et seq.

### 1017.9.3 PROCEDURE

If an officer is a material witness in a criminal case, a person or persons designated by the Chief of Police may examine the subject officer's personnel file to determine whether there are Brady materials contained therein (e.g., evidence which is both favorable and material to the guilt and/or punishment of the defendant). If Brady material is located, the following procedure shall apply:

- (a) In the event that a Pitchess motion has not already been filed by the criminal defendant or other party, the District Attorney shall be notified of the potential presence of Brady material in the officer's personnel file
- (b) The District Attorney should be instructed to file a Pitchess motion in order to initiate an in camera review by the court
- (c) As with any Pitchess motion, and prior to any review of the files by the court, subject officer(s) shall be notified in writing that a Pitchess motion has been filed
- (d) The responsible Division Captain and City Attorney shall accompany all relevant personnel files during any in camera inspection and address any issues or questions raised by the court in determining whether or not any material contained in the file is both material and favorable to the criminal defendant
- (e) If the court determines that there is relevant Brady material contained in the file(s), only that material ordered released will be copied and released to the parties filing the Pitchess motion
  1. Prior to the release of any materials pursuant to this process, the City Attorney should request a protective order from the Court limiting the use of such materials to the involved case and requiring the return of all copies upon completion of the case.

### **1017.10 RELEASE OF PERSONNEL RECORDS AND RECORDS RELATED TO CERTAIN INCIDENTS, COMPLAINTS, AND INVESTIGATIONS OF OFFICERS**

Personnel records and records related to certain incidents, complaints, and investigations of officers shall be released pursuant to a proper request under the Public Records Act and subject to redaction and delayed release as provided by law.

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The Custodian of Records should work as appropriate with the Chief of Police or the Internal Affairs Unit supervisor in determining what records may qualify for disclosure when a request for records is received and if the requested record is subject to redaction or delay from disclosure.

For purposes of this section, a record includes (Penal Code § 832.7(b)(2)):

- All investigation reports.
- Photographic, audio, and video evidence.
- Transcripts or recordings of interviews.
- Autopsy reports.
- All materials compiled and presented for review to the District Attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and department policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take.
- Documents setting forth findings or recommending findings.
- Copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the *Skelly* or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

Unless a record or information is confidential or qualifies for delayed disclosure as provided by Penal Code § 832.7(b)(7) or other law, the following records shall be made available for public inspection upon request (Penal Code § 832.7):

- (a) Records relating to the report, investigation, or findings of:
  1. The discharge of a firearm at another person by an officer.
  2. The use of force against a person resulting in death or in great bodily injury (as defined by Penal Code § 243(f)(4)) by an officer.
- (b) Records relating to an incident where a sustained finding (see the Personnel Complaints Policy) was made by the department or oversight agency regarding:
  1. An officer engaged in sexual assault of a member of the public (as defined by Penal Code § 832.7(b)).
  2. Dishonesty of an officer relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another officer, including but not limited to any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence.

A record from a separate and prior investigation or assessment of a separate incident shall not be released unless it is independently subject to disclosure (Penal Code § 832.7(b)(3)).

When an investigation involves multiple officers, the Department shall not release information about allegations of misconduct or the analysis or disposition of an investigation of an officer unless

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it relates to a sustained finding of a qualified allegation as provided by Penal Code § 832.7(b)(4) against the officer. However, factual information about the action of the officer during an incident or the statements of an officer shall be released if the statements are relevant to a sustained finding of the qualified allegation against another officer that is subject to release (Penal Code § 832.7(b)(4)).

### 1017.10.1 REDACTION

The Custodian of Records, in consultation with the Chief of Police or authorized designee, shall redact the following portions of records made available for release (Penal Code § 832.7(b)(5)):

- (a) Personal data or information (e.g., home address, telephone number, identities of family members) other than the names and work-related information of officers
- (b) Information that would compromise the anonymity of complainants and witnesses
- (c) Confidential medical, financial, or other information where disclosure is prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about misconduct and serious use of force
- (d) Where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the officer or another person

Additionally, a record may be redacted, including redacting personal identifying information, where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosing it (Penal Code § 832.7(b)(6)).

### 1017.10.2 DELAY OF RELEASE

Unless otherwise directed by the Chief of Police, the Custodian of Records should consult with a supervisor familiar with the underlying investigation to determine whether to delay disclosure of records relating to the discharge of a firearm or use of force resulting in death or in great bodily injury due to any of the following conditions (Penal Code § 832.7):

- (a) Active criminal investigations
  1. Disclosure may be delayed 60 days from the date the use of force occurred or until the District Attorney determines whether to file criminal charges, whichever occurs sooner.
  2. After the initial 60 days, delay of disclosure may be continued if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against an officer or against someone other than an officer who used the force.
- (b) Filed criminal charges
  1. When charges are filed related to an incident where force was used, disclosure may be delayed until a verdict on those charges is returned at trial or, if a plea of guilty or no contest is entered, the time to withdraw the plea has passed.
- (c) Administrative investigations

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1. Disclosure may be delayed until whichever occurs later:
  - (a) There is a determination from the investigation whether the use of force violated law or department policy, but no longer than 180 days after the date of the department's discovery of the use of force or allegation of use of force
  - (b) Thirty days after the close of any criminal investigation related to the officer's use of force

### 1017.10.3 NOTICE OF DELAY OF RECORDS

When there is justification for delay of disclosure of records relating to the discharge of a firearm or use of force resulting in death or in great bodily injury during an active criminal investigation, the Custodian of Records shall provide written notice of the reason for any delay to a requester as follows (Penal Code § 832.7):

- (a) Provide the specific basis for the determination that the interest in delaying disclosure clearly outweighs the public interest in disclosure. The notice shall also include the estimated date for the disclosure of the withheld information.
  - (b) When delay is continued beyond the initial 60 days because of criminal enforcement proceedings against anyone, at 180-day intervals provide the specific basis that disclosure could reasonably be expected to interfere with a criminal enforcement proceeding and the estimated date for disclosure.
1. Information withheld shall be disclosed when the specific basis for withholding the information is resolved, the investigation or proceeding is no longer active, or no later than 18 months after the date of the incident, whichever occurs sooner, unless:
    - (a) When the criminal proceeding is against someone other than an officer and there are extraordinary circumstances to warrant a continued delay due to the ongoing criminal investigation or proceeding, then the Department must show by clear and convincing evidence that the interest in preventing prejudice to the active and ongoing criminal investigation or proceeding outweighs the public interest for prompt disclosure of records about use of serious force by officers.

In cases where an action to compel disclosure is brought pursuant to Government Code § 6258, the Department may justify delay by filing an application to seal the basis for withholding if disclosure of the written basis itself would impact a privilege or compromise a pending investigation (Penal Code § 832.7(b)(7)).



## Employee Commendations

### 1018.1 PURPOSE AND SCOPE

Special recognition may be in order whenever an employee performs his/her duties in an exemplary manner. This procedure provides general guidelines for the commending of exceptional employee performance.

### 1018.2 WHO MAY MAKE COMMENDATIONS

A written commendation may be made by any supervisor regarding any other employee of the Department, provided the reporting person is superior in rank or is the person-in-charge of the individual being commended. Additionally, investigating officers may commend uniformed officers for exceptional assistance in investigative functions, with approval from the investigator's supervisor. Any employee may recommend a commendation to the supervisor of the employee subject to commendation.

### 1018.3 COMMENDABLE ACTIONS

A meritorious or commendable act by an employee of this department may include, but is not limited to, the following:

- Superior handling of a difficult situation by an employee
- Conspicuous bravery or outstanding performance by any employee of the Department
- Any action or performance that is above and beyond the typical duties of an employee

#### 1018.3.1 COMMENDATION INCIDENT REPORT

The Commendation Incident Report shall be used to document the commendation of the employee and shall contain the following:

- (a) Employee name, bureau, and assignment at the date and time of the commendation
- (b) A brief account of the commendable action shall be documented on the form with report numbers, as appropriate
- (c) Signature of the commending supervisor

Completed reports shall be forwarded to the appropriate Bureau Commander for his/her review. The Bureau Commander shall sign and forward the report to the Chief of Police for his/her review.

The Chief of Police will return the commendation to the employee for his/her signature. The report will then be returned to the Administrative Secretary for entry into the employee's personnel file.

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## Critical Incident Debriefing Procedure

### 1019.1 POLICY

It is the policy of this department to provide appropriate assistance whenever an employee is involved in a traumatic incident.

#### 1019.1.1 PURPOSE

This policy establishes departmental procedures to assist employees with stresses that may result from being involved in a critical incident. It is recognized that stressful incidents can have a cumulative effect.

#### 1019.1.2 DEFINITION

An incident is defined as critical if it has the potential for producing a significant emotional shock. Examples of critical incidents include serious injury or death cases as well as other events involving serious threats to human life.

### 1019.2 PROCEDURE

- (a) Whenever an employee has been involved in or has witnessed a critical incident, or he/she reports difficulty in coping with work related stress, the following procedures shall be followed:
1. The employee should complete all necessary duties as deemed appropriate by the incident or on duty watch commander.
  2. As soon as possible, the on duty watch commander shall call a mental health professional through the city's Employee Assistance Program and consult with a mental health professional to determine the need for a Critical Incident Debrief (CID) for the employee(s) involved in the critical incident. Should the City's employee assistance provider not be able to provide the needed assistance, an appropriate alternative may be utilized. The city's Employee Assistance Program will not be used to evaluate an officer concerning his/her fitness for duty.
  3. CID's shall be arranged for all of the following types of incidents:
    - Officer Involved Shootings
    - Multiple Casualties
    - Unexpected Death/Serious Injury of a co-worker
    - Line of Duty Death
    - Any critical incident the Watch Commander and mental health professional believe would better help employees cope.
  4. Participation in the CID is voluntary.

## Fitness for Duty

### 1020.1 PURPOSE AND SCOPE

All officers are required to be free from any physical, emotional, or mental condition which might adversely affect the exercise of peace officer powers. The purpose of this policy is to ensure that all officers of this department remain fit for duty and able to perform their job functions (Government Code § 1031).

### 1020.2 EMPLOYEE RESPONSIBILITIES

- (a) It shall be the responsibility of each member of this department to maintain good physical condition sufficient to safely and properly perform essential duties of their position.
- (b) Each member of this department shall perform his/her respective duties without physical, emotional, and/or mental constraints.
- (c) During working hours, all employees are required to be alert, attentive, and capable of performing his/her assigned responsibilities.
- (d) Any employee who feels unable to perform his/her duties shall promptly notify a supervisor. In the event that an employee believes that another employee is unable to perform his/her duties, such observations and/or belief shall be promptly reported to a supervisor.

### 1020.3 SUPERVISOR RESPONSIBILITIES

- (a) A supervisor observing an employee, or receiving a report of an employee who is perceived to be, unable to safely perform his/her duties due to a physical or mental condition shall take prompt and appropriate action in an effort to resolve the situation.
- (b) Whenever feasible, the supervisor should attempt to ascertain the reason or source of the problem and in all cases a preliminary evaluation should be made in an effort to determine the level of inability of the employee to perform his/her duties.
- (c) In the event the employee appears to be in need of immediate medical or psychiatric treatment, all reasonable efforts should be made to provide such care.
- (d) In conjunction with the Watch Commander or employee's available Bureau Commander, a determination should be made whether or not the employee should be temporarily relieved from his/her duties.
- (e) The Chief of Police shall be promptly notified in the event that any employee is relieved from duty.

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### **1020.4 NON-WORK RELATED CONDITIONS**

Any employee suffering from a non-work related condition which warrants a temporary relief from duty may be required to use sick leave or other paid time off (PTO) in order to obtain medical treatment or other reasonable rest period.

### **1020.5 WORK RELATED CONDITIONS**

Any employee suffering from a work related condition which warrants a temporary relief from duty shall be required to comply with personnel rules and guidelines for processing such claims.

Upon the recommendation of the Watch Commander or unit supervisor and concurrence of a Bureau Commander, any employee whose actions or use of force in an official capacity result in death or serious injury to another may be temporarily removed from regularly assigned duties and/or placed on paid administrative leave for the wellbeing of the employee and until such time as the following may be completed:

- (a) A preliminary determination that the employee's conduct appears to be in compliance with policy and, if appropriate.
- (b) The employee has had the opportunity to receive necessary counseling and/or psychological clearance to return to full duty.

### **1020.6 PHYSICAL AND PSYCHOLOGICAL EXAMINATIONS**

- (a) Whenever circumstances reasonably indicate that an employee is unfit for duty, the Chief of Police may serve that employee with a written order to undergo a physical and/or psychological examination in cooperation with Department of Human Resources to determine the level of the employee's fitness for duty. The order shall indicate the date, time and place for the examination.
- (b) The examining physician or therapist will provide the Department with a report indicating that the employee is either fit for duty or, if not, listing any functional limitations which limit the employee's ability to perform job duties. If the employee places his/her condition at issue in any subsequent or related administrative action/grievance, the examining physician or therapist may be required to disclose any and all information which is relevant to such proceeding (Civil Code § 56.10(c)(8)).
- (c) In order to facilitate the examination of any employee, the Department will provide all appropriate documents and available information to assist in the evaluation and/or treatment.
- (d) All reports and evaluations submitted by the treating physician or therapist shall be part of the employee's confidential personnel file.
- (e) Any employee ordered to receive a fitness for duty examination shall comply with the terms of the order and cooperate fully with the examining physician or therapist regarding any clinical interview, tests administered or other procedures as directed.

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Any failure to comply with such an order and any failure to cooperate with the examining physician or therapist may be deemed insubordination and shall be subject to discipline up to and including termination.

- (f) Once an employee has been deemed fit for duty by the examining physician or therapist, the employee will be notified to resume his/her duties.

### **1020.7 LIMITATION ON HOURS WORKED**

Absent emergency operations members should not work more than:

- 16 hours in one day (24 hour) period or
- 30 hours in any 2 day (48 hour) period or
- 84 hours in any 7 day (168 hour) period

Except in very limited circumstances members should have a minimum of 8 hours off between shifts. Supervisors should give consideration to reasonable rest periods and are authorized to deny overtime or relieve to off-duty status any member who has exceeded the above guidelines.

Limitations on the number of hours worked apply to shift changes, shift trades, rotation, holdover, training, general overtime and any other work assignments.

### **1020.8 APPEALS**

An employee who is separated from paid employment or receives a reduction in salary resulting from a fitness for duty examination shall be entitled to an administrative appeal as outlined in the Personnel Complaints Policy.

## Peer Support Team

### 1021.1 POLICY

The Walnut Creek Police Department places the highest value on employee welfare. In order to better provide for the needs of members of the department the Peer Support Program has been established. This program works closely and in conjunction with the Police Chaplain Group and Employee Assistance Program.

#### 1021.1.1 PURPOSE

The purpose of the Peer Support Program is to offer employees of the police department the opportunity to meet with a trained peer who can provide emotional support and assistance through times of personal or professional crisis and to help anticipate and address potential difficulties and provide education on maintaining emotional and mental health. Further support is provided in developing a plan to deal with critical incidents and/or in problem solving personal issues before they become chronic and debilitating.

### 1021.2 PEER SUPPORT TEAM

Membership on the Peer Support Team is open to any member of the department. Members of the Chaplains Group are integrated into the Peer Support Team.

It is highly desirable, but not required, that applicants be off probation to participate as members of the Peer Support Team. Selection for the team may be by self-nomination or peer nomination. In either event current members of the Peer Support Team will discuss the aptitude of the prospective new member and at times seek input from other members of the department regarding the aptitude of the prospective new member.

Considerations for selection of candidates include, but are not limited to, previous experience, education and training; resolved traumatic experiences; and desirable personal qualities, such as maturity, judgment, and personal and professional credibility.

### 1021.3 PEER SUPPORT TEAM MEMBER

The Peer Support Team offers trained peers available to all employees and their family members to address personal issues or stressors. Employees are often more inclined to reach out to a peer for help before they would seek assistance from a mental health professional. By offering employees information and support, the employee is better able to make healthy decisions. While the Peer Support Team Member may offer information, support and guidance, it is ultimately the individual's responsibility to make the problem solving decisions.

The primary responsibilities of the Peer Support Team Member are to provide information and support to department employees and their family members who are experiencing life-challenges, and to respond to peers dealing with reactions to critical incidents. The Peer Support Team Member utilizes appropriate active listening skills, helps to clarify issues and supports the person through the problem-solving process.

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## *Peer Support Team*

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Peer Support Team Members will be proactive in identifying potential crisis situations with individuals and offering assistance.

### **1021.4 TRAINING**

The initial training shall be a minimum of a P.O.S.T. approved Basic Peer Support course as well as a Basic Critical Incident Stress Management (CISM) course. A member who has received the Basic Peer Support training may involve themselves with that aspect of the program. Likewise, a member who has received the Basic CISM training may involve themselves with that aspect of the program.

- (a) Initial training is intended to provide a basic understanding of and skills in the following areas:
  - Developing rapport with person being assisted
  - Facilitating and supportive listening skills
  - Crisis intervention techniques
  - Relationship problems
  - Alcoholism
  - Depression and suicide
  - Post critical incident syndrome
  - Job related problems
  - Critical Incident Stress Debrief (CISD)
- (b) Follow-up training for Team members will be determined by the team manager or supervisor and will be scheduled by the Peer Support Team supervisor. Some areas to be considered are:
  - Problem solving workshops
  - Referral update information
  - Sharing workshops
  - Advanced skills workshops
  - Critical incident identification
  - Traumatic incident stress
  - Post traumatic stress disorder
  - Advanced CISD certification

Continued training will be provided in house by the mental health professional(s), qualified Peer Support Personal, and/or outside classes in appropriate subjects.

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### **1021.5 PROCEDURE**

A list of the current Peer Support Teams Members is located on the Cordico App and Communifire. Any member of the department may voluntarily utilize the assistance of a Peer Support Team Member without any requirement for prior approval. If a Critical Incident Debriefing is being considered refer to Policy 1019.

Upon recognition of a personal or professional crisis experienced by a member of the department any person may consult a Peer Support Team Member of the situation. The Peer Support Team member will notify the Peer Support supervisor of the general request for assistance.

In the event of a critical incident the on duty watch commander will notify the Peer Support Team Manager and request appropriate assistance. The Peer Support Team members trained in CISM are expected to participate fully in all post critical incidents within the Department and the City.

### **1021.6 CONFIDENTIALITY**

Peer Support outreach and counseling is confidential, however, Peer Support Team Members cannot abdicate their job responsibility as officers by participating in the program. Peer Support Team Members must advise members that information told to them is not protected by legal privilege.

Peer Support Team Members must inform department members of the limits of their confidentiality. These will be consistent with the law as well as departmental policy and may include the following:

- Threats to self
- Threats to specific people
- Criminal activity including felonies and misdemeanors
- Information regarding internal investigations

Except for the types of information listed above, members of the Walnut Creek Police department should feel secure in confiding and sharing personal information with a Peer Support Team Member. To that end, Peer Support Team Members must not volunteer any personal information about others to any other person, including supervisors and other Peer Support Team Members without expressed permission. Peer Support Team Members shall advise supervisors of the confidentiality guidelines established by the department.

The Peer Support Program is a confidential program. No records will be maintained which identify the employees who solicit or utilize this program.

The only information that department staff may require about peer support cases is the anonymous statistical information regarding the general utilization of the program.

### **1021.7 LIMITATIONS**

In most cases the Peer Support Program is a first step toward getting help and does not replace psychological treatment or professional Employee Assistance Program (EAP) services. The objective of the Peer Support Program is to minimize psychological trauma that Department



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employees and their families may experience throughout their career, support employees on methods of handling career related stressors, and render assistance in an attempt to accelerate normal recovery to critical events, some of which are unique to law enforcement.

The Peer Support Team members are not a licensed counselor or therapist but acts as a peer support provider, offering an opportunity for the employee to obtain information and direction to resolve emotionally charged matters in a confidential setting. Peer support is not a substitute for professional counseling. The Chaplain members of the team may be licensed counselors and/or therapists.

## Meal Periods and Breaks

### 1022.1 PURPOSE AND SCOPE

This policy regarding meals and breaks, insofar as possible shall conform to the policy governing all City employees that has been established by the City Manager.

#### 1022.1.1 MEAL PERIODS

Sworn employees and dispatchers shall remain on duty subject to call during meal breaks. All other employees are not on call during meal breaks unless directed otherwise by a supervisor.

Uniformed patrol and traffic officers shall request clearance from Dispatch prior to taking a meal period. Uniformed officers shall take their breaks within the City limits unless on assignment outside of the City or with supervisor approval.

The standard meal time allowed is 30 minutes for dispatchers and sworn personnel.

## Lactation Break Policy

### 1023.1 PURPOSE AND SCOPE

The purpose of this policy is to provide reasonable accommodations to employees desiring to express breast milk for the employee's infant child (Labor Code § 1034).

### 1023.2 POLICY

It is the policy of this department to provide, in compliance with the Fair Labor Standards Act, reasonable break time and appropriate facilities to accommodate any employee desiring to express breast milk for her nursing infant child (29 USC § 207; Labor Code § 1030).

### 1023.3 LACTATION BREAK TIME

A rest period should be permitted each time the employee has the need to express breast milk (29 USC § 207; Labor Code § 1030). In general, lactation breaks that cumulatively total 30 minutes or less during any four-hour work period or major portion of a four-hour work period would be considered reasonable. However, individual circumstances may require more or less time. Such breaks, if feasible, should be taken at the same time as the employee's regularly scheduled rest or meal periods.

While a reasonable effort will be made to provide additional time beyond authorized breaks, any such time exceeding regularly scheduled and paid break time will be unpaid (Labor Code § 1030).

Employees desiring to take a lactation break shall notify Dispatch or a supervisor prior to taking such a break. Such breaks may be reasonably delayed if they would seriously disrupt department operations (Labor Code § 1032).

Once a lactation break has been approved, the break should not be interrupted except for emergency or exigent circumstances.

### 1023.4 PRIVATE LOCATION

The Department will make reasonable efforts to accommodate employees with the use of an appropriate room or other location to express milk in private. Such room or place should be in close proximity to the employee's work area and shall be other than a bathroom or toilet stall. The location must be shielded from view and free from intrusion from co-workers and the public (29 USC § 207; Labor Code § 1031).

Employees occupying such private areas shall either secure the door or otherwise make it clear to others that the area is occupied with a need for privacy. All other employees should avoid interrupting an employee during an authorized break, except to announce an emergency or other urgent circumstance.

Authorized lactation breaks for employees assigned to the field may be taken at the nearest appropriate private area.

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## *Lactation Break Policy*

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### **1023.5 STORAGE OF EXPRESSED MILK**

Any employee storing expressed milk in any authorized refrigerated area within the Department shall clearly label it as such and shall remove it when the employee ends her shift.

#### **1023.5.1 STATE REQUIREMENTS**

Employees have the right to request lactation accommodations. If a break time or location accommodation cannot be provided, the supervisor shall provide the member with a written response regarding the reasons for the determination (Labor Code § 1034).

Lactation rooms or other locations should comply with the prescribed feature and access requirements of Labor Code § 1031.

Employees who believe that their rights have been violated under this policy or have been the subject of discrimination or retaliation for exercising or attempting to exercise their rights under this policy, are encouraged to follow the chain of command in reporting a violation, but may also file a complaint directly with the Labor Commissioner (Labor Code § 1033).

## Payroll Records

### 1024.1 PURPOSE AND SCOPE

This policy provides the guidelines for completing and submitting payroll records of department members who are eligible for the payment of wages.

### 1024.2 POLICY

The Walnut Creek Police Department maintains timely and accurate payroll records.

### 1024.3 RESPONSIBILITIES

Members are responsible for the accurate completion and timely submission of their payroll records for the payment of wages.

Supervisors are responsible for approving the payroll records for those under their commands.

### 1024.4 TIME REQUIREMENTS

Members who are eligible for the payment of wages are paid on a scheduled, periodic basis, generally on the same day or date each period, with certain exceptions, such as holidays. Payroll records shall be completed and submitted to Administration as established by the City payroll procedures.

### 1024.5 RECORDS

The Administration Bureau Commander shall ensure that accurate and timely payroll records are maintained as required by 29 CFR 516.2 for a minimum of three years (29 CFR 516.5).

## Overtime Compensation Requests

### 1025.1 PURPOSE AND SCOPE

It is the policy of the Department to compensate non-exempt salaried employees who work authorized overtime either by payment of wages as agreed and in effect through the Memorandum of Understanding (MOU), or by the allowance of accrual of compensatory time off. In order to qualify for either, the employee must submit their overtime in the timekeeping system.

#### 1025.1.1 DEPARTMENT POLICY

Because of the nature of police work, and the specific needs of the Department, a degree of flexibility concerning overtime policies must be maintained.

Non-exempt employees are not authorized to volunteer work time to the Department. All requests to work overtime shall be approved in advance by a supervisor. If circumstances do not permit prior approval, then approval shall be sought as soon as practical during the overtime shift and in no case later than the end of shift in which the overtime is worked.

The individual employee may request compensatory time in lieu of receiving overtime payment, however, the employee may not exceed their bargaining unit's maximum accrual of compensatory time.

### 1025.2 REQUEST FOR OVERTIME PAYMENT FORMS

Employees shall submit overtime in the timekeeping system. The request should include the reason for the overtime.

### 1025.3 ACCOUNTING FOR OVERTIME WORKED

Employees are to record the actual time worked in an overtime status. In some cases, the Memorandum of Understanding or the City Rules and Regulations provides that a minimum number of hours will be paid.

#### 1025.3.1 ACCOUNTING FOR PORTIONS OF AN HOUR

When accounting for less than a full hour, time worked shall be rounded up to the nearest quarter of an hour as indicated by the following chart:

<u>TIME WORKED</u>	<u>INDICATE ON CARD</u>
1 to 15 minutes	.25
16 to 30 minutes	.50
31 to 45 minutes	.75
46 to 60 minutes	1 hour

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## Outside Employment

### 1026.1 PURPOSE AND SCOPE

In order to avoid actual or perceived conflicts of interest for departmental employees engaging in outside employment, all employees shall obtain written approval from the Chief of Police prior to engaging in any outside employment. Approval of outside employment shall be at the discretion of the Chief of Police in accordance with the provisions of this policy.

#### 1026.1.1 DEFINITIONS

**Outside Employment** - Any member of this department who receives wages, compensation or other consideration of value from another employer, organization or individual not affiliated directly with this department for services, product(s) or benefits rendered. For purposes of this section, the definition of outside employment includes those employees who are self-employed and not affiliated directly with this department for services, product(s) or benefits rendered.

### 1026.2 OBTAINING APPROVAL

No member of this department may engage in any outside employment without first obtaining prior written approval of the Chief of Police. Failure to obtain prior written approval for outside employment or engaging in outside employment prohibited by this policy may lead to disciplinary action.

In order to obtain approval for outside employment, the employee must complete a Walnut Creek Police Department Outside Employment Application which shall be submitted to the Executive Assistant. The application will then be forwarded to the Chief of Police for consideration.

If approved, the employee will be provided with a copy of the approved permit. Unless otherwise indicated in writing on the approved permit, permits will renew June 30th of each year. A copy of the approved permit shall be maintained in Chief's Office by the Executive Assistant. The Executive Assistant should send an email to all employees each June soliciting an update on any active permits and reminding all employees of the outside work permit requirement. It is however, each employee's responsibility to ensure timely renewal of the permit. Any employee seeking to renew a permit shall submit a new Outside Employment Application prior to June 30th of each year.

Any employee seeking approval of outside employment, whose request has been denied, shall be provided with a written reason for the denial of the application at the time of the denial (Penal Code § 70(e)(3)).

#### 1026.2.1 APPEAL OF DENIAL OF OUTSIDE EMPLOYMENT

If an employee's Outside Employment Application is denied or withdrawn by the Department, the employee may file a written notice of appeal to the Chief of Police within ten days of the date of denial.

If the employee's appeal is denied, the employee may file a grievance pursuant to the procedure set forth in the current Memorandum of Understanding (MOU).

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### 1026.2.2 REVOCATION/SUSPENSION OF OUTSIDE EMPLOYMENT PERMITS

Any outside employment permit may be revoked or suspended under the following circumstances:

- (a) Should an employee's performance at this department decline to a point where it is evaluated by a supervisor as needing improvement to reach an overall level of competency, the Chief of Police may, at his or her discretion, revoke any previously approved outside employment permit(s). That revocation will stand until the employee's performance has been reestablished at a satisfactory level and his/her supervisor recommends reinstatement of the outside employment permit
- (b) Suspension or revocation of a previously approved outside employment permit may be included as a term or condition of sustained discipline
- (c) If, at any time during the term of a valid outside employment permit, an employee's conduct or outside employment conflicts with the provisions of department policy, the permit may be suspended or revoked
- (d) When an employee is unable to perform at a full duty capacity due to an injury or other condition, any previously approved outside employment permit may be subject to similar restrictions as those applicable to the employee's full time duties until the employee has returned to a full duty status

### 1026.3 PROHIBITED OUTSIDE EMPLOYMENT

Consistent with the provisions of Government Code § 1126, the Department expressly reserves the right to deny any Outside Employment Application submitted by an employee seeking to engage in any activity which:

- (a) Involves the employee's use of departmental time, facilities, equipment or supplies, the use of the Department badge, uniform, prestige or influence for private gain or advantage
- (b) Involves the employee's receipt or acceptance of any money or other consideration from anyone other than this department for the performance of an act which the employee, if not performing such act, would be required or expected to render in the regular course or hours of employment or as a part of the employee's duties as a member of this department
- (c) Involves the performance of an act in other than the employee's capacity as a member of this department that may later be subject directly or indirectly to the control, inspection, review, audit or enforcement of any other employee of this department
- (d) Involves time demands that would render performance of the employee's duties for this department less efficient

#### 1026.3.1 OUTSIDE SECURITY AND PEACE OFFICER EMPLOYMENT

Consistent with the provisions of Penal Code § 70, and because it would further create a potential conflict of interest, no member of this department may engage in any outside or secondary



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employment as a private security guard, private investigator or other similar private security position.

No officer may engage in outside employment as a peace officer for any other public agency without prior written authorization of the Chief of Police.

### **1026.3.3 SPECIAL RESTRICTIONS**

Except for emergency situations or with prior authorization from the Division Commander, undercover officers or officers assigned to covert operations shall not be eligible to work overtime or other assignments in a uniformed or other capacity which might reasonably disclose the officer's law enforcement status.

### **1026.4 DEPARTMENT RESOURCES**

Employees are prohibited from using any department equipment or resources in the course of or for the benefit of any outside employment. This shall include the prohibition of access to official records or databases of this department or other agencies through the use of the employee's position with this department.

#### **1026.4.1 REVIEW OF FINANCIAL RECORDS**

Employees approved for outside employment expressly agree that their personal financial records may be requested and reviewed/audited for potential conflict of interest (Government Code § 3308; Government Code § 1126). Prior to providing written approval for an outside employment position, the Department may request that an employee provide his/her personal financial records for review/audit in order to determine whether a conflict of interest exists. Failure of the employee to provide the requested personal financial records could result in denial of the off-duty work permit. If, after approving a request for an outside employment position, the Department becomes concerned that a conflict of interest exists based on a financial reason, the Department may request that the employee provide his/her personal financial records for review/audit. If the employee elects not to provide the requested records, his/her off-duty work permit may be revoked pursuant to the Revocation/Suspension of Outside Employment Permits section of this policy.

### **1026.5 CHANGES IN OUTSIDE EMPLOYMENT STATUS**

If an employee terminates his or her outside employment during the period of a valid permit, the employee shall promptly submit written notification of such termination to the Chief of Police through channels. Any subsequent request for renewal or continued outside employment must thereafter be processed and approved through normal procedures set forth in this policy.

Employees shall also promptly submit in writing to the Chief of Police any material changes in outside employment including any change in the number of hours, type of duties, or demands of any approved outside employment. Employees who are uncertain whether a change in outside employment is material are advised to report the change.

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### **1026.6 OUTSIDE EMPLOYMENT WHILE ON DISABILITY**

Department members engaged in outside employment who are placed on disability leave or modified/light-duty shall inform their immediate supervisor in writing within five days whether or not they intend to continue to engage in such outside employment while on such leave or light-duty status. The immediate supervisor shall review the duties of the outside employment along with any related doctor's orders, and make a recommendation to the Chief of Police whether such outside employment should continue.

In the event the Chief of Police determines that the outside employment should be discontinued or if the employee fails to promptly notify his/her supervisor of his/her intentions regarding their work permit, a notice of revocation of the member's permit will be forwarded to the involved employee, and a copy attached to the original work permit.

Criteria for revoking the outside employment permit include, but are not limited to, the following:

- (a) The outside employment is medically detrimental to the total recovery of the disabled member, as indicated by the City's professional medical advisors.
- (b) The outside employment performed requires the same or similar physical ability, as would be required of an on-duty member.
- (c) The employee's failure to make timely notice of their intentions to their supervisor.

When the disabled member returns to full duty with the Walnut Creek Police Department, a request (in writing) may be made to the Chief of Police to restore the permit.

# Occupational Disease and Work-Related Injury Reporting

## 1027.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance regarding the timely reporting of occupational diseases, mental health issues, and work-related injuries.

## 1027.2 POLICY

The Walnut Creek Police Department will address occupational diseases and work-related injuries appropriately, and will comply with applicable state workers' compensation requirements (Labor Code § 3200 et seq.).

## 1027.3 EMPLOYEE'S RESPONSIBILITY

- (a) Inform your supervisor of the injury or illness as soon as possible.
- (b) Call "**Company Nurse**" at 1-877-247-1453 to report your injury. Company Nurse is available to take calls 24/7 and will gather information about your injury and assist you with accessing appropriate medical treatment.
- (c) If you are not sure whether you should seek medical treatment, you may speak with a Registered Nurse at "Company Nurse" who will listen closely to the nature of your injury and focus on your unique medical needs, then refer you to the most appropriate level of care - whether ER, clinic, or first aid.
- (d) Within one working day of notice of your injury or illness, your supervisor should provide you with the "**Employee's Claim for Workers' Compensation Benefits**" form. Complete items 1-8 of the form and forward via inter-office mail to Human Resources. Be sure to keep a copy for your records. You do not need to complete and return the form until and unless you wish to receive medical treatment.

Any employee observing or learning of a potentially hazardous condition is to promptly report the condition to his/her immediate supervisor.

## 1027.4 SUPERVISOR'S RESPONSIBILITY

- (a) Your employee should inform of the injury or illness as soon as possible.
- (b) Advise the injured employee to call "Company Nurse" at 1-877-247-1453 to report the injury. Company Nurse is available to take calls 24/7 and will gather information about the injury and assist the employee with accessing appropriate medical treatment.
- (c) The employee has the option of speaking with a Registered Nurse at "Company Nurse" if the employee is not sure whether medical treatment is necessary. The nurse will listen closely to the nature of the injury and focus on the employee's unique medical

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needs, then refer the employee to the most appropriate level of care - whether ER, clinic, or first aid.

- (d) Within one working day of notice of the injury or illness, you must provide the injured employee with the **"Employee's Claim for Workers' Compensation Benefits"** form. Advise the employee to complete items 1-8 of the form and forward via inter-office mail to Human Resources. *The employee does not need to complete and return the form until and unless medical treatment is received.*
- (e) Company Nurse will notify Human Resources of the new injury and you will receive a copy of the injury report via email from Human Resources. The email will also include a link to the **"Employee Injury/Incident Report"** which you should complete and return to Human Resources no later than 48 hours of receipt of the email.

### **1027.5 DIVISION CAPTAIN RESPONSIBILITY**

The Division Captain receiving a report of a work-related accident or injury should review the report for accuracy and determine what additional action should be taken. The report shall then be forwarded to the Chief of Police.

### **1027.6 CHIEF OF POLICE RESPONSIBILITY**

The Chief of Police (or his/her designee) shall review and forward copies of the report to the Department of Human Resources. Any copies of the report and any related documents retained by the Department shall be filed in the employee's confidential medical file and not in the employee's personnel file (see Policy Manual § 1026).

### **1027.7 SETTLEMENT OF INJURY CLAIMS**

Occasionally, an employee's work-related injury results from the negligent or wrongful acts of another, for which the employee, the City, and/or other insurers are entitled to recover civilly. To ensure that the City's interests are protected and that the employee has the benefit of the City's experience in these matters, the following procedure is to be followed:

#### **1027.7.1 EMPLOYEE TO REPORT INITIAL CONTACTS**

When an employee sustains work-related injuries caused by another person and is then approached by such person or an agent, insurance company, or attorney and offered a settlement of claims, that employee shall take no action other than to make a written report of this contact to his/her supervisor as soon as possible.

#### **1027.7.2 NO SETTLEMENT WITHOUT PRIOR APPROVAL**

No less than ten (10) days prior to accepting and finalizing the settlement of any third party claim arising out of or related to an on duty injury, the employee shall provide the Chief of Police with written notice of the proposed terms of such settlement. In no case shall the employee accept a settlement without first providing such written notice to the Chief of Police. The purpose of such notice to permit the City to determine whether or not the offered settlement will affect any claim

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## *Occupational Disease and Work-Related Injury Reporting*

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the City may have regarding payment for damage(s) to equipment or reimbursement for wages against the person who caused the accident or injury and to protect the City's right of subrogation, while ensuring that the employee's rights to receive compensation for injuries are not affected.

## Personal Appearance Standards

### 1028.1 PURPOSE AND SCOPE

In order to project uniformity and neutrality toward the public and other members of the department, employees shall maintain their personal hygiene and appearance to project a professional image appropriate for this department and for their assignment.

### 1028.2 GROOMING STANDARDS

Unless otherwise stated and because deviations from these standards could present officer safety issues, the following appearance standards shall apply to all employees, except those whose current assignment would deem them not appropriate, and where the Chief of Police has granted exception.

#### 1028.2.1 HAIR

In order to maintain the public's confidence and respect, head and facial hair of members of the Department will be neat and well groomed. The hair style will not have designs or words cut or shaved into it. Unconventional hair color is prohibited, for sworn employees and Police Services Officers. Professional staff who have no interaction with the public or minimal interaction with the public are allowed to wear color in their hair. Supervisors retain the right to require employees to remove unconventional hair coloring that is not of a tasteful or professional image. In addition, employees may be required to remove unconventional hair color for Department photos (individual or group), at funerals, or when representing the Department at Community events.

For uniformed personnel, hair will not extend beyond the bottom of the uniform shirt collar while in a standing position. Hair longer than the collar will be worn up in a neat fashion and securely fastened. Items used to hold the hair will be of similar color to the individual's hair color and/or duty uniform. Large pins, barrettes or combs shall not be worn.

Persons wearing wigs and/or hairpieces will conform to all the grooming standards set forth in these regulations.

#### 1028.2.2 MUSTACHES

A short and neatly trimmed mustache may be worn. Mustaches shall not extend below the corners of the mouth or beyond the natural hairline of the upper lip. Mustaches shall not interfere with the fit or operation of any tool or equipment issued by the Department. Extreme or exotic mustache styles (ie. handlebar, Fu Manchu, Dali, lampshade, horseshoe, toothbrush, etc.) are prohibited.

#### 1028.2.3 SIDEBURNS

Sideburns shall be trimmed and neat, not extending below the earlobe and shall not exceed 1-1/2 inches in width at the base unless worn with appropriate facial hair.

#### 1028.2.4 FACIAL HAIR/BEARDS

Beards are authorized. They must have a natural color and be neatly trimmed with no exotic patterns or designs. No portion of the beard shall be exceptionally longer than the rest, and beard

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## *Personal Appearance Standards*

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hair length shall not exceed 1/4 inch. The neck must remain clean shaven, and the perimeter lines of the beard shall be neatly trimmed and defined. Clumps of facial hair (ie. anchor patch, Van Dyke, chin puff, Balbo, French Fork, Soul Patches, Mutton Chops, or other patch style facial hair) are not permitted. A modest goatee beard is permissible, provided it is neatly groomed according to specifications outlined in this policy, and contiguous with the mustache so as to not constitute a clump or patch of hair. The wearing of facial hair shall remain the discretion of the Chief of Police.

### **1028.2.5 FINGERNAILS**

Fingernails extending beyond the tip of the finger can pose a safety hazard to officers or others. For this reason, fingernails shall be trimmed so that no point of the nail extends beyond the tip of the finger. Female Officers working in an Administrative function or plain clothes assignment may wear their fingernails at a length no greater than 1/4 inch and which does not constitute a hazard or interfere with equipment.

### **1028.2.6 JEWELRY AND ACCESSORIES**

No jewelry or personal ornaments shall be worn by officers on any part of the uniform or equipment, except those authorized within this manual. Jewelry, if worn around the neck, shall not be visible above the shirt collar.

For uniformed personnel, no necklaces or bracelets shall be visible. There is an exception for medical ID bracelets. A maximum of two rings or bands may be worn on either or both hands. An engagement and wedding ring will be considered one ring. Earrings are limited to the wearing of post or stud earrings with the decorative face no larger than the earlobe. Only one earring may be worn in each ear. No other visible piercing or jewelry will be permitted for uniformed personnel and employees who have public contact.

There shall be no odors coming from a person, either natural or added, that affects the work environment to the extent that it interferes with the duties of any employee or person.

The use of facial makeup shall be conservative and consistent with the professional image of the Walnut Creek Police Department.

### **1028.3 TATTOOS**

While on-duty or representing the Department in any official capacity, every reasonable effort should be made to conceal tattoos or other body art. For uniformed personnel, no tattoos shall be visible while on duty. A long sleeve rash guard/compression shirt matching the uniform color (LAPD Blue or Black Utility) may be worn to conceal tattoos and must cover both arms. Officers appearing in Criminal Court shall wear a long sleeve uniform shirt to conceal exposed tattoos. For non-uniformed personnel working in assignments where there is no face-to-face public interaction, tattoos that are not offensive are permissible. At no time while on-duty or representing the Department in any official capacity, shall an offensive tattoo or body art be visible. Examples of offensive tattoos would include, but not be limited to, those which depict racial, sexual, discriminatory, gang related, or obscene language.

All visible tattoos are subject to review by the Chief of Police who has final approval authority.

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## *Personal Appearance Standards*

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### **1028.4 BODY PIERCING OR ALTERATION**

Body piercing or alteration to any area of the body visible in any authorized uniform or attire that is a deviation from normal anatomical features and which is not medically required is prohibited. Such body alteration includes, but is not limited to:

- (a) Tongue splitting or piercing.
- (b) The complete or transdermal implantation of any material other than hair replacement.
- (c) Abnormal shaping of the ears, eyes, nose or teeth.
- (d) Branding or scarification.

### **1028.5 GENERAL**

At no time will it be permissible to display any inappropriate symbol, tattoo, item of jewelry or piercing that is demeaning, derogatory or reflects on the Department in an unprofessional manner.

The Chief of Police may exempt Department members from these regulations when appropriate.

### **1028.6 EXEMPTIONS**

Members who seek cultural (e.g., culturally protected hairstyles) or other exemptions to this policy that are protected by law should generally be accommodated (Government Code § 12926). A member with an exemption may be ineligible for an assignment if the individual accommodation presents a security or safety risk. The Chief of Police should be advised any time a request for such an accommodation is denied or when a member with a cultural or other exemption is denied an assignment based on a safety or security risk.



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## Uniform Regulations

### 1029.1 PURPOSE AND SCOPE

The uniform policy of the Walnut Creek Police Department is established to ensure that uniformed officers will be readily identifiable to the public through the proper use and wearing of department uniforms. Employees should also refer to the following associated policies:

Department Owned and Personal Property

Body Armor

Personal Appearance Standards

The Uniform and Equipment Specifications manual is maintained and periodically updated by the Chief of Police or his/her designee. That manual should be consulted regarding authorized equipment and uniform specifications.

The Walnut Creek Police Department will provide uniforms for all employees required to wear them in the manner, quantity and frequency agreed upon in the respective employee group's collective bargaining agreement.

### 1029.2 WEARING AND CONDITION OF UNIFORM AND EQUIPMENT

Police employees wear the uniform to be identified as the law enforcement authority in society. The uniform also serves an equally important purpose to identify the wearer as a source of assistance in an emergency, crisis or other time of need.

- (a) Uniform and equipment shall be maintained in a serviceable condition and shall be ready at all times for immediate use. Uniforms shall be neat, clean, and appear professionally pressed.
- (b) All peace officers of this department shall possess and maintain at all times, a serviceable uniform and the necessary equipment to perform uniformed field duty.
- (c) Personnel shall wear only the uniform specified for their rank and assignment.
- (d) The uniform is to be worn in compliance with the specifications set forth in the department's uniform specifications that are maintained separately from this policy.
- (e) All supervisors will perform periodic inspections of their personnel to ensure conformance to these regulations.
- (f) Civilian attire shall not be worn in combination with any distinguishable part of the uniform.
- (g) Uniforms are only to be worn while on duty, while in transit to or from work, for court, or at other official department functions or events.
- (h) If the uniform is worn while in transit, an outer garment shall be worn over the uniform shirt so as not to bring attention to the employee while he/she is off-duty.

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## *Uniform Regulations*

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- (i) Employees are not to purchase or drink alcoholic beverages while wearing any part of the department uniform, including the uniform pants.
- (j) Mirrored sunglasses will not be worn with any Department uniform.
- (k) Visible jewelry, other than those items listed below, shall not be worn with the uniform unless specifically authorized by the Chief of Police or the authorized designee.
  - 1. Wrist watch
  - 2. Wedding ring(s), class ring, or other ring of tasteful design. A maximum of one ring/set may be worn on each hand
  - 3. Medical alert bracelet

### **1029.4 INSIGNIA AND PATCHES**

- (a) Shoulder Patches - The authorized shoulder patch supplied by the Department shall be machine stitched to the sleeves of all uniform shirts and jackets, three-quarters of an inch below the shoulder seam of the shirt and be bisected by the crease in the sleeve.
- (b) Service stripes, stars, etc. - Service stripes and other indicators for length of service may be worn on long sleeved shirts and jackets. They are to be machine stitched onto the uniform. The bottom of the service stripe shall be sewn the width of one and one-half inches above the cuff seam with the rear of the service stripes sewn on the dress of the sleeve. The stripes are to be worn on the left sleeve only.
- (c) The regulation nameplate, or an authorized sewn on cloth nameplate, shall be worn at all times while in uniform. The nameplate shall display the employee's first and last name. If an employee's first and last names are too long to fit on the nameplate, then the initial of the first name will accompany the last name. If the employee desires other than the legal first name, the employee must receive approval from the Chief of Police. The nameplate shall be worn and placed above the right pocket located in the middle, bisected by the pressed shirt seam, with equal distance from both sides of the nameplate to the outer edge of the pocket.
- (d) When a jacket is worn, the nameplate or an authorized sewn on cloth nameplate shall be affixed to the jacket in the same manner as the uniform.
- (e) Assignment Insignias - Assignment insignias, (SWAT, FTO, etc.) may be worn as designated by the Chief of Police.
- (f) Flag Pin - A flag pin may be worn, centered above the nameplate.
- (g) Badge - The department issued badge, or an authorized sewn on cloth replica, must be worn and visible at all times while in uniform.

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## *Uniform Regulations*

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- (h) Rank Insignia - The designated insignia indicating the employee's rank must be worn at all times while in uniform. The Chief of Police may authorize exceptions.

### **1029.6 POLITICAL ACTIVITIES, ENDORSEMENTS, AND ADVERTISEMENTS**

Unless specifically authorized by the Chief of Police, Walnut Creek Police Department employees may not wear any part of the uniform, be photographed wearing any part of the uniform, utilize a department badge, patch or other official insignia, or cause to be posted, published, or displayed, the image of another employee, or identify himself/herself as an employee of the Walnut Creek Police Department to do any of the following (Government Code §§ 3206 and 3302):

- (a) Endorse, support, oppose, or contradict any political campaign or initiative.
- (b) Endorse, support, oppose, or contradict any social issue, cause, or religion.
- (c) Endorse, support, or oppose, any product, service, company or other commercial entity.
- (d) Appear in any commercial, social, or non-profit publication, or any motion picture, film, video, public broadcast, or any website.

### **1029.7 OPTIONAL EQUIPMENT - MAINTENANCE, AND REPLACEMENT**

- (a) Any of the items listed in the Uniform and Equipment Specifications as optional shall be purchased totally at the expense of the employee. No part of the purchase cost shall be offset by the Department for the cost of providing the Department issued item.
- (b) Maintenance of optional items shall be the financial responsibility of the purchasing employee. For example, repairs due to normal wear and tear.
- (c) Replacement of items listed in this order as optional shall be done as follows:
  1. When the item is no longer functional because of normal wear and tear, the employee bears the full cost of replacement.
  2. When the item is no longer functional because of damage in the course of the employee's duties, it shall be replaced following the procedures for the replacement of damaged personal property (see the Department Owned and Personal Property Policy).

### **1029.8 UNAUTHORIZED UNIFORMS, EQUIPMENT AND ACCESSORIES**

Walnut Creek Police Department employees may not wear any uniform item, accessory or attachment unless specifically authorized in the Uniform Regulations Manual or by the Chief of Police or designee.

Walnut Creek Police Department employees may not use or carry any safety item, tool or other piece of equipment unless specifically authorized in the Uniform and Equipment Specifications or by the Chief of Police or designee.

## Police Cadets

### 1030.1 PURPOSE AND SCOPE

Cadets work under direct supervision, perform a variety of routine and progressively more advanced tasks in an apprenticeship program in preparation for a career in law enforcement.

### 1030.2 EDUCATION REQUIREMENTS

A Cadet candidate must:

- (a) Be between the ages of 16 and 22 years old
- (b) Show an ACTIVE interest in law enforcement
- (c) Have a 2.00 grade point average or higher
- (d) Maintain ethical standards of conduct at all times
- (e) Be able to pass an oral interview and background investigation
- (f) Once accepted, Cadets may remain in the program until their 22nd birthday if in good standing

### 1030.3 PROCEDURE

- (a) Participation -
  - Members of the Police Cadet Program are allowed to participate in assigned work projects, group training sessions and visit other law enforcement agencies to acquaint them with policies, procedures and principles of the criminal justice system under the supervision of members of the Walnut Creek Police Department.
- (b) Identification -
  - All members are identified by uniforms that will be worn during official Cadet duties. Cadets will also carry their Police Cadet ID Card while in uniform and display their ID cards while in plain clothes within the department.

### 1030.4 GUIDELINES

- (a) A Cadet will complete the Cadet Roster Sign-In Log (Watch Commander's Office) and the Monthly Time Record Sheet (Cadet file) anytime he/she is at the Police Department.
- (b) The Cadet will advise the Watch Commander and/or Cadet Advisor of the purpose of his/her presence while at the PD (i.e. ride-a-long, project, etc.).
- (c) All ride-alongs must be approved by the Watch Commander.

# Walnut Creek Police Department

## Walnut Creek PD Policy Manual

### *Police Cadets*

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- (d) All Cadets shall familiarize themselves with the Ride-Along Program Policy.
- (e) A Cadet will not go on a ride-along or participate in a PD event after 2200 hours on any given day (unless an Emergency dictates otherwise and the Watch Commander deems it a necessity).
  - o \*\*\*If an Officer is with a Cadet at MDF, hospital, and/or call and 2200 hours passes, the Officer will transport the Cadet back to the PD as soon as practical.
- (f) No ride-alongs with Reserve Officers without Watch Commander approval.
- (g) No ride-alongs with Officers and/or Reserves who are on Probation without Watch Commander approval.
- (h) All ride-alongs must be pre-arranged either with the Officer and/or the Cadet Advisor at least 24 hours in advance.
- (i) Rank insignia shall not be worn while participating in ride-alongs.
- (j) No wearing of the Cadet Uniform, including hat or jacket, unless it is within the scope of the Cadet's official police duties.
- (k) For Cadets that are eligible to drive - no AR-15's inside vehicle (no exceptions).
- (l) Cadets are not allowed to drive while with an on-duty uniformed patrol Officer during routine patrol other than for a transport.
- (m) A Cadet will only perform a task (i.e. traffic control, decoy vehicle transports, etc.) if he/she has received the appropriate training and if the Watch Commander and/or on-duty supervisor approves the function.
- (n) For handicap placard enforcement, Cadets will only cite and/or deal with an unoccupied vehicle. If the driver and/or occupant(s) arrive on scene, the Cadet will walk away and not issue a citation.
- (o) Cadets under 18 years old are not permitted at MDF's intake facility; or inside WCPD's jail facility when there is an adult prisoner present. Officers are not to take juvenile Cadets to MDF if at all possible. If for some reason, circumstances dictate the Cadet to be with the Officer at MDF, the juvenile Cadet will remain inside the patrol vehicle (doors locked) at MDF's sally port.
- (p) Cadets are not allowed to run with an Officer(s) during a foot pursuit and will remain inside the patrol vehicle unless exigent circumstances dictate otherwise (i.e. vehicle fire, shooting at patrol vehicle).
- (q) Cadets are not allowed to be in vehicle pursuits (refer ride-along policy).
- (r) Cadets are not allowed to act as Cover Officers with suspects.
- (s) Cadets are not allowed to walk downtown during bar nights (Thursday, Friday and Saturday's).

# Walnut Creek Police Department

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## *Police Cadets*

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### **1030.5 CONCLUSION**

This program can be a worthwhile endeavor if all officers assist in providing training in police operations to the Cadets and help them understand the functions of the Police Department.

# Nepotism and Conflicting Relationships

## 1031.1 PURPOSE AND SCOPE

The purpose of this policy is to ensure equal opportunity and effective employment practices by avoiding actual or perceived favoritism, discrimination or actual or potential conflicts of interest by or between members of this department. These employment practices include: recruiting, testing, hiring, compensation, assignment, use of facilities, access to training opportunities, supervision, performance appraisal, discipline and workplace safety and security.

### 1031.1.1 DEFINITIONS

**Business relationship** - Serving as an employee, independent contractor, compensated consultant, owner, board member, shareholder, or investor in an outside business, company, partnership, corporation, venture or other transaction, where the Department employee's annual interest, compensation, investment or obligation is greater than \$250.

**Conflict of interest** - Any actual, perceived or potential conflict of interest in which it reasonably appears that a department employee's action, inaction or decisions are or may be influenced by the employee's personal or business relationship.

**Nepotism** - The practice of showing favoritism to relatives over others in appointment, employment, promotion or advancement by any public official in a position to influence these personnel decisions.

**Personal relationship** - Includes marriage, cohabitation, dating or any other intimate relationship beyond mere friendship.

**Public official** - A supervisor, officer or employee vested with authority by law, rule or regulation or to whom authority has been delegated.

**Relative** - An employee's parent, stepparent, spouse, domestic partner, significant other, child (natural, adopted or step), sibling or grandparent.

**Subordinate** - An employee who is subject to the temporary or ongoing direct or indirect authority of a supervisor.

**Supervisor** - An employee who has temporary or ongoing direct or indirect authority over the actions, decisions, evaluation and/or performance of a subordinate employee.

## 1031.2 RESTRICTED DUTIES AND ASSIGNMENTS

The Department will not prohibit all personal or business relationships between employees. However, in order to avoid nepotism or other inappropriate conflicts, the following reasonable restrictions shall apply (Government Code § 12940(a)):

- (a) Employees are prohibited from directly supervising, occupying a position in the line of supervision or being directly supervised by any other employee who is a relative or with whom they are involved in a personal or business relationship.

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## *Nepotism and Conflicting Relationships*

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1. If circumstances require that such a supervisor/subordinate relationship exist temporarily, the supervisor shall make every reasonable effort to defer matters pertaining to the involved employee to an uninvolved supervisor.
  2. When personnel and circumstances permit, the Department will attempt to make every reasonable effort to avoid placing employees in such supervisor/subordinate situations. The Department, however, reserves the right to transfer or reassign any employee to another position within the same classification in order to avoid conflicts with any provision of this policy.
- (b) Employees are prohibited from participating in, contributing to or recommending promotions, assignments, performance evaluations, transfers or other personnel decisions affecting an employee who is a relative or with whom they are involved in a personal or business relationship.
  - (c) Whenever possible, FTOs and other trainers will not be assigned to train relatives. FTOs and other trainers are prohibited from entering into or maintaining personal or business relationships with any employee they are assigned to train until such time as the training has been successfully completed and the employee is off probation.
  - (d) To avoid actual or perceived conflicts of interest, members of this department shall refrain from developing or maintaining personal or financial relationships with victims, witnesses, businesses or other individuals during the course of or as a direct result of any official contact.
  - (e) Except as required in the performance of official duties or, in the case of immediate relatives, employees shall not develop or maintain personal or financial relationships with any individual they know or reasonably should know is under criminal investigation, is a convicted felon, parolee, fugitive or registered sex offender or who engages in serious violations of state or federal laws.

### 1031.2.1 EMPLOYEE RESPONSIBILITY

Prior to entering into any personal or business relationship or other circumstance which the employee knows or reasonably should know could create a conflict of interest or other violation of this policy, the employee shall promptly notify his/her uninvolved, next highest level of supervisor.

Whenever any employee is placed in circumstances that would require the employee to take enforcement action or provide official information or services to any relative or individual with whom the employee is involved in a personal or business relationship, the employee shall promptly notify his/her uninvolved, immediate supervisor. In the event that no uninvolved supervisor is immediately available, the employee shall promptly notify dispatch to have another uninvolved employee either relieve the involved employee or minimally remain present to witness the action.



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## *Nepotism and Conflicting Relationships*

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### 1031.2.2 SUPERVISOR'S RESPONSIBILITY

Upon being notified of, or otherwise becoming aware of any circumstance that could result in or constitute an actual or potential violation of this policy, a supervisor shall take all reasonable steps to promptly mitigate or avoid such violations whenever possible. Supervisors shall also promptly notify the Chief of Police of such actual or potential violations through the chain of command.

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## Department Badges

### 1032.1 PURPOSE AND SCOPE

The Walnut Creek Police Department badge and uniform patch as well as the likeness of these items and the name of the Walnut Creek Police Department are property of the Department and their use shall be restricted as set forth in this policy.

### 1032.2 POLICY

The uniform badge shall be issued to department members as a symbol of authority and the use and display of departmental badges shall be in strict compliance with this policy. Only authorized badges issued by this department shall be displayed, carried or worn by members while on duty or otherwise acting in an official or authorized capacity. Employees in uniform shall identify themselves by displaying their badge and name plate/tag at all times. Employees in uniform shall identify themselves by giving their names and badge number upon request except in exigent circumstances or if an exception has been specifically authorized by a supervisor.

While on duty, employees in plainclothes shall identify themselves by giving their names and/or displaying their badge and official credential unless such action is likely to jeopardize the successful completion of a police assignment or if an exception has been specifically authorized by a supervisor.

#### 1032.2.1 FLAT BADGE

Sworn officers, with the written approval of the Chief of Police may purchase, at his/her own expense, a flat badge capable of being carried in a wallet. The use of the flat badge is subject to all the same provisions of departmental policy as the uniform badge.

- (a) An officer may sell, exchange, or transfer the flat badge he/she purchased to another officer within the Walnut Creek Police Department with the written approval of the Chief of Police.
- (b) Should the flat badge become lost, damaged, or otherwise removed from the officer's control, he/she shall make the proper notifications as outlined in the Policy Manual 700.
- (c) An honorably retired officer may keep his/her flat badge upon retirement.
- (d) The purchase, carrying or display of a flat badge is not authorized for civilian personnel.

#### 1032.2.2 CIVILIAN PERSONNEL

Badges and departmental identification cards issued to civilian personnel shall be clearly marked to reflect the position of the assigned employee (e.g. Police Services Officer, Chaplain, Dispatcher).

- (a) Civilian personnel shall not display any department badge except as a part of his/her uniform and while on duty, or otherwise acting in an official and authorized capacity.

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## *Department Badges*

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- (b) Civilian personnel shall not display any department badge or represent him/herself, on or off duty, in such a manner which would cause a reasonable person to believe that he/she is a sworn peace officer.

### **1032.2.3 RETIREE UNIFORM BADGE**

Upon honorable retirement employees may purchase his/her assigned duty badge for display purposes. It is intended that the duty badge be used only as private memorabilia as other uses of the badge may be unlawful or in violation of this policy.

### **1032.3 UNAUTHORIZED USE**

Except as required for on-duty use by current employees, no badge designed for carry or display in a wallet, badge case or similar holder shall be issued to anyone other than a current or honorably retired peace officer.

Department badges are issued to all sworn employees and civilian uniformed employees for official use only. The department badge, shoulder patch or the likeness thereof, or the department name shall not be used for personal or private reasons including, but not limited to, letters, memoranda, and electronic communications such as electronic mail or web sites and web pages.

The use of the badge, uniform patch and department name for all material (printed matter, products or other items) developed for department use shall be subject to approval by the Chief of Police.

Employees shall not loan his/her department badge or identification card to others and shall not permit the badge or identification card to be reproduced or duplicated.

### **1032.4 PERMITTED USE BY EMPLOYEE GROUPS**

The likeness of the department badge shall not be used without the expressed authorization of the Chief of Police and shall be subject to the following:

- (a) The employee associations may use the likeness of the department badge for merchandise and official association business provided they are used in a clear representation of the association and not the Walnut Creek Police Department. The following modifications shall be included:
  1. The text on the upper and lower ribbons is replaced with the name of the employee association.
  2. The badge number portion displays the acronym of the employee association.
- (b) The likeness of the department badge for endorsement of political candidates shall not be used without the expressed approval of the Chief of Police.

### **1032.5 BADGE**

#### **1032.5.1 DESCRIPTION**

Shall be a seven point silver metal star with blue trim and the seal of the State of California in the center (Ed Jones and Co. #712 or equal) for police officers. Shall be a gold colored, seven

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## *Department Badges*

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point star for supervisors, police officers, master/ senior officers, reserve supervisors and reserve officers with nine or more years of service.

### 1032.5.2 POLICE OFFICER

Shall have the wording "Police Officer, Walnut Creek." The badge shall have the officer's I.D. number in blue block numbers. Officers assigned to the temporary position of Detective, may purchase at their own expense a "flat" badge, which shall have the wording, "Walnut Creek Police" on the lower portion and on the upper portion the word "Detective." The badge shall have the officer's I.D. number in blue block numbers. Detective badges may be ordered with a special banner across the top containing the officer's name if he/she desires.

### 1032.5.3 OTHER RANKS

All other badges shall have the wording "Walnut Creek Police" on the lower portion and on the upper portion the words "Sergeant," "Lieutenant," "Captain," or "Chief." The badge shall have the officer's I.D. number in blue block numbers.

### 1032.5.4 RESERVE OFFICER

Shall have the wording "Police Reserve, Walnut Creek Police." Reserve staff shall have a similar badge with a banner across the top with the wording "Sergeant, "Lieutenant" or "Captain".

### 1032.5.5 MASTER OFFICER

Master officers badges may be issued with a special banner across the top containing the officer's name.

### 1032.5.6 CLOTH BADGE

- **Description:** Shall be a seven point 100% embroidered star with the seal of the State of California in the center. The dimensions shall be 85mm wide and 85mm tall. The Seal of the State of California is embroidered in six colors utilizing a Black, Tan PMS 468, White Gold PMS 143, Royal PMS 072 and Brown PMS 483. All badges are to be sealed with a poly vinyl hot press backing to retain their shape and integrity.
- For officers with less than 9 years of service, the Star and circle detailing shall be Silver Grey PMS 428 with text, the star is to be in Royal PMS 072.
- For officer with 9 or more years of service and all supervisors the Star and circle shall be Gold PMS 143 with highlights and border to be in Deep Yellow PMS 1225, with text, the star is to be in Royal PMS 072.
- **Reserve Officer:** Silver color for reserve officers with less than 9 years of service, and gold color for reserve officers with 9 or more years of service and supervisors. The words "reserve officer" shall be in block letters above the Seal, and the words "Walnut Creek Police" and the reserve officer "R" number below the seal.

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## *Department Badges*

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- **Wearing:** The cloth badge must be worn on the utility uniform (patrol or traffic), the shorts and the bicycle uniform. If the cloth badge is worn on any garment, then a cloth nametag as described in 100.38(10.a) must be worn.

### 1032.5.7 POLICE SERVICES OFFICERS

- **Description:** Shall be a seven point silver metal star with blue trim and the seal of the State of California in the center (Ed Jones and Co. #712 or equal) The wording on the badge shall say "Police Services" on the top and "Walnut Creek Calif" on the bottom. After nine years of service the badge color will be changed to gold.

### 1032.5.8 CHAPLAINS

A seven point silver metal star with blue trim and the seal of the State of California in the center. The wording of the badge shall say "Police Services" on the top and "Walnut Creek, Calif" on the bottom. Across the top shall be a banner with the word "Chaplain". After 9 years of service the badge shall be changed to gold. The badge will remain the property of Walnut Creek PD.

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## Modified Duty Assignments

### 1033.1 PURPOSE AND SCOPE

The purpose of this policy is to establish procedures for assigning employees to modified duty. Temporary modified duty assignments may be available to employees who have incurred an injury or illness and, due to work restrictions or limitations, are unable to perform their regularly assigned duties. Work-related *and* non-work related injuries or illnesses will be considered for eligibility in accordance with this policy. Eligibility for modified duty assignment is subject to the approval of the Chief of Police or his/her designee.

The Department endeavors to return injured workers to their usual and customary job assignments as soon as possible. The modified duty assignments are intended to provide employees with the ability to continue working within the limits of their restrictions on a *temporary* basis in an effort to encourage recovery by providing an opportunity for a gradual transition to regular job responsibilities following an injury or illness. The Department will ask employees to perform only those job functions that the treating physician has agreed can be safely performed during the recovery process.

The Department will engage in a good faith interactive process to consider reasonable accommodation for any employee with a temporary or permanent disability.

### 1033.2 DEFINITION

Modified Duty – A temporary, limited-term assignment not requiring performance of the full scope of duties associated with the regular job classification. Modified duty may also be referred to as light duty.

### 1033.3 LIMITATIONS

Modified duty assignments are made at the discretion of the Department and are not an employee right. Modified duty assignments shall be subject to continuous re-assessment depending on the needs of the Department, the progress of the employee's recovery, and the employee's ability to perform the requirements of the modified duty assignment.

Duty assignments are generally available for ninety (90) days, after which time they will be reassessed to determine if the employee's recovery is progressing (generally indicated by a progressive reduction in work restrictions as indicated by the treating physician). If the employee's condition is improving, modified duty assignments may be extended and reassessed after each 90 day period, but in no case shall a modified duty assignment exceed one (1) year. Any request for modified duty beyond the ninety day period must include specific information from the treating physician outline the recovery timeline, as well as the reason for the request for extended modified duty. Any requests for extended modified duty will be left to the discretion of the Chief of Police and will be based on a thorough review of information provided by the treating physician and the business needs of the Department. If at any time during and leading up to the 90 day reassessment point it is determined that the employee's recovery hasn't progressed within the preceding 90 day

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### *Modified Duty Assignments*

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period, the modified duty assignment may be terminated so that the employee can be off work for a period to allow for rest and recovery.

#### **1033.4 PROCEDURE**

Employees must provide the Department with a note from their treating physician following each medical appointment. The note should describe any work restrictions/limitations and expected duration of the restrictions/limitations. The Department will then determine if an appropriate modified duty assignment is available.

##### **1033.4.1 MODIFIED DUTY SCHEDULES**

Employees working modified duty assignments will generally be assigned a work a schedule of Monday through Friday, 8 a.m. to 5 p.m. with a one hour unpaid lunch break. Exceptions to this schedule may be considered and will be approved solely at the discretion of the Department

##### **1033.4.2 MODIFIED DUTY CLOTHING ATTIRE**

Business Casual shall be the standard for employees assigned to modified duty. Business Casual shall consist of dress pants, khakis, or BDU style pants; a button up dress shirt, blouse, or a polo shirt tucked in; and dress or uniform shoes. Jeans, tennis shoes, and t-shirts are prohibited. Any deviation from this dress standard shall be approved by a supervisor.

##### **1033.4.3 ACCOUNTABILITY**

- (a) Employees on modified duty are responsible for coordinating required medical appointments in advance with their supervisor to appropriately account for any duty time used to attend said appointments. Medical appointments for treatment of injuries or illnesses that are not work related shall be arranged during off-duty time or otherwise charge to the employee's general leave (or other appropriate leave bank). Employees are responsible for adhering to the work restrictions noted by their treating physician.  
Employees are required to report to their immediate supervisor any circumstance which would cause them to work outside of the restrictions. Any deviation from these restrictions will cause the employee's modified duty status to be revoked.
- (b) Employees shall promptly submit a doctor's note from their treating physician after each initial or follow-up appointment, and should immediately notify their supervisor of any change in work restrictions as determined by the treating physician. Employees assigned to modified duty shall provide medical status reports to their supervisor no less than once every 30 days while on modified duty.
- (c) Supervisors shall keep the Division Captain apprised of the employee's status. Any extensions of modified duty beyond 90 days must be approved by the Chief of Police.
- (d) When it is determined that an employee on modified duty will return to regular duty, supervisor shall notify the Division Captain. All training and certification necessary for return to full duty shall be reviewed and updated as necessary.
- (e) Employees assigned to modified duty shall adhere to the dress standards listed in the Walnut Creek Police Grooming Policy and the Walnut Creek Police Uniform Regulations section 100.37.

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## *Modified Duty Assignments*

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### 1033.4.4 MEDICAL EXAMINATIONS

The Department reserves the right to require, prior to returning to full duty status, a fitness for duty examination pertaining to the employee's physical ability to perform the job. Such examinations shall be at the expense of the Department.

Prior to returning to full duty status, employees shall be required to provide a note from their treating physician indicating that they are medically cleared to perform the full scope of duties of their usual and customary positions without restrictions.



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## Military Leave Procedure

### 1034.1 PURPOSE

This training bulletin defines specific terms and describes the process and procedures to correctly complete a request for Military Leave. This bulletin follows State law as it pertains to military leave.

### 1034.2 BACKGROUND

In order to show support for employees who serve in a military reserve capacity, laws were passed to compensate employees in the form of paid leave while serving in an active duty status. The City of Walnut Creek and the Walnut Creek Police Department support employees who serve our country as members of a Reserve Military Unit or the National Guard. The following policy outlines the process to receive compensation for this special leave.

### 1034.3 DEFINITIONS

**Orders:** A written document authorized by the Commanding Officer of an U.S. Military Reserve Unit or National Guard ordering an employee to military duty.

**Active Duty:** Term used by the military to describe a specific type of military duty. Common abbreviations that appear on orders signifying Active Duty are: (AD)- Active Duty, (ADSW)- Active Duty Special Work, (SAD)- State Active Duty, (TAD)- Temporary Active Duty.

**Military Leave:** Full-time employees who have been employed by the City for a minimum of one year, and who serve in Military Reserve or National Guard are entitled to 173.33 hours of leave per fiscal year (July 1st- June 30th) to compensate employees ordered to "Active Duty." The one-year employment requirement is waived for employees who serve in the National Guard.

No more than the pay for 173.33 hours shall be allowed for any one fiscal year.

### 1034.4 APPROPRIATE FORMS

**Military Leave Request Form:** A form that is kept in the Records Bureau and Chief's Office. It is an 8 ½ X 11 sheet of paper entitled "City of Walnut Creek Leave Request."

**Outside Employment Authorization Form:** Per City Policy employees must seek authorization to be involved in outside employment every year. This form will be distributed to all persons who engage in employment in addition to City employment. This form is kept in the Records Bureau and can also be found on the City Wide Web Page under "Forms." Every year, during the first week of June, the Chief's Secretary will distribute an outside employment authorization form to all employees engaged in outside employment. There is a certification box on the form where employees in the Military Reserve or National Guard will indicate that they are active members in the Reserve Corps or National Guard. These forms will be returned to the Chief's Secretary when complete.

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## *Military Leave Procedure*

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### **1034.5 INCOME REPLACEMENT BENEFIT FOR ACTIVE MILITARY LEAVE**

The City Council has authorized through December 11, 2005, income replacement between City salary and military pay for those full-time employees ordered to active military duty. The City Council also authorized a continuation of medical, dental, and if applicable, vision coverage benefits for full-time employees ordered to active military duty. The Supplemental Benefits Program is described in The City's Administrative Policy No. 02 - 2.

### **1034.6 MILITARY LEAVE PROCEDURE**

#### **1034.6.1 TRAINING OR NON-ACTIVE DUTY REPORTING**

Employees who are required to report for military duty during their regularly scheduled work day(s) must complete a leave request (WCPD Form 127) and use their accrued general leave or comp time hours. An employee may choose to serve without pay if a division captain has approved the leave. The leave will not be denied for required and ordered duty.

Employees should notify their supervisor as soon as possible, but at a minimum, 10 days prior to the leave to allow the supervisor enough time to facilitate the necessary staffing.

Employees who volunteer for military duty, not supported by orders, must have the leave approved by their supervisor before the time off will be granted. Leave requested for voluntary military duty will be granted if minimum staffing requirements can be met without the use of overtime.

#### **1034.6.2 ORDERED TO ACTIVE DUTY**

Employees who are ordered to "Active Military Duty" during their regularly scheduled work day(s) must follow the procedure listed below in order to be compensated per the City's Military Leave Policy.

- Orders commanding the employee report for "Active Duty" must be presented to the employee's supervisor. The orders must state that the employee is ordered to "Active Duty" and have the start and end date of the assignment. Orders containing multiple assignments will not be accepted. Employees must present orders that reflect only one assignment in order to receive leave hours.
- The employee must complete the City of Walnut Creek Leave Request form (described above) and attach the form to the orders.
- The orders and leave request form should be submitted to the employee's supervisor as soon as possible, but at a minimum, 10 days prior to the leave.

The employee's supervisor will review the orders and leave request to ensure that it meets the guidelines set forth in this policy. The approved leave request should be forwarded to the timekeeper. The supervisor should also forward a copy of the leave request to the Court Calendar Clerk, and the Division Captain.

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## *Military Leave Procedure*

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If an employee uses all 173.33 hours of military leave the employee will be required to use general leave or comp time in order to be compensated for the additional leave taken. The employee may choose to serve without pay if a division captain has approved the leave.

If an employee is ordered to be on long-term active duty, they should refer to the City's Administrative Policy No. 02 - 2 for information about the supplemental benefits program.

### **1034.7 TIMEKEEPER RESPONSIBILITIES**

The Timekeeper will forward a copy of the employee's orders and the Military Leave Request to the Division Captain for a final review and approval. After the Captain's approval of military leave for active military duty, the timekeeper will code the employee's time card with code 33. This code number will automatically add the hours taken to the employee's Military Leave Balance on the employee's time sheet. No more than the pay for 173.33 hours shall be allowed for any one military leave of absence or during any one fiscal year. If the employee submitting the Military Leave Request exceeds the allowance for military leave, the Timekeeper shall take the remainder of the hours out of the employee's general leave bank (if the employee wishes to be compensated for those hours). A copy of the orders and leave request will be forwarded to Human Resources.

On or before June 15th of each year, the Chief's Secretary will forward the Outside Employment forms submitted by those employees certifying that they are still in the Military Reserve or National Guard to the timekeeper who will then know which full-time employees are allowed to take military leave for that fiscal year.

An employee may, with the Division Captain's approval, be allowed to take unpaid leave if the employee requesting leave for ordered or required military duty has insufficient hours to cover the leave.

When employees submit leave requests for military duty outside of orders for "Active Duty," the timekeeper will use the appropriate code consistent with the leave requested, i.e., comp-time, administrative or general leave. These types of leave requests will be documented on the usual leave request form (WCPD Form 127).

### **1034.8 MILITARY LEAVE AND COURT CLERK NOTIFICATION**

Employees, who are ordered to military duty on their regular day(s) off, must complete a leave request, mark it "Court Calendar Only" and forward it to their supervisor. The Supervisor will review the request to ensure that the request is appropriate and forward the notice to the Subpoena Clerk. The Subpoena Clerk will follow the established protocol used to notify the court.

# Employee Speech, Expression and Social Networking

## 1035.1 PURPOSE AND SCOPE

This policy is intended to address issues associated with employee use of social networking sites and to provide guidelines for the regulation and balancing of employee speech and expression with the needs of the Department.

Nothing in this policy is intended to prohibit or infringe upon any communication, speech or expression that is protected or privileged under law. This includes speech and expression protected under state or federal constitutions as well as labor or other applicable laws. For example, this policy does not limit an employee from speaking as a private citizen, including acting as an authorized member of a recognized bargaining unit or officer associations, about matters of public concern, such as misconduct or corruption.

Employees are encouraged to consult with their supervisor regarding any questions arising from the application or potential application of this policy.

### 1035.1.1 APPLICABILITY

This policy applies to all forms of communication including but not limited to film, video, print media, public or private speech, use of all internet services, including the World Wide Web, e-mail, file transfer, remote computer access, news services, social networking, social media, instant messaging, blogs, forums, video, and other file-sharing sites.

## 1035.2 POLICY

Public employees occupy a trusted position in the community, and thus, their statements have the potential to contravene the policies and performance of this department. Due to the nature of the work and influence associated with the law enforcement profession, it is necessary that employees of this department be subject to certain reasonable limitations on their speech and expression. To achieve its mission and efficiently provide service to the public, the Walnut Creek Police Department will carefully balance the individual employee's rights against the Department's needs and interests when exercising a reasonable degree of control over its employees' speech and expression.

## 1035.3 SAFETY

Employees should consider carefully the implications of their speech or any other form of expression when using the internet. Speech and expression that may negatively affect the safety of the Walnut Creek Police Department employees, such as posting personal information in a public forum, can result in compromising an employee's home address or family ties. Employees should therefore not disseminate or post any information on any forum or medium that could reasonably be anticipated to compromise the safety of any employee, an employee's family, or

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## *Employee Speech, Expression and Social Networking*

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associates. Examples of the type of information that could reasonably be expected to compromise safety include:

- Disclosing a photograph and name or address of an officer who is working undercover.
- Disclosing the address of a fellow officer.
- Otherwise disclosing where another officer can be located off-duty.

### **1035.4 PROHIBITED SPEECH, EXPRESSION AND CONDUCT**

To meet the department's safety, performance and public-trust needs, the following are prohibited unless the speech is otherwise protected (for example, an employee speaking as a private citizen, including acting as an authorized member of a recognized bargaining unit or officer associations, on a matter of public concern):

- (a) Speech or expression made pursuant to an official duty that tends to compromise or damage the mission, function, reputation or professionalism of the Walnut Creek Police Department or its employees.
- (b) Speech or expression that, while not made pursuant to an official duty, is significantly linked to, or related to, the Walnut Creek Police Department and tends to compromise or damage the mission, function, reputation or professionalism of the Walnut Creek Police Department or its employees. Examples may include:
  1. Statements that indicate disregard for the law or the state or U.S. Constitution.
  2. Expression that demonstrates support for criminal activity.
  3. Participating in sexually explicit photographs or videos for compensation or distribution.
- (c) Speech or expression that could reasonably be foreseen as having a negative impact on the credibility of the employee as a witness. For example, posting statements or expressions to a website that glorify or endorse dishonesty, unlawful discrimination or illegal behavior.
- (d) Speech or expression of any form that could reasonably be foreseen as having a negative impact on the safety of the employees of the Department. For example, a statement on a blog that provides specific details as to how and when prisoner transportations are made could reasonably be foreseen as potentially jeopardizing employees by informing criminals of details that could facilitate an escape or attempted escape.
- (e) Speech or expression that is contrary to the canons of the Law Enforcement Code of Ethics as adopted by the Walnut Creek Police Department.
- (f) Use or disclosure, through whatever means, of any information, photograph, video or other recording obtained or accessible as a result of employment with the Department

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for financial or personal gain, or any disclosure of such materials without the express authorization of the Chief of Police or the authorized designee.

- (g) Posting, transmitting or disseminating any photographs, video or audio recordings, likenesses or images of department logos, emblems, uniforms, badges, patches, marked vehicles, equipment or other material that specifically identifies the Walnut Creek Police Department on any personal or social networking or other website or web page, without the express authorization of the Chief of Police.
- (h) Accessing websites for non-authorized purposes, or use of any personal communication device, game device or media device, whether personally or department-owned, for personal purposes while on-duty, except in the following circumstances:
  1. When brief personal communication may be warranted by the circumstances (e.g., inform family of extended hours).
  2. During authorized breaks such usage should be limited as much as practicable to areas out of sight and sound of the public and shall not be disruptive to the work environment.

Employees must take reasonable and prompt action to remove any content, including content posted by others, that is in violation of this policy from any web page or website maintained by the employee (e.g., social or personal website).

### 1035.4.1 UNAUTHORIZED ENDORSEMENTS AND ADVERTISEMENTS

While employees are not restricted from engaging in the following activities as private citizens or as authorized members of a recognized bargaining unit or officer associations, employees may not represent the Walnut Creek Police Department or identify themselves in any way that could be reasonably perceived as representing the Walnut Creek Police Department in order to do any of the following, unless specifically authorized by the Chief of Police (Government Code § 3206; Government Code § 3302):

- (a) Endorse, support, oppose or contradict any political campaign or initiative.
- (b) Endorse, support, oppose or contradict any social issue, cause or religion.
- (c) Endorse, support or oppose any product, service, company or other commercial entity.
- (d) Appear in any commercial, social or nonprofit publication or any motion picture, film, video, public broadcast or on any website.

Additionally, when it can reasonably be construed that an employee, acting in his/her individual capacity or through an outside group or organization (e.g., bargaining group or officer associations), is affiliated with this department, the employee shall give a specific disclaiming statement that any such speech or expression is not representative of the Walnut Creek Police Department.

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Employees retain their right to vote as they choose, to support candidates of their choice and to express their opinions as private citizens, including as authorized members of a recognized bargaining unit or officer associations, on political subjects and candidates at all times while off-duty.

However, employees may not use their official authority or influence to interfere with or affect the result of an election or a nomination for office. Employees are also prohibited from directly or indirectly using their official authority to coerce, command or advise another employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes (5 USC § 1502).

### **1035.5 PRIVACY EXPECTATION**

Employees forfeit any expectation of privacy with regard to e-mails, texts, or anything published or maintained through file-sharing software or any internet site (e.g., Facebook) that is accessed, transmitted, received, or reviewed on any department technology system (see the Information Technology Use Policy for additional guidance).

The Department shall not require an employee to disclose a personal user name or password for accessing personal social media or to open a personal social website; however, the Department may request access when it is reasonably believed to be relevant to the investigation of allegations of work-related misconduct (Labor Code § 980).

### **1035.6 CONSIDERATIONS**

In determining whether to grant authorization of any speech or conduct that is prohibited under this policy, the factors that the Chief of Police or authorized designee should consider include:

- (a) Whether the speech or conduct would negatively affect the efficiency of delivering public services.
- (b) Whether the speech or conduct would be contrary to the good order of the Department or the efficiency or morale of its members.
- (c) Whether the speech or conduct would reflect unfavorably upon the Department.
- (d) Whether the speech or conduct would negatively affect the member's appearance of impartiality in the performance of his/her duties.
- (e) Whether similar speech or conduct has been previously authorized.
- (f) Whether the speech or conduct may be protected and outweighs any interest of the Department.

### **1035.7 TRAINING**

Subject to available resources, the Department should provide training regarding employee speech and the use of social networking to all members of the Department.

## Anti-Retaliation

### 1036.1 PURPOSE AND SCOPE

This policy prohibits retaliation against members who identify workplace issues, such as fraud, waste, abuse of authority, gross mismanagement or any inappropriate conduct or practices, including violations that may pose a threat to the health, safety or well-being of members.

This policy does not prohibit actions taken for nondiscriminatory or non-retaliatory reasons, such as discipline for cause.

These guidelines are intended to supplement and not limit members' access to other applicable remedies. Nothing in this policy shall diminish the rights or remedies of a member pursuant to any applicable federal law, provision of the U.S. Constitution, law, ordinance or memorandum of understanding.

### 1036.2 POLICY

The Walnut Creek Police Department has a zero tolerance for retaliation and is committed to taking reasonable steps to protect from retaliation members who, in good faith, engage in permitted behavior or who report or participate in the reporting or investigation of workplace issues. All complaints of retaliation will be taken seriously and will be promptly and appropriately investigated.

### 1036.3 RETALIATION PROHIBITED

No member may retaliate against any person for engaging in lawful or otherwise permitted behavior; for opposing a practice believed to be unlawful, unethical, discriminatory or retaliatory; for reporting or making a complaint under this policy; or for participating in any investigation related to a complaint under this or any other policy.

Retaliation includes any adverse action or conduct, including but not limited to:

- Refusing to hire or denying a promotion.
- Extending the probationary period.
- Unjustified reassignment of duties or change of work schedule.
- Real or implied threats or other forms of intimidation to dissuade the reporting of wrongdoing or filing of a complaint, or as a consequence of having reported or participated in protected activity.
- Taking unwarranted disciplinary action.
- Spreading rumors about the person filing the complaint or about the alleged wrongdoing.
- Shunning or unreasonably avoiding a person because he/she has engaged in protected activity.



## *Anti-Retaliation*

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### **1036.4 COMPLAINTS OF RETALIATION**

Any member who feels he/she has been retaliated against in violation of this policy should promptly report the matter to any supervisor, command staff member, Chief of Police or the City Personnel Manager.

Members shall act in good faith, not engage in unwarranted reporting of trivial or minor deviations or transgressions, and make reasonable efforts to verify facts before making any complaint in order to avoid baseless allegations. Members shall not report or state an intention to report information or an allegation knowing it to be false, with willful or reckless disregard for the truth or falsity of the information or otherwise act in bad faith.

Investigations are generally more effective when the identity of the reporting member is known, thereby allowing investigators to obtain additional information from the reporting member. However, complaints may be made anonymously. All reasonable efforts shall be made to protect the reporting member's identity. However, confidential information may be disclosed to the extent required by law or to the degree necessary to conduct an adequate investigation and make a determination regarding a complaint. In some situations, the investigative process may not be complete unless the source of the information and a statement by the member is part of the investigative process.

### **1036.5 SUPERVISOR RESPONSIBILITIES**

Supervisors are expected to remain familiar with this policy and ensure that members under their command are aware of its provisions.

The responsibilities of supervisors include, but are not limited to:

- (a) Ensuring complaints of retaliation are investigated as provided in the Personnel Complaints Policy.
- (b) Receiving all complaints in a fair and impartial manner.
- (c) Documenting the complaint and any steps taken to resolve the problem.
- (d) Acknowledging receipt of the complaint, notifying the Chief of Police via the chain of command and explaining to the member how the complaint will be handled.
- (e) Taking appropriate and reasonable steps to mitigate any further violations of this policy.
- (f) Monitoring the work environment to ensure that any member making a complaint is not subjected to further retaliation.
- (g) Periodic follow-up with the complainant to ensure that retaliation is not continuing.
- (h) Not interfering with or denying the right of a member to make any complaint.
- (i) Taking reasonable steps to accommodate requests for assignment or schedule changes made by a member who may be the target of retaliation if it would likely mitigate the potential for further violations of this policy.

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## *Anti-Retaliation*

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### **1036.6 COMMAND STAFF RESPONSIBILITIES**

The Chief of Police should communicate to all supervisors the prohibition against retaliation.

Command staff shall treat all complaints as serious matters and shall ensure that prompt actions take place, including but not limited to:

- (a) Communicating to all members the prohibition against retaliation.
- (b) The timely review of complaint investigations.
- (c) Remediation of any inappropriate conduct or condition and instituting measures to eliminate or minimize the likelihood of recurrence.
- (d) The timely communication of the outcome to the complainant.

### **1036.7 WHISTLE-BLOWING**

California law protects members who (Labor Code § 1102.5; Government Code § 53296 et seq.):

- (a) Report a violation of a state or federal statute or regulation to a government or law enforcement agency, including the member's supervisor or any other member with the authority to investigate the reported violation.
- (b) Provide information or testify before a public body if the member has reasonable cause to believe a violation of law occurred.
- (c) Refuse to participate in an activity that would result in a violation of a state or federal statute or regulation.
- (d) File a complaint with a local agency about gross mismanagement or a significant waste of funds, abuse of authority, or a substantial and specific danger to public health or safety. Members shall exhaust all available administrative remedies prior to filing a formal complaint.
- (e) Are family members of a person who has engaged in any protected acts described above.

Members are encouraged to report any legal violations through the chain of command (Labor Code § 1102.5).

Members who believe they have been the subject of retaliation for engaging in such protected behaviors should promptly report it to a supervisor. Supervisors should refer the complaint to their captain for investigation pursuant to the Personnel Complaints Policy.

#### **1036.7.1 DISPLAY OF WHISTLE-BLOWER LAWS**

The Department shall display a notice to members regarding their rights and responsibilities under the whistle-blower laws, including the whistle-blower hotline maintained by the Office of the Attorney General (Labor Code § 1102.8).

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## *Anti-Retaliation*

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### **1036.8 RECORDS RETENTION AND RELEASE**

The Records Manager shall ensure that documentation of investigations is maintained in accordance with the established records retention schedules.

### **1036.9 TRAINING**

The policy should be reviewed with each new member.

All members should receive periodic refresher training on the requirements of this policy.

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## Line-of-Duty Deaths

### 1037.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance to members of the Walnut Creek Police Department in the event of the death of a member occurring in the line of duty and to direct the Department in providing proper support for the member's survivors.

The Chief of Police may also apply some or all of this policy in situations where members are injured in the line of duty and the injuries are life-threatening.

#### 1037.1.1 DEFINITIONS

Definitions related to this policy include:

**Line-of-duty death** - The death of a sworn member during the course of performing law enforcement-related functions while on- or off-duty, or a civilian member during the course of performing their assigned duties.

**Survivors** - Immediate family members of the deceased member, which can include spouse, children, parents, other next of kin or significant others. The determination of who should be considered a survivor for purposes of this policy should be made on a case-by-case basis given the individual's relationship with the member and whether the individual was previously designated by the deceased member.

### 1037.2 POLICY

It is the policy of the Walnut Creek Police Department to make appropriate notifications and to provide assistance and support to survivors and coworkers of a member who dies in the line of duty.

It is also the policy of this department to respect the requests of the survivors when they conflict with these guidelines, as appropriate.

### 1037.3 INITIAL ACTIONS BY COMMAND STAFF

- (a) Upon learning of a line-of-duty death, the deceased member's supervisor should provide all reasonably available information to the Watch Commander and Dispatch.
  1. Communication of information concerning the member and the incident should be restricted to secure networks to avoid interception by the media or others (see the Press Information Officer section of this policy).
- (b) The Watch Commander should ensure that notifications are made in accordance with the Officer-Involved Shootings and Deaths and Major Incident Notification policies as applicable.
- (c) If the member has been transported to the hospital, the Watch Commander or the designee should respond to the hospital to assume temporary responsibilities as the Hospital Liaison.

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## *Line-of-Duty Deaths*

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- (d) The Chief of Police or the authorized designee should assign members to handle survivor notifications and assign members to the roles of Hospital Liaison (to relieve the temporary Hospital Liaison) and the Department Liaison as soon as practicable (see the Notifying Survivors section and the Department Liaison and Hospital Liaison subsections in this policy).

### **1037.4 NOTIFYING SURVIVORS**

Survivors should be notified as soon as possible in order to avoid the survivors hearing about the incident in other ways.

The Chief of Police or the authorized designee should review the deceased member's emergency contact information and make accommodations to respect the member's wishes and instructions specific to notifying survivors. However, notification should not be excessively delayed because of attempts to assemble a notification team in accordance with the member's wishes.

The Chief of Police, Watch Commander or the authorized designee should select at least two members to conduct notification of survivors, one of which may be the Department Chaplain.

Notifying members should:

- (a) Make notifications in a direct and compassionate manner, communicating as many facts of the incident as possible, including the current location of the member. Information that is not verified should not be provided until an investigation has been completed.
- (b) Determine the method of notifying surviving children by consulting with other survivors and taking into account factors such as the child's age, maturity and current location (e.g., small children at home, children in school).
- (c) Plan for concerns such as known health concerns of survivors or language barriers.
- (d) Offer to transport survivors to the hospital, if appropriate. Survivors should be transported in department vehicles. Notifying members shall inform the Hospital Liaison over a secure network that the survivors are on their way to the hospital and should remain at the hospital while the survivors are present.
- (e) When survivors are not at their residences or known places of employment, actively seek information and follow leads from neighbors, other law enforcement, postal authorities and other sources of information in order to accomplish notification in as timely a fashion as possible. Notifying members shall not disclose the reason for their contact other than a family emergency.
- (f) If making notification at a survivor's workplace, ask a workplace supervisor for the use of a quiet, private room to meet with the survivor. Members shall not inform the workplace supervisor of the purpose of their visit other than to indicate that it is a family emergency.
- (g) Offer to call other survivors, friends or clergy to support the survivors and to avoid leaving survivors alone after notification.
- (h) Assist the survivors with meeting childcare or other immediate needs.

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## *Line-of-Duty Deaths*

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- (i) Provide other assistance to survivors and take reasonable measures to accommodate their needs, wishes and desires. Care should be taken not to make promises or commitments to survivors that cannot be met.
- (j) Inform the survivors of the name and phone number of the Survivor Support Liaison (see the Survivor Support Liaison section of this policy), if known, and the Department Liaison.
- (k) Provide their contact information to the survivors before departing.
- (l) Document the survivor's names and contact information, as well as the time and location of notification. This information should be forwarded to the Department Liaison.
- (m) Inform the Chief of Police or the authorized designee once survivor notifications have been made so that other Walnut Creek Police Department members may be apprised that survivor notifications are complete.

### 1037.4.1 OUT-OF-AREA NOTIFICATIONS

The Department Liaison should request assistance from law enforcement agencies in appropriate jurisdictions for in-person notification to survivors who are out of the area.

- (a) The Department Liaison should contact the appropriate jurisdiction using a secure network and provide the assisting agency with the name and telephone number of the department member that the survivors can call for more information following the notification by the assisting agency.
- (b) The Department Liaison may assist in making transportation arrangements for the member's survivors, but will not obligate the Department to pay travel expenses without the authorization of the Chief of Police.

### 1037.5 NOTIFYING DEPARTMENT MEMBERS

Supervisors or members designated by the Chief of Police are responsible for notifying department members of the line-of-duty death as soon as possible after the survivor notification is made. Notifications and related information should be communicated in person or using secure networks and should not be transmitted over the radio.

Notifications should be made in person and as promptly as possible to all members on-duty at the time of the incident. Members reporting for subsequent shifts within a short amount of time should be notified in person at the beginning of their shift. Members reporting for duty from their residence should be instructed to contact their supervisor as soon as practicable. Those members who are working later shifts or are on days off should be notified by phone as soon as practicable.

Members having a close bond with the deceased member should be notified of the incident in person. Supervisors should consider assistance (e.g., peer support group, modifying work schedules, approving sick leave) for members who are especially affected by the incident.

Supervisors should direct members not to disclose any information outside the Department regarding the deceased member or the incident.

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### **1037.6 LIAISONS AND COORDINATORS**

The Chief of Police or the authorized designee should select members to serve as liaisons and coordinators to handle responsibilities related to a line-of-duty death, including, but not limited to:

- (a) Department Liaison.
- (b) Hospital Liaison.
- (c) Survivor Support Liaison.
- (d) Critical Incident Stress Management (CISM) coordinator.
- (e) Funeral Liaison.
- (f) Mutual aid coordinator.
- (g) Benefits Liaison.
- (h) Finance coordinator.

Liaisons and coordinators will be directed by the Department Liaison and should be given sufficient duty time to complete their assignments.

Members may be assigned responsibilities of more than one liaison or coordinator position depending on available department resources. The Department Liaison may assign separate liaisons and coordinators to accommodate multiple family units, if needed.

#### **1037.6.1 DEPARTMENT LIAISON**

The Department Liaison should be a Bureau Commander or of sufficient rank to effectively coordinate department resources, and should serve as a facilitator between the deceased member's survivors and the Department. The Department Liaison reports directly to the Chief of Police. The Department Liaison's responsibilities include, but are not limited to:

- (a) Directing the other liaisons and coordinators in fulfilling survivors' needs and requests. Consideration should be given to organizing the effort using the National Incident Management System (NIMS).
- (b) Establishing contact with survivors within 24 hours of the incident and providing them contact information.
- (c) Advising survivors of the other liaison and coordinator positions and their roles and responsibilities.
- (d) Identifying locations that will accommodate a law enforcement funeral and presenting the options to the appropriate survivors, who will select the location.
- (e) Coordinating all official law enforcement notifications and arrangements.
- (f) Making necessary contacts for authorization to display flags at half-mast.
- (g) Ensuring that department members are reminded of appropriate information—sharing restrictions regarding the release of information that could undermine future legal proceedings.
- (h) Coordinating security checks of the member's residence as necessary and reasonable.

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- (i) Serving as a liaison with visiting law enforcement agencies during memorial and funeral services.

### 1037.6.2 HOSPITAL LIAISON

The Hospital Liaison should work with hospital personnel to:

- (a) Arrange for appropriate and separate waiting areas for:
  1. The survivors and others whose presence is requested by the survivors.
  2. Department members and friends of the deceased member.
  3. Media personnel.
- (b) Ensure, as much as practicable, that any suspects who are in the hospital and their families or friends are not in close proximity to the member's survivors or Walnut Creek Police Department members (except for members who may be guarding the suspect).
- (c) Ensure that survivors receive timely updates regarding the member before information is released to others.
- (d) Arrange for survivors to have private time with the member, if requested.
  1. The Hospital Liaison or hospital personnel may need to explain the condition of the member to the survivors to prepare them accordingly.
  2. The Hospital Liaison should accompany the survivors into the room, if requested.
- (e) Stay with survivors and ensure that they are provided with other assistance as needed at the hospital.
- (f) If applicable, explain to the survivors why an autopsy may be needed.
- (g) Ensure hospital bills are directed to the Department, that the survivors are not asked to sign as guarantor of payment for any hospital treatment and that the member's residence address, insurance information and next of kin are not included on hospital paperwork.

Other responsibilities of the Hospital Liaison include, but are not limited to:

- Arranging transportation for the survivors back to their residence.
- Working with investigators to gather and preserve the deceased member's equipment and other items that may be of evidentiary value.
- Documenting his/her actions at the conclusion of his/her duties.

### 1037.6.3 SURVIVOR SUPPORT LIAISON

The Survivor Support Liaison should work with the Department Liaison to fulfill the immediate needs and requests of the survivors of any member who has died in the line of duty, and serve as the long-term department contact for survivors.

The Survivor Support Liaison should be selected by the deceased member's Bureau Commander. The following should be considered when selecting the Survivor Support Liaison:



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- The liaison should be an individual the survivors know and with whom they are comfortable working.
- If the survivors have no preference, the selection may be made from names recommended by the deceased member's supervisor and/or coworkers. The deceased member's partner or close friends may not be the best selections for this assignment because the emotional connection to the member or survivors may impair their ability to conduct adequate liaison duties.
- The liaison must be willing to assume the assignment with an understanding of the emotional and time demands involved.

The responsibilities of the Survivor Support Liaison include, but are not limited to:

- (a) Arranging for transportation of survivors to hospitals, places of worship, funeral homes and other locations, as appropriate.
- (b) Communicating with the Department Liaison regarding appropriate security measures for the family residence, as needed.
- (c) If requested by the survivors, providing assistance with instituting methods of screening telephone calls made to their residence after the incident.
- (d) Providing assistance with travel and lodging arrangements for out-of-town survivors.
- (e) Returning the deceased member's personal effects from the Department and the hospital to the survivors. The following should be considered when returning the personal effects:
  1. Items should not be delivered to the survivors until they are ready to receive the items.
  2. Items not retained as evidence should be delivered in a clean, unmarked box.
  3. All clothing not retained as evidence should be cleaned and made presentable (e.g., items should be free of blood or other signs of the incident).
  4. The return of some personal effects may be delayed due to ongoing investigations.
- (f) Assisting with the return of department-issued equipment that may be at the deceased member's residence.
  1. Unless there are safety concerns, the return of the equipment should take place after the funeral at a time and in a manner considerate of the survivors' wishes.
- (g) Working with the CISM coordinator to ensure that survivors have access to available counseling services.
- (h) Coordinating with the department's Press Information Officer (PIO) to brief the survivors on pending press releases related to the incident and to assist the survivors with media relations in accordance with their wishes (see the Press Information Officer section of this policy).
- (i) Briefing survivors on investigative processes related to the line-of-duty death, such as criminal, internal and administrative investigations.

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- (j) Informing survivors of any related criminal proceedings and accompanying them to such proceedings.
- (k) Introducing survivors to prosecutors, victim's assistance personnel and other involved personnel as appropriate.
- (l) Maintaining long-term contact with survivors and taking measures to sustain a supportive relationship (e.g., follow-up visits, phone calls, cards on special occasions, special support during holidays).
- (m) Inviting survivors to department activities, memorial services or other functions as appropriate.

Survivor Support Liaisons providing services after an incident resulting in multiple members being killed should coordinate with and support each other through conference calls or meetings as necessary.

The Department recognizes that the duties of a Survivor Support Liaison will often affect regular assignments over many years, and is committed to supporting members in the assignment.

If needed, the Survivor Support Liaison should be issued a personal communication device (PCD) owned by the Department to facilitate communications necessary to the assignment. The department-issued PCD shall be used in accordance with the Personal Communication Devices Policy.

### 1037.6.4 CRITICAL INCIDENT STRESS MANAGEMENT COORDINATOR

The CISM coordinator should work with the Chief of Police or the authorized designee, liaisons, coordinators and other resources to make CISM and counseling services available to members and survivors who are impacted by a line-of-duty death. The responsibilities of the CISM coordinator include, but are not limited to:

- (a) Identifying members who are likely to be significantly affected by the incident and may have an increased need for CISM and counseling services, including:
  - 1. Members involved in the incident.
  - 2. Members who witnessed the incident.
  - 3. Members who worked closely with the deceased member but were not involved in the incident.
- (b) Ensuring that members who were involved in or witnessed the incident are relieved of department responsibilities until they can receive CISM support as appropriate and possible.
- (c) Ensuring that CISM and counseling resources (e.g., peer support, debriefing, grief counselors) are available to members as soon as reasonably practicable following the line-of-duty death.
- (d) Coordinating with the Survivor Support Liaison to ensure survivors are aware of available CISM and counseling services and assisting with arrangements as needed.

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- (e) Following up with members and the Survivor Support Liaison in the months following the incident to determine if additional CISM or counseling services are needed.

### 1037.6.5 FUNERAL LIAISON

The Funeral Liaison should work with the Department Liaison, Survivor Support Liaison and survivors to coordinate funeral arrangements to the extent the survivors wish. The Funeral Liaison's responsibilities include, but are not limited to:

- (a) Assisting survivors in working with the funeral director regarding funeral arrangements and briefing them on law enforcement funeral procedures.
- (b) Completing funeral notification to other law enforcement agencies.
- (c) Coordinating the funeral activities of the Department, including, but not limited to the following:
  1. Honor Guard
    - (a) Casket watch
    - (b) Color guard
    - (c) Pallbearers
    - (d) Bell/rifle salute
  2. Bagpipers/bugler
  3. Uniform for burial
  4. Flag presentation
  5. Last radio call
- (d) Briefing the Chief of Police and command staff concerning funeral arrangements.
- (e) Assigning an officer to remain at the family home during the viewing and funeral.
- (f) Arranging for transportation of the survivors to and from the funeral home and interment site using department vehicles and drivers.

### 1037.6.6 MUTUAL AID COORDINATOR

The mutual aid coordinator should work with the Department Liaison and the Funeral Liaison to request and coordinate any assistance from outside law enforcement agencies needed for, but not limited to:

- (a) Traffic control during the deceased member's funeral.
- (b) Area coverage so that as many Walnut Creek Police Department members can attend funeral services as possible.

The mutual aid coordinator should perform his/her duties in accordance with the Mutual Aid and Outside Agency Assistance Policy.

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### 1037.6.7 BENEFITS LIAISON

The Benefits Liaison should provide survivors with information concerning available benefits and assist them in applying for benefits. Responsibilities of the Benefits Liaison include, but are not limited to:

- (a) Confirming the filing of workers' compensation claims and related paperwork (see the Occupational Disease and Work-Related Injury Reporting Policy).
- (b) Researching and assisting survivors with application for federal government survivor benefits, such as those offered through the:
  1. Public Safety Officers' Benefits (PSOB) Programs.
  2. Public Safety Officers' Educational Assistance (PSOEA) Program.
  3. Social Security Administration.
  4. Department of Veterans Affairs.
- (c) Researching and assisting survivors with application for state and local government survivor benefits.
  1. Education benefits (Education Code § 68120)
  2. Health benefits (Labor Code § 4856)
  3. Worker's compensation death benefit (Labor Code § 4702)
- (d) Researching and assisting survivors with application for other survivor benefits such as:
  1. Private foundation survivor benefits programs.
  2. Survivor scholarship programs.
- (e) Researching and informing survivors of support programs sponsored by police associations and other organizations.
- (f) Documenting and informing survivors of inquiries and interest regarding public donations to the survivors.
  1. If requested, working with the finance coordinator to assist survivors with establishing a process for the receipt of public donations.
- (g) Providing survivors with a summary of the nature and amount of benefits applied for, including the name of a contact person at each benefit office. Printed copies of the summary and benefit application documentation should be provided to affected survivors.
- (h) Maintaining contact with the survivors and assisting with subsequent benefit questions and processes as needed.

### 1037.6.8 FINANCE COORDINATOR

The finance coordinator should work with the Chief of Police and the Department Liaison to manage financial matters related to the line-of-duty death. The finance coordinator's responsibilities include, but are not limited to:

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- (a) Establishing methods for purchasing and monitoring costs related to the incident.
- (b) Providing information on finance-related issues, such as:
  - 1. Paying survivors' travel costs if authorized.
  - 2. Transportation costs for the deceased.
  - 3. Funeral and memorial costs.
  - 4. Related funding or accounting questions and issues.
- (c) Working with the Benefits Liaison to establish a process for the receipt of public donations to the deceased member's survivors.
- (d) Providing accounting and cost information as needed.

### **1037.7 PRESS INFORMATION OFFICER**

In the event of a line-of-duty death, the department's PIO should be the department's contact point for the media. As such, the PIO should coordinate with the Department Liaison to:

- (a) Collect and maintain the most current incident information and determine what information should be released.
- (b) Ensure that department members are instructed to direct any media inquiries to the PIO.
- (c) Prepare necessary press releases.
  - 1. Ensure coordination with other entities having media roles (e.g., outside agencies involved in the investigation or incident).
  - 2. Ensure that important public information is disseminated, such as information on how the public can show support for the Department and deceased member's survivors.
- (d) Arrange for community and media briefings by the Chief of Police or the authorized designee as appropriate.
- (e) Respond, or coordinate the response, to media inquiries.
- (f) If requested, assist the member's survivors with media inquiries.
  - 1. Brief the survivors on handling sensitive issues such as the types of questions that reasonably could jeopardize future legal proceedings.
- (g) Release information regarding memorial services and funeral arrangements to department members, other agencies and the media as appropriate.
- (h) If desired by the survivors, arrange for the recording of memorial and funeral services via photos and/or video.

The identity of deceased members should be withheld until the member's survivors have been notified. If the media has obtained identifying information for the deceased member prior to survivor notification, the PIO should request that the media withhold the information from release until proper notification can be made to survivors. The PIO should ensure that media are notified when survivor notifications have been made.

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### **1037.8 DEPARTMENT CHAPLAIN**

The Department chaplain may serve a significant role in line-of-duty deaths. His/her duties may include, but are not limited to:

- Assisting with survivor notifications and assisting the survivors with counseling, emotional support or other matters, as appropriate.
- Assisting liaisons and coordinators with their assignments, as appropriate.
- Assisting department members with counseling or emotional support, as requested and appropriate.

Further information on the potential roles and responsibilities of the chaplain is in the Chaplains Policy.

### **1037.9 INVESTIGATION OF THE INCIDENT**

The Chief of Police shall ensure that line-of-duty deaths are investigated thoroughly and may choose to use the investigation process outlined in the Officer-Involved Shootings and Deaths Policy.

Investigators from other agencies may be assigned to work on any criminal investigation related to line-of-duty deaths. Partners, close friends or personnel who worked closely with the deceased member should not have any investigative responsibilities because such relationships may impair the objectivity required for an impartial investigation of the incident.

Involved department members should be kept informed of the progress of the investigations and provide investigators with any information that may be pertinent to the investigations.

### **1037.10 LINE-OF-DUTY DEATH OF A LAW ENFORCEMENT ANIMAL**

The Chief of Police may authorize appropriate memorial and funeral services for law enforcement animals killed in the line of duty.

### **1037.11 NON-LINE-OF-DUTY DEATH**

The Chief of Police may authorize certain support services for the death of a member not occurring in the line of duty.

## Attachments

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**Commission on Peace Officer Standards and  
Training Hate Crimes Model Policy 2019.pdf**



# POST HATE CRIMES MODEL POLICY



COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

2019

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## POST Mission Statement

The mission of the California Commission on Peace Officer Standards and Training is to continually enhance the professionalism of California Law Enforcement in serving its communities





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## FOREWORD

Hate Crimes (i.e. crimes motivated by bias) convey a message of terror and exclusion, not just to the immediate victims but to entire communities. They often target victims who are least able to defend themselves. They cause trauma that is more extreme and longer lasting than similar crimes committed for other motivations. They can spark retaliatory crimes, escalating the cycle of crime and violence. If not addressed professionally and thoroughly they may undermine public confidence in law enforcement.

The 2018 California State Auditor's Report, titled "Hate Crimes in California," found that California law enforcement has not taken adequate action to identify, report, and respond to hate crimes. The report found that agencies did not properly identify some hate crimes, and underreported or misreported hate crimes as well. The report also noted that hate crimes are on the rise in California, increasing in both 2015 and 2016.

California Penal Code (CPC) 422.87 added new language and requirements to any newly created or updated agency hate crimes policy. Effective January 1, 2019, any local law enforcement agency that updates an existing hate crimes policy, or adopts a new one, shall include the content of the model policy framework provided in this document as well as any revisions or additions to the model policy in the future.

These guidelines are the primary elements that law enforcement executives are now required to incorporate into their hate crimes policy if an agency creates a new hate crimes policy or updates an existing one. The guidelines are designed for department-wide application and are intended to reflect a values-driven "top-down" process. They are intended to assist with the development and delivery of training and ensure proper identification, investigation, and reporting of hate crimes within each agency's jurisdiction.



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# POLICY GUIDELINES

## GUIDELINE #1

*Develop the foundation for the agency's hate crimes policy.*

The law enforcement executive is responsible for providing leadership, communicating organizational values to the department and the community, paying attention to hate crime trends and current events that could trigger hate incidents and/or hate crimes in the community, and providing education and training to establish the foundation for the agency's hate crimes policy. Employees' ability to respond appropriately to hate crimes and hate incidents is maximized when the executive effectively establishes and communicates the foundational values of the organization.

## GUIDELINE #2

*Develop a hate crimes policy for the agency.*

- I. An agency's hate crimes policy shall include the statutory definition of a hate crime, and its policy and programs should minimally include the following:
  - A. Response
  - B. Training
  - C. Planning and Prevention
  - D. Reporting

The law enforcement executive is responsible for the initial development of the policy and should be actively involved in its implementation. See the appendix for the exemplar "Message from the Agency Chief Executive".

## GUIDELINE #3

*Develop expertise to identify and investigate hate crimes.*

The law enforcement executive is responsible for ensuring that the agency possesses expertise to identify and investigate hate crimes, as well as ensuring compliance with state and federal

reporting and public information requirements. Agencies should assign identified personnel to appropriate training to develop expertise and knowledge to investigate hate crimes.

Hate crimes are low-frequency events with high-risk consequences for the agency and community. Agencies shall provide a checklist to first responders to provide direction for the investigation of all hate crimes as mandated by CPC 422.87.

## GUIDELINE #4

*Develop and implement cooperative hate crimes plans with other law enforcement agencies.*

- I. Coordinate cooperative efforts among regional, state, federal, and tribal law enforcement agencies to share information and training, and develop strategies to prevent hate crime activity.
- II. Develop and/or participate in law enforcement intelligence networks to enhance the agency's ability to anticipate potential hate crime targets. This interaction should include sharing intelligence information with other jurisdictions and cooperative investigations, arrests, and prosecutions if appropriate.

## GUIDELINE #5

*Develop and implement cooperative hate crime plans with the community and related governmental and non-governmental organizations, as appropriate.*

- I. Collaborate with the community, including human relations/civil rights organizations, advocacy groups, service organizations, neighborhood associations, religious institutions, local schools and colleges, to do the following:
  - Develop a network to build rapport with community groups

- 
- Develop a protocol for response to hate crimes
  - Obtain witness and victim cooperation
  - Provide support services to victims
  - Collect demographic information about specific communities
  - Identify hate crime trends based upon current events and activity (hate crimes and/or hate incidents)
  - Identify periods of increased vulnerability based on significant dates and events for affected communities
- II. Law enforcement should identify and seek out cultural diversity training and information from/about specific communities within its jurisdiction (immigrant, Muslim, Arab, LGBTQ, Black or African American, Jewish, Sikh, disability, etc.) to strengthen agency awareness.

## **GUIDELINE #6**

### ***Conduct an annual assessment of the agency's hate crimes policy and its ongoing implementation.***

The assessment should include:

- I. A review to ensure compliance with the POST Hate Crimes Model Policy and California law.
- II. A review and analysis of the agency's data collection, policy, and annual mandated reporting of hate crimes.
- III. A review and updating of the agency's hate crimes brochure to ensure compliance with CPC 422.92.
- IV. A review of any existing or available data or reports, including the annual California Attorney General's report on hate crimes, in preparation for, and response to, future hate crime trends.

- V. Annual outreach to the community including human relations/civil rights organizations, advocacy groups, service organizations, neighborhood associations, religious institutions, local schools, and colleges assessing the agency's responsiveness to hate crimes.



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# MINIMUM LEGAL REQUIREMENTS FOR AN AGENCY'S HATE CRIMES POLICY

## **CPC 13519.6, effective January 1, 2005, minimally requires:**

1. A message from the law enforcement agency's chief executive officer to the agency's officers and staff concerning the importance of hate crime laws and the agency's commitment to enforcement.
2. The definition of "hate crime" in Penal Code section 422.55.
3. References to hate crime statutes including Penal Code section 422.6.
4. A title-by-title specific protocol that agency personnel are required to follow, including, but not limited to, the following:
  - a. Preventing and preparing for likely hate crimes by, among other things, establishing contact with persons and communities who are likely targets, and forming and cooperating with community hate crime prevention and response networks.
  - b. Responding to reports of hate crimes, including reports of hate crimes committed under the color of authority.
  - c. Accessing assistance, by, among other things, activating the Department of Justice hate crimes rapid response protocol when necessary.
  - d. Providing victim assistance and follow-up, including community follow-up.
  - e. Reporting

## **CPC 422.87, effective January 1, 2019, states and minimally requires:**

Each local law enforcement agency may adopt a hate crimes policy. Any local law enforcement agency that updates an existing hate crimes policy or adopts a new one shall include, but not limited to, the following:

1. The definitions in Penal Code sections 422.55 and 422.56.
2. The content of the model policy framework that the Commission on Peace Officer Standards and Training developed pursuant to Section 13519.6 (above) and any content that the commission may revise or add in the future, including any policy, definitions, response and reporting responsibilities, training resources, and planning and prevention methods.
3. Information regarding bias motivation
  - a. For the purposes of this paragraph, "bias motivation" is a preexisting negative attitude toward actual or perceived characteristics referenced in Section 422.55. Depending on the circumstances of each case, bias motivation may include, but is not limited to, hatred, animosity, resentment, revulsion, contempt, unreasonable fear, paranoia, callousness, thrill-seeking, desire for social dominance, desire for social bonding with those of one's "own kind," or a perception of the vulnerability of the victim due to the victim being perceived as being weak, worthless, or fair game because of a protected characteristic, including, but not limited to, disability or gender.
    - i. In recognizing suspected disability-bias hate crimes, the policy shall advise officers to consider whether there is any indication that the perpetrator was motivated by hostility or other bias, occasioned by factors such as, but not limited to, dislike of persons who arouse

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fear or guilt, a perception that persons with disabilities are inferior and therefore “deserving victims,” a fear of persons whose visible traits are perceived as being disturbing to others, or resentment of those who need, demand, or receive alternative educational, physical, or social accommodations.

- ii. In recognizing suspected disability-bias hate crimes, the policy also shall advise officers to consider whether there is any indication that the perpetrator perceived the victim to be vulnerable and, if so, if this perception is grounded, in whole or in part, in anti-disability bias. This includes, but is not limited to, if a perpetrator targets a person with a particular perceived disability while avoiding other vulnerable-appearing persons such as inebriated persons or persons with perceived disabilities different than those of the victim, those circumstances could be evidence that the perpetrator’s motivations included bias against persons with the perceived disability of the victim and that the crime must be reported as a suspected hate crime and not a mere crime of opportunity.
- b. Information regarding the general underreporting of hate crimes and the more extreme underreporting of anti-disability and anti-gender hate crimes *and a plan for the agency to remedy this underreporting* (emphasis added).
- c. A protocol for reporting suspected hate crimes to the Department of Justice pursuant to Penal Code section 13023.
- d. A checklist of first responder responsibilities, including, but not limited to, being sensitive to effects of the crime on the victim, determining whether any additional resources are needed on the scene to assist the victim or whether to refer the victim to appropriate community and legal services, and giving the victims and any interested persons the agency’s hate crimes brochure, as required by Section 422.92.
- e. A specific procedure for transmitting and periodically retransmitting the policy and any related orders to all officers, including a simple and immediate way for officers to access the policy in the field when needed.
- f. The title or titles of the officer or officers responsible for assuring that the department has a hate crime brochure as required by Section 422.92 and ensuring that all officers are trained to distribute the brochure to all suspected hate crime victims and all other interested persons.
- g. A requirement that all officers be familiar with the policy and carry out the policy at all times unless directed by the chief, sheriff, director, or other chief executive of the law enforcement agency or other command-level officer to whom the chief executive officer formally delegates this responsibility.
- h. Any local law enforcement agency that updates an existing hate crimes policy or adopts a new hate crimes policy may include any of the provisions of a model hate crime policy and other relevant documents developed by the International Association of Chiefs of Police that are relevant to California and consistent with this chapter.

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# MODEL POLICY FRAMEWORK

## Purpose

This model policy framework is designed to assist in identifying and handling crimes motivated by hate or other bias toward individuals and groups with legally defined protected characteristics, to define appropriate steps for assisting victims, and to provide a guide to conducting related investigations. It outlines the general policy framework for prevention, response, accessing assistance, victim assistance and follow up, and reporting as related to law enforcement's role in handling hate crimes. It also serves as a declaration that hate crimes are taken seriously and demonstrates how law enforcement agencies may best use its resources to investigate and solve an offense, in addition to building community trust and increasing police legitimacy.

## Policy

It is the policy of this agency to safeguard the rights of all individuals irrespective of their disability, gender, nationality, race or ethnicity, religion, sexual orientation, and/or association with a person or group with one or more of these actual or perceived characteristics. Any acts or threats of violence, property damage, harassment, intimidation, or other crimes motivated by hate or bias should be viewed very seriously and given high priority.

This agency will employ necessary resources and vigorous law enforcement action to identify and arrest hate crime perpetrators. Also, recognizing the particular fears and distress typically suffered by victims, the potential for reprisal and escalation of violence, and the far-reaching negative consequences of these crimes on the community, this agency should attend to the security and related concerns of the immediate victims and their families as feasible.

The agency policy shall include a requirement that all officers be familiar with the policy and carry out the policy at all times unless directed by the chief, sheriff, director, or other chief executive of the law enforcement agency or other command-level officer to whom the chief executive officer formally delegates this responsibility.

The agency policy shall provide a specific procedure for transmitting and periodically retransmitting the policy and any related orders to all officers, including a simple and immediate way for officers to access the policy in the field when needed.

## Response, Victim Assistance and Follow-up

### *Initial response*

First responding officers should know the role of all department personnel as they relate to the agency's investigation of hate crimes and/or incidents. Responding officers should evaluate the need for additional assistance, and working with supervision and/or investigations, access needed assistance if applicable. Responding officers should ensure the crime scene is properly protected, preserved and processed.

At the scene of a suspected hate or bias crimes, officers should take preliminary actions deemed necessary, to include, but not limited to, the following:

1. Use agency checklist (per CPC 422.87) to assist in the investigation of any hate crime (see appendix, page 21, for exemplar checklist based on the Los Angeles Police Department Hate Crimes Supplemental Report with the agency's permission).

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2. Stabilize the victim(s) and request medical attention when necessary.
  3. Ensure the safety of victims, witnesses, and perpetrators.
    - a. Issue a Temporary Restraining Order (if applicable).
  4. Notify other appropriate personnel in the chain of command, depending on the nature and seriousness of the offense and its potential inflammatory and related impact on the community.
  5. Ensure that the crime scene is properly protected, preserved, and processed and that all physical evidence of the incident is removed as soon as possible after the offense is documented. If evidence of an inflammatory nature cannot be physically removed, the property owner should be contacted to ensure that it is removed or covered up as soon as possible. Agency personnel should follow-up to ensure that this is accomplished in a timely manner.
  6. Collect and photograph physical evidence or indicators of hate crimes such as:
    - a. Hate literature.
    - b. Spray paint cans.
    - c. Threatening letters.
    - d. Symbols used by hate groups.
  7. Identify criminal evidence on the victim.
  8. Request the assistance of translators or interpreters when needed to establish effective communication with witnesses, victims, or others as appropriate.
  9. Conduct a preliminary investigation and record pertinent information including, but not limited to:
    - a. Identity of suspected perpetrator(s).
    - b. Identity of witnesses, including those no longer at the scene.
    - c. The offer of victim confidentiality per Government Code (GC) 5264.
    - d. Prior occurrences, in this area or with this victim.
    - e. Statements made by suspects; exact wording is critical.
    - f. The victim's protected characteristics and determine if bias was a motivation "in whole or in part"<sup>1</sup> in the commission of the crime.
      1. "Bias motivation" is a preexisting negative attitude toward actual or perceived characteristics referenced in Section 422.55. Depending on the circumstances of each case, bias motivation may include, but is not limited to, hatred, animosity, resentment, revulsion, contempt, unreasonable fear, paranoia, callousness, thrill-seeking, desire for social dominance, desire for social bonding with those of one's "own kind," or a perception of the vulnerability of the victim due to the victim being perceived as being weak, worthless, or fair game because of a protected characteristic, including, but not limited to, disability or gender.
        - (a) In recognizing suspected disability-bias hate crimes, the policy shall advise officers to consider whether there is any indication that the perpetrator was motivated by hostility or other bias, occasioned by factors such as, but not limited to, dislike of persons

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<sup>1</sup>See Appendix, page 15, for definition

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who arouse fear or guilt, a perception that persons with disabilities are inferior and therefore “deserving victims,” a fear of persons whose visible traits are perceived as being disturbing to others, or resentment of those who need, demand, or receive alternative educational, physical, or social accommodations.

(b) In recognizing suspected disability-bias hate crimes, the policy also shall advise officers to consider whether there is any indication that the perpetrator perceived the victim to be vulnerable and, if so, if this perception is grounded, in whole or in part, in anti-disability bias. This includes, but is not limited to, if a perpetrator targets a person with a particular perceived disability while avoiding other vulnerable-appearing persons such as inebriated persons or persons with perceived disabilities different than those of the victim, those circumstances could be evidence that the perpetrator’s motivations included bias against persons with the perceived disability of the victim and that the crime must be reported as a suspected hate crime and not a mere crime of opportunity.

10. Adhere to CPC 422.93, which protects hate crime victims and witnesses from being reported to federal immigration authorities if they have not committed any crime under state law.
11. Provide information regarding immigration remedies available to victims of crime. (U-Visa, T-Visa, S-Visa, etc.).
12. Provide the agency’s Hate Crimes Brochure (per CPC 422.92) if asked, if necessary or per policy (if applicable).
13. Utilize proper techniques for interviewing people with disabilities and being aware of and providing appropriate accommodations (such as ADA standards, Braille, visuals, translators for the deaf or hard of hearing, etc.).
14. Report any suspected multi-mission extremist crimes to the agency Terrorism Liaison Officer (TLO), or assigned designee, and direct the TLO/ designee to send the data to the Joint Regional Information Exchange System.

### ***Investigation***

Investigators at the scene of or while performing follow-up investigation on a suspected hate or bias crimes (or hate incident if agency policy requires it) should take all actions deemed necessary, including, but not limited to, the following:

1. Consider typologies of perpetrators of hate crimes and incidents, including but not limited to thrill, reactive/defensive, and mission (hard core).
2. Utilize investigative techniques and methods to handle hate crimes or hate incidents in a professional manner.
3. Utilize proper techniques for interviewing people with disabilities and being aware of and providing appropriate accommodations (such as ADA standards, Braille, visuals, translators for the deaf or hard of hearing, etc.).
4. Fully investigate any report of hate crime committed under the color of authority per CPC 422.6 and CPC 13519.6.

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5. Collect and photograph physical evidence or indicators of hate crimes such as:
    - a. Hate literature.
    - b. Spray paint cans.
    - c. Threatening letters.
    - d. Symbols used by hate groups.
    - e. Desecration of religious symbols, objects, or buildings.
  6. Request the assistance of translators or interpreters when needed to establish effective communication.
  7. Conduct a preliminary investigation and record information regarding:
    - a. Identity of suspected perpetrator(s).
    - b. Identity of witnesses, including those no longer at the scene.
    - c. Offer of victim confidentiality per GC 5264.
    - d. Prior occurrences, in this area or with this victim.
    - e. Statements made by suspects; exact wording is critical.
    - f. Document the victim's protected characteristics.
  8. Provide victim assistance and follow-up.
  9. Canvass the area for additional witnesses.
  10. Examine suspect's social media activity for potential evidence of bias motivation.
  11. Coordinate the investigation with agency, state, and regional intelligence operations. These sources can provide the investigating officer with an analysis of any patterns, organized hate groups, and suspects potentially involved in the offense.
  12. Coordinate the investigation with the crime scene investigation unit (if applicable) or other units of the agency.
  13. Determine if the incident should be classified as a hate crime.
  14. Take steps to ensure appropriate assistance is provided to hate crime victim(s), including the following measures:
    - a. Contact the victim periodically to determine whether he/she is receiving adequate and appropriate assistance.
    - b. Provide ongoing information to the victim about the status of the criminal investigation.
    - c. Provide the victim and any other interested person the brochure on hate crimes per CPC 422.92 and information on any local advocacy groups (if asked).
  15. Report any suspected multi-mission extremist crimes to the agency TLO, or assigned designee, and direct the TLO or designee to send the data to the Joint Regional Information Exchange System.
  16. Coordinate with other law enforcement agencies in the area to assess patterns of hate crimes and/or hate incidents (if directed by policy), and determine if organized hate groups are involved.

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## *Supervision*

The supervisor shall confer with the initial responding officer(s) and ensure that necessary preliminary actions have been taken. The supervisor shall request any appropriate personnel necessary to accomplish the following:

1. Provide immediate assistance to the crime victim by:
  - a. Expressing the law enforcement agency's official position on the importance of these cases and the measures that will be taken to apprehend the perpetrators.
  - b. Expressing the department's interest in protecting victims' anonymity (confidentiality forms GC 6254) to the extent possible. Allow the victim to convey his/her immediate concerns and feelings.
  - c. Identifying individuals or agencies that may provide victim assistance and support. Local victim assistance resources may include family members or close acquaintances, clergy or departmental chaplain, as well as community service agencies that provide shelter, food, clothing, child care, or other related services (per CPC 422.92).
2. Ensure that all relevant facts are documented on an incident and/ or arrest report and make an initial determination as to whether the incident should be classified as a hate crime for federal and state bias-crimes reporting purposes.
3. Notify other appropriate personnel in the chain of command, depending on the nature and seriousness of the offense and its potential inflammatory and related impact on the community.
4. In cases of large-scale hate crime waves, or in circumstances where the potential exists for subsequent hate crimes or incidents, consider directing resources to protect vulnerable sites (such as assigning an officer at specific locations that could become targets).
5. Ensure hate crimes are properly reported, including reporting to the Department of Justice, pursuant to CPC 13023.
6. Ensure adherence to CPC 422.93, which protects hate crime victims and witnesses from being reported to federal immigration authorities if they have not committed any crime under state law. Supervisors should also be aware of the immigration remedies available to victims of crime. (U-Visa, T-Visa, S-Visa, etc.)
7. Respond to and investigate any reports of hate crimes committed under the color of authority.
8. Provide appropriate assistance, including activating the California Department of Justice hate crime rapid response protocol if necessary. For information see the California Department of Justice webpage or use following link: <https://oag.ca.gov/sites/all/files/agweb/pdfs/civilrights/AG-Rapid-Response-Team-Protocol-2.pdf>
9. Report or ensure any suspected multi-mission extremists crimes are reported to the agency TLO, or assigned designee, and direct the TLO/ designee to send the data to the Joint Regional Information Exchange System.
10. Make a final determination as to whether the incident should be classified as a hate crime.

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## Training

All staff, including dispatch, desk personnel, volunteers, records, support staff, officers, supervisors, and managers shall be properly trained on the department's hate crimes policy. The agency will follow all legislatively mandated training requirements.

POST offers training and video courses to assist law enforcement in the identification, investigation, documentation and reporting of hate crimes. These courses provide officers with information and skills necessary to effectively identify, investigate, document and report hate crimes. Various training programs include the history and definitions of hate crimes, recognition of hate groups, international terrorism, legal considerations, victims' considerations, initial response duties, victim interviewing and care, suspect identification and interrogation, evidence identification, report writing, the role of law enforcement, investigative strategies, intelligence collection, supervisory roles, community relations, media relations and local program training development, and other topics such as proper use of computer systems and methods for reporting. POST also maintains an extensive array of training videos on applicable topics such as working with those with mental illness and intellectual disabilities, hate crimes, and working with minority communities.

For more information on POST training opportunities and available videos, visit the POST website at [www.post.ca.gov](http://www.post.ca.gov). In conjunction with POST training opportunities, trainers may utilize other state and federal agencies that offer training courses, such as the U.S. Department of Justice.

## Planning and Prevention

The general underreporting of hate crimes is an identified issue in California. Underreporting is caused by victims not reporting hate crimes or hate incidents due to a number of factors, including fear of reprisal and the belief that law enforcement will not properly investigate them. A report by the State Auditor in 2018 determined that California law enforcement has not taken adequate action to identify, report and respond to hate crimes. There is also an extreme underreporting of anti-disability and anti-gender hate crimes. The agency's plan to remedy this underreporting *shall be inserted into the policy* (emphasis added).

In order to facilitate the recommendations contained within this policy, it is strongly recommended that agencies build and strengthen relationships with the community, engage in dialogue, and provide education to the community about this policy. Agency personnel are also encouraged to learn about the inherent issues concerning their communities in relation to hate crimes. Assigned personnel should perform the following:

1. Meet with residents in target communities to allay fears; emphasize the agency's concern over this and related incidents; reduce the potential for counter-violence; and provide safety, security, and crime prevention information. Cultural diversity education and immersion programs (if available) could facilitate this process.
2. Provide direct and referral assistance to the victim and his/her family.
3. Conduct public meetings on hate crime threats and violence in general.
4. Establish relationships with formal community-based organizations and leaders.
5. Expand, where appropriate, preventive programs such as hate, bias, and crime reduction seminars for school children.



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6. Review the Attorney General's latest opinion on hate crime statistics and targets in order to prepare and plan for future crimes, specifically for Arab/Middle Eastern and Islamic communities.<sup>2</sup>
  7. Provide orientation of and with communities of specific targeted victims such as immigrants, Muslims, Arabs, LGBTQ, Black or African-American, Jewish, Sikh, disabled persons, etc.

Hate crimes are not only a crime against the targeted victim(s) but also have impacts on the victim's family and community. Working constructively with segments of this larger community after such crimes is essential to help reduce fears, stem possible retaliation, prevent additional hate crimes, and encourage any other previously victimized individuals to step forward and report such crimes. This is particularly important if an upward trend has been identified in these crimes.

Although hate incidents are not criminal events, they can be indicators of, or precursors to, hate crimes. Most California law enforcement agencies do not track hate incidents. It is recommended that hate incidents be investigated and documented, if directed by policy, as part of the overall planning to prevent hate crime.

Tracking social media is also another identified area to find indicators of, or precursors to, hate crimes. It is recommended that agencies assign personnel to find, evaluate and monitor public social media sources to identify possible suspects in reported hate crimes, or to determine suspects or suspect groups in future hate crimes or hate incidents affecting the identified individuals, groups or communities that may be victimized, and planned hate-based events.

### ***Release of Information***

Agencies should have procedure and/or policy on public disclosure of hate crimes. Establishing a relationship with stakeholders, before any incident occurs, to develop a network and protocol for disclosure would assist greatly in any disclosure.

The benefit of public disclosure of hate crime incidents includes:

1. Dissemination of correct information.
2. Assurance to affected communities or groups that the matter is being properly and promptly investigated.
3. The ability to request information regarding the commission of the crime(s) from the victimized community.

Agencies should provide the supervisor, public information officer, or designee with information that can be responsibly reported to the media. When appropriate, the law enforcement media spokesperson should reiterate that the hate crimes will not be tolerated, will be taken seriously, and will be prosecuted to the full extent of the law.

Agencies are encouraged to consider the following when releasing information to the public regarding hate crimes and hate incidents that have been reported within the jurisdiction:

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<sup>2</sup>As described in CPC 13519.6(b)(8)

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1. Informing community organizations in a timely manner when a community group has been the target of a hate crime.
  2. Informing the community of the impact of these crimes on the victim, the victim's family, and the community, and the assistance and compensation available to victims.
  3. Informing the community regarding hate crime law and the legal rights of, and the remedies available to, victims of hate crimes.
  4. Providing the community with on-going information regarding hate crime and/or hate incidents (if policy requires it).

## Reporting

The agency policy shall require development of a procedure for data collection, documentation, and mandated reporting requirements. The agency shall:

1. Ensure that hate crimes are properly investigated, documented and reported.
2. During documentation, ensure hate crimes are flagged properly to allow for required reporting to the California Department of Justice. This is typically indicated by the title/penal code section identifying the report as a hate crime. Some agencies have added a check box specifically indicating a hate crime that could, if required by the agency policy, require a secondary review by an investigator/detective, supervisor or other identified party. It is the agency executive's responsibility to determine the form of documentation and type of indicators on crime reports.
3. The agency head or their designee (identified in the agency policy) should make a final determination as to whether the incident should be classified as a hate crime by the agency.
4. Agencies shall develop procedures to comply with legally mandated reporting, including the California Department of Justice, pursuant to CPC 13023.

## Checklist for the agency's policy creation

- Message from the law enforcement's agency's chief executive is included
  - The updated existing policy or newly adopted policy includes the content of the model policy framework from POST.
  - Definition of "hate crime" included from:
    - CPC 422.55
    - CPC 422.56
    - CPC 422.6
  - Title by title specific protocol regarding:
    - Prevention
      - Is contact is established with identified persons and/or communities who are likely targets?
      - Have we formed and/or are we cooperating with hate crime prevention and response networks?
      - Has a plan for the agency to remedy underreporting of hate crimes and the more extreme underreporting of anti-disability and anti-gender hate crimes been created?
    - Response
      - Requirement that all hate crimes be properly investigated and supervised
      - Requirement that any hate crimes committed under the color of authority are investigated
    - Accessing Assistance
      - Information provided for activating the Department of Justice hate crime rapid response protocol when necessary
    - Victim assistance and follow-up
    - Reporting
      - Protocol for reporting suspected hate crimes to the Department of Justice per CPC 13023
    - Training
      - Has a checklist for first responders been created and provided personnel (see exemplar officer checklist in appendix)
        - Does the checklist include first responder responsibilities include:
          - Determining the need for additional resources if necessary?
          - Referral information for appropriate community and legal services?
          - The requirement to provide the agency's hate crimes brochure per CPC 422.92?
        - Information regarding bias motivation from CPC 422.87
        - Information regarding the general underreporting of hate crimes and the more extreme underreporting of anti-disability and anti-gender hate crimes
- Definitions of terms used in the policy are listed
- Specific procedure for transmitting and periodically retransmitting the policy and any related orders to officers is included.
  - Procedure shall include a simple and immediate way for officers to access the policy in the field when needed
- Title or titles of the officer or officers responsible for assuring the department has a hate crime brochure (per CPC 422.92) and ensuring that all officers are trained to distribute the brochure to all suspected hate crime victims and all other interested persons.
- A requirement that all officers be familiar with the policy and carry out the policy at all times unless directed by the law enforcement chief executive or the chief executive's designee.



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# APPENDIX

## Definitions and Laws

In accordance with CPC sections 422.55, 422.56, 422.6, and 422.87, for purposes of all other state law unless an explicit provision of law or the context clearly requires a different meaning, the following shall apply:

### *Hate crime*

“Hate crime” means a criminal act committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim:

- (1) Disability.
- (2) Gender.
- (3) Nationality.
- (4) Race or ethnicity.
- (5) Religion.
- (6) Sexual orientation.
- (7) Association with a person or group with one or more of these actual or perceived characteristics.

(b) “Hate crime” includes, but is not limited to, a violation of Section 422.6.

“Association with a person or group with these actual or perceived characteristics” Includes advocacy for, identification with, or being on the ground owned or rented by, or adjacent to, any of the following: a community center, educational facility, family, individual, office, meeting hall, place of worship, private institution, public agency, library, or other entity, group, or person that has, or is identified with people who have, one or more of those characteristics listed in the definition of “hate crime” under paragraphs 1 to 6, inclusive, of CPC 422.55 subdivision (a).

**Note:** A “hate crime” need not be motivated by hate but may be motivated by any bias against a protected characteristic.

### *Hate Speech*

The First Amendment to the U.S. Constitution protects most speech, even when it is disagreeable, offensive, or hurtful. The following types of speech are generally not protected: fighting words, true threats, perjury, blackmail, incitement to lawless action, conspiracy and solicitation to commit any crime.

### *Hate incident*

A hate incident is an action or behavior motivated by hate or bias but legally protected by the First Amendment right to freedom of expression. Examples of hate incidents include:

- Name-calling
- Insults and epithets
- Distributing hate material in public places
- Displaying hate material on your own property

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## ***Bias Motivation***

Bias motivation is a preexisting negative attitude toward actual or perceived characteristics referenced in Section 422.55. Depending on the circumstances of each case, bias motivation may include, but is not limited to, hatred, animosity, resentment, revulsion, contempt, unreasonable fear, paranoia, callousness, thrill-seeking, desire for social dominance, desire for social bonding with those of one's "own kind," or a perception of the vulnerability of the victim due to the victim being perceived as being weak, worthless, or fair game because of a protected characteristic, including, but not limited to, disability or gender.

## ***Disability Bias***

In recognizing suspected disability-bias hate crimes, officers should consider whether there is any indication that the perpetrator was motivated by hostility or other bias, occasioned by factors such as, but not limited to, dislike of persons who arouse fear or guilt, a perception that persons with disabilities are inferior and therefore "deserving victims," a fear of persons whose visible traits are perceived as being disturbing to others, or resentment of those who need, demand, or receive alternative educational, physical, or social accommodations.

In recognizing suspected disability-bias hate crimes, officers should consider whether there is any indication that the perpetrator perceived the victim to be vulnerable and, if so, if this perception is grounded, in whole or in part, in anti-disability bias. This includes, but is not limited to, if a perpetrator targets a person with a particular perceived disability while avoiding other vulnerable-appearing persons such as inebriated persons or persons with perceived disabilities different than those of the victim, those circumstances could be evidence that the perpetrator's motivations included bias against persons with the perceived disability of the victim and that the crime must be reported as a suspected hate crime and not a mere crime of opportunity.

## ***Disability***

Disability includes mental disability and physical disability as defined in GC 12926, regardless of whether those disabilities are temporary, permanent, congenital or acquired by heredity, accident, injury, advanced age or illness.

## ***Gender***

Gender means sex and includes a person gender identity and gender expression. Gender expression means a person's gender-related appearance and behavior, whether or not stereotypically associated with the persons assigned sex at birth. A person's gender identity and gender related appearance and behavior, whether or not stereotypically associated with the person's assigned sex at birth.

## ***In Whole or In Part***

"In whole or in part because of" means that the bias motivation must be a cause in fact of the offense whether or not other causes also exist. When multiple concurrent motives exist, the prohibited bias must be a substantial factor in bringing about the particular result. There is no requirement that the bias be a main factor, or that crime would not have been committed but for the actual or perceived characteristic.

## ***Nationality***

Nationality includes citizenship, country of origin, and national origin.

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***Race or Ethnicity***

Race or ethnicity includes ancestry, color, and ethnic background.

***Religion***

Religion includes all aspects of religious belief, observance, and practice and includes agnosticism and atheism.

***Sexual orientation***

Sexual orientation means heterosexuality, homosexuality, or bisexuality.

***Victim***

Victim includes, but is not limited to, a community center, educational facility, entity, family, group, individual, office, meeting hall, person, place of worship, private institution, public





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## Statutes and Legal Requirements

Items listed in this section include sections from the California Penal Code (CPC), Welfare and Institutions Code (WI) and Government Code (GC).

### *Definitions*

CPC 422.55 - Provides general definition of hate crimes in California.

CPC 422.56- Provides definitions of terms included in hate crimes statutes.

GC 12926- Disability-related definitions applicable to some hate crime statutes.

## Felonies

### *Hate Crimes*

CPC 422.7 - Commission of a crime for the purpose of interfering with another's exercise of civil rights.

### *Related Crimes*

CPC 190.2(a)(16) - Homicide penalties related to certain hate crime related acts.

CPC 190.03(a) - Homicide penalties related to certain hate crime related acts.

CPC 288(b)(2) - Sexual assault of dependent person by caretaker

CPC 368(b) - Dependent adult abuse generally - may apply as disability-related hate crime.

CPC 594.3 - Vandalism of places of worship.

CPC 11412 - Causing or attempting to cause other to refrain from exercising religion by threat.

CPC 11413 - Arson or destructive device at place of worship.

## Misdemeanors

### *Hate Crimes*

CPC 422.6 - Use of force, threats, or destruction of property to interfere with another's exercise of civil rights.

CPC 422.77 - Violation of civil order (Bane Act) protecting the exercise of civil rights

### *Related Crimes*

CPC 302 - Disorderly conduct during an assemblage of people gathered for religious worship at a tax-exempt place of worship.

CPC 538(c) - Unauthorized insertion of advertisements in newspapers and redistribution to the public.

CPC 640.2 - Placing handbill, notice of advertisement on a consumer product or product packaged without authorization.

CPC 11411 - Terrorism of owner or occupant of real property. Placement or display of sign, symbol, or other physical impression without authorization, engagement in pattern of conduct, or burning or desecration of religious symbols.

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## Enhancements

**CPC 190.2(a)(16)** - Special circumstances imposing the Death Penalty or Life Without Possibility of Parole, if the victim was intentionally killed because of sexual orientation, gender, or disability.

**CPC 190.3** - Special circumstances imposing LWOP if the victim was intentionally killed because of sexual orientation, gender, or disability.

**CPC 422.75** - Penalty for felony committed because of victim's race, color, religion, nationality, country or origin, ancestry, disability, or sexual orientation shall be enhanced one, two, or three years in prison, if the person acts alone; and two, three, or four years if the person commits the act with another.

**CPC 1170.8** - Enhancement for robbery or assault at a place of worship.

**CPC 1170.85(b)** - Felony assault or battery enhancement due to age or disability.

## Reporting

**CPC 13023**- Requirement for law enforcement agencies to report hate crime data to DOJ.

**WI 15630** – Elder and Dependent Adult Abuse Mandated Reporting (may apply in disability-related hate crimes).

## Training and Policy Requirements

**CPC 422.87** - Hate crimes policy adoption and update requirements (AB 1985, Effective January 1, 2019).

**CPC 13519.6** - Defines hate crime training requirements for peace officers.

**CPC 13519.41** - Training requirements on sexual orientation and gender identity-related hate crimes for peace officers and dispatchers (AB 2504, Effective January 1, 2019).

## Miscellaneous Provisions

**CPC 422.78** - Responsibility for prosecution of stay away order violations.

**CPC 422.86** - Public policy regarding hate crimes.

**CPC 422.89** - Legislative intent regarding violations of civil rights and hate crimes

**CPC 422.92** - Hate crimes victims brochure requirement for law enforcement agencies.

**CPC 422.93** - Protection of victims and witnesses from being reported to immigration authorities.

**GC 6254** - Victim confidentiality.

# HATE CRIME CHECKLIST

Page \_\_\_\_\_ of \_\_\_\_\_

<b>VICTIM</b>	<p style="text-align: center;"><b><u>Victim Type:</u></b></p> <p><input type="checkbox"/> <b>Individual</b>                  Legal name (Last, First): _____                  Other Names used (AKA): _____</p> <p><input type="checkbox"/> <b>School, business or organization</b>                  Name: _____                  Type: _____  <i>(e.g., non-profit, private, public school)</i>                  Address: _____</p> <p><input type="checkbox"/> <b>Faith-based organization</b>                  Name: _____                  Faith: _____                  Address: _____</p>	<p style="text-align: center;"><b><u>Target of Crime (Check all that apply):</u></b></p> <p><input type="checkbox"/> Person    <input type="checkbox"/> Private property    <input type="checkbox"/> Public property</p> <p><input type="checkbox"/> Other _____</p> <p style="text-align: center;"><b><u>Nature of Crime (Check all that apply):</u></b></p> <p><input type="checkbox"/> Bodily injury                      <input type="checkbox"/> Threat of violence</p> <p><input type="checkbox"/> Property damage</p> <p><input type="checkbox"/> Other crime: _____</p> <p>Property damage - estimated value _____</p>
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<b>BIAS</b>	<p style="text-align: center;"><b><u>Type of Bias</u></b>  <b>(Check all characteristics that apply):</b></p> <p><input type="checkbox"/> Disability</p> <p><input type="checkbox"/> Gender</p> <p><input type="checkbox"/> Gender identity/expression</p> <p><input type="checkbox"/> Sexual orientation</p> <p><input type="checkbox"/> Race</p> <p><input type="checkbox"/> Ethnicity</p> <p><input type="checkbox"/> Nationality</p> <p><input type="checkbox"/> Religion</p> <p><input type="checkbox"/> Significant day of offense  <i>(e.g., 9/11, holy days)</i></p> <p><input type="checkbox"/> Other: _____</p> <p>Specify disability (be specific):                  _____                  _____</p>	<p style="text-align: center;"><b><u>Actual or Perceived Bias – Victim’s Statement:</u></b></p> <p><input type="checkbox"/> Actual bias [Victim actually has the indicated characteristic(s)].</p> <p><input type="checkbox"/> Perceived bias [Suspect believed victim had the indicated characteristic(s)].  <i>If perceived, explain the circumstances in narrative portion of Report.</i></p> <p style="text-align: center;"><b><u>Reason for Bias:</u></b></p> <p><b>Do you feel you were targeted based on one of these characteristics?</b>  <input type="checkbox"/> Yes    <input type="checkbox"/> No    <i>Explain in narrative portion of Report.</i></p> <p><b>Do you know what motivated the suspect to commit this crime?</b>  <input type="checkbox"/> Yes    <input type="checkbox"/> No    <i>Explain in narrative portion of Report.</i></p> <p><b>Do you feel you were targeted because you associated yourself with an individual or a group?</b>  <input type="checkbox"/> Yes    <input type="checkbox"/> No    <i>Explain in narrative portion of Report.</i></p> <p><b>Are there indicators the suspect is affiliated with a Hate Group (i.e., literature/tattoos)?</b>  <input type="checkbox"/> Yes    <input type="checkbox"/> No    <i>Describe in narrative portion of Report.</i></p> <p><b>Are there Indicators the suspect is affiliated with a criminal street gang?</b>  <input type="checkbox"/> Yes    <input type="checkbox"/> No    <i>Describe in narrative portion of Report.</i></p>
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	<p style="text-align: center;"><b><u>Bias Indicators (Check all that apply):</u></b></p> <p><input type="checkbox"/> Hate speech                      <input type="checkbox"/> Acts/gestures                      <input type="checkbox"/> Property damage                      <input type="checkbox"/> Symbol used</p> <p><input type="checkbox"/> Written/electronic communication                      <input type="checkbox"/> Graffiti/spray paint                      <input type="checkbox"/> Other: _____</p> <p><i>Describe with exact detail in narrative portion of Report.</i></p>
--	--

<b>HISTORY</b>	<p style="text-align: center;"><b><u>Relationship Between Suspect &amp; Victim:</u></b></p> <p>Suspect known to victim?    <input type="checkbox"/> Yes    <input type="checkbox"/> No</p> <p>Nature of relationship: _____</p> <p>Length of relationship: _____</p> <p><i>If Yes, describe in narrative portion of Report</i></p>	<p><input type="checkbox"/> Prior reported incidents with suspect? Total # _____</p> <p><input type="checkbox"/> Prior unreported incidents with suspect? Total # _____</p> <p>Restraining orders?    <input type="checkbox"/> Yes    <input type="checkbox"/> No</p> <p><i>If Yes, describe in narrative portion of Report</i></p> <p>Type of order: _____    Order/Case# _____</p>
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<b>WEAPONS</b>	<p>Weapon(s) used during incident?    <input type="checkbox"/> Yes    <input type="checkbox"/> No    Type: _____</p> <p>Weapon(s) booked as evidence?    <input type="checkbox"/> Yes    <input type="checkbox"/> No</p> <p>Automated Firearms System (AFS) Inquiry attached to Report?    <input type="checkbox"/> Yes    <input type="checkbox"/> No</p>
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# HATE CRIME CHECKLIST

Page \_\_\_\_ of \_\_\_\_

<b>EVIDENCE</b>	Witnesses present during incident? <input type="checkbox"/> Yes <input type="checkbox"/> No	Statements taken? <input type="checkbox"/> Yes <input type="checkbox"/> No
	Evidence collected? <input type="checkbox"/> Yes <input type="checkbox"/> No	Recordings: <input type="checkbox"/> Video <input type="checkbox"/> Audio <input type="checkbox"/> Booked
	Photos taken? <input type="checkbox"/> Yes <input type="checkbox"/> No	Suspect identified: <input type="checkbox"/> Field ID <input type="checkbox"/> By photo
	Total # of photos: _____ D#: _____ Taken by: _____ Serial #: _____	<input type="checkbox"/> Known to victim

<b>OBSERVATIONS</b>	<b><u>VICTIM</u></b>	<b><u>SUSPECT</u></b>
	<input type="checkbox"/> Tattoos <input type="checkbox"/> Shaking <input type="checkbox"/> Unresponsive <input type="checkbox"/> Crying <input type="checkbox"/> Scared <input type="checkbox"/> Angry <input type="checkbox"/> Fearful <input type="checkbox"/> Calm <input type="checkbox"/> Agitated <input type="checkbox"/> Nervous <input type="checkbox"/> Threatening <input type="checkbox"/> Apologetic <input type="checkbox"/> Other observations: _____	<input type="checkbox"/> Tattoos <input type="checkbox"/> Shaking <input type="checkbox"/> Unresponsive <input type="checkbox"/> Crying <input type="checkbox"/> Scared <input type="checkbox"/> Angry <input type="checkbox"/> Fearful <input type="checkbox"/> Calm <input type="checkbox"/> Agitated <input type="checkbox"/> Nervous <input type="checkbox"/> Threatening <input type="checkbox"/> Apologetic <input type="checkbox"/> Other observations: _____

**ADDITIONAL QUESTIONS (Explain all boxes marked "Yes" in narrative portion of report):**

Has suspect ever threatened you?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Has suspect ever harmed you?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Does suspect possess or have access to a firearm?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Are you afraid for your safety?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Do you have any other information that may be helpful?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

**Resources offered at scene:**  Yes  No Type: \_\_\_\_\_

<b>MEDICAL</b>	<b><u>Victim</u></b>	<b><u>Suspect</u></b>	Paramedics at scene? <input type="checkbox"/> Yes <input type="checkbox"/> No Unit # _____
	<input type="checkbox"/>	<input type="checkbox"/> Declined medical treatment	Name(s)/ID #: _____
	<input type="checkbox"/>	<input type="checkbox"/> Will seek own medical treatment	Hospital: _____
	<input type="checkbox"/>	<input type="checkbox"/> Received medical treatment	Jail Dispensary: _____
Authorization to Release Medical Information, Form 05.03.00, signed? <input type="checkbox"/> Yes <input type="checkbox"/> No			Physician/Doctor: _____
			Patient #: _____

Officer (Name/Rank)	Date
Officer (Name/Rank)	Date
Supervisor Approving (Name/Rank)	Date

**Amber Alert\_Page\_1.jpg**

**Amber Alert\_Page\_3(1).jpg**

## **SART Protocol.pdf**

# Walnut Creek PD Policy Manual

Walnut Creek PD Policy Manual

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