

FIRST AMENDMENT PROTECTED ACTIVITY



Police Commissioner	
Deputy Police Commissioner	
Colonel	
Lieutenant Colonel	
Inspector	
Major	
Captain	
Lieutenant	
Sergeant	

SUPERVISOR RESPONSIBILITIES

E-LEARNING — POLICY
804



Objectives:

1. DETERMINE WHEN TO APPLY A LIMITED EXCEPTION TO THE RULE FORBIDDING INTERRUPTION TO PUBLIC SPEAKERS.
2. EXPLAIN THE SUPERVISOR'S RESPONSIBILITIES FOR ASSEMBLY/PROTEST PLANNING AND RESPONSE.
3. IDENTIFY THE COMPONENTS OF AN INCIDENT ACTION PLAN (IAP).



PUBLIC SPEAKERS



When can you interrupt them?



PUBLIC SPEAKERS

Only the highest ranking member on the scene may interrupt or restrict speech.

- ***No public speech may be interrupted except on the say-so of the highest ranking officer on the scene.***
- ***The circumstances under which supervisors may interrupt speech are extremely limited, restricted to situations in which speakers are saying things that incite or advocate imminent violence.***
- ***If the highest ranking member does interrupt or restrict speech, they must use the least restrictive means possible and only do it after all other alternatives to interruption or restriction are exhausted. (See Policy 804, Prohibited Actions, Paragraph 7).***

PUBLIC SPEAKERS

BPD members may not interrupt a speaker, except in the following limited circumstances:

- The speech incites imminent unlawful violent action; or
- The speech is likely to provoke the audience to use force or threaten imminent force against the speaker; or
- The speech is a true threat.



LET'S REVIEW A FEW KEY DEFINITIONS FROM POLICY 804



Inciting Imminent Unlawful Action

Urging others to engage in criminal activity that will occur immediately. Inciting imminent unlawful action does not include urging others to engage in criminal activity that might occur at some point in the future; it only includes criminal activity that is about to happen.

True Threats

Statements that threaten or intimidate, when the speaker communicates a serious intent to commit an act of unlawful violence or harm to a particular person or group of persons and those persons are aware of or are present to observe the communication.



WHEN CAN POLICE INTERRUPT A SPEAKER FOR INCITING “IMMINENT UNLAWFUL ACTION”?

Only when ALL THREE of these conditions are met:

1. The speech threatens or encourages imminent unlawful violent action or destruction of property; and
2. The speech has a substantial likelihood of producing imminent unlawful violent action or destruction of property; and
3. The speech clearly and objectively directs at least one other person to engage in imminent unlawful violent action.

DOES THESE TYPES OF SPEECH INCITE IMMINENT UNLAWFUL ACTION?

- ❖ Insults, profanity, obscene gestures, criticism of police.
- ❖ Calling for violent action in the future.

NO: these types of speech are protected, and the speaker cannot be arrested for them.



WHEN CAN POLICE INTERRUPT A SPEAKER FOR PROVOKING THE AUDIENCE TO RETALIATE AGAINST THEM?



- Only when the speech provokes violence or the threat of imminent violence against the speaker; AND
- Only after making reasonable efforts to control the crowd and protect the speaker.

WHEN CAN POLICE INTERRUPT A SPEAKER FOR MAKING 'TRUE THREATS'?

Only when the speech threatens imminent violent action against a specific person or group aware of the threat.





Let's review some examples of when or when not to interrupt a speaker.

Review the historical statements carefully and decide if they meet the requirements to warrant the highest ranking member on-scene to order interruption of the speaker.

SPEAKER STATEMENTS

DEMONSTRATORS MARCHING THROUGH THE STREETS OF WASHINGTON DC AT THE 1963 MARCH ON WASHINGTON FOR JOBS AND FREEDOM, SINGING WE "SHALL OVER COME" (WASHINGTON DC AUGUST 28, 1963).

Does the song "We Shall Overcome" qualify as a statement to incite imminent unlawful violent action? Yes or No?



No

SPEAKER STATEMENTS

“IF WE CATCH ANY OF YOU GOING IN ANY OF THEM RACIST STORES, WE'RE GONNA BREAK YOUR DAMN NECK” (CHARLES EVERS *SPEECH 1966: NAACP v CLAIBORNE*).

Does this statement incite imminent unlawful violent action? Yes or No?

NO. *See next slide for explanation.*

EXPLANATION

“IF WE CATCH ANY OF YOU GOING IN ANY OF THEM RACIST STORES, WE'RE GONNA BREAK YOUR DAMN NECK” (CHARLES EVERS *SPEECH 1966: NAACP V CLAIBORNE*).

Does this statement incite imminent unlawful violent action? No

Answer Explained:

The circumstances surrounding the remarks in this case were relevant to its outcome. There was no prior record of violence against the boycott breakers and no indication of imminent violence. The situation could have been different if, for example, there was a mob with weapons demonstrating in front of the home of a family believed to be unsympathetic to the boycott and if the boycott leader uttered those same words.

SPEAKER STATEMENTS

“I HAVE ALREADY RECEIVED MY DRAFT CLASSIFICATION AS 1-A AND I HAVE GOT TO REPORT FOR MY PHYSICAL THIS MONDAY COMING. I AM NOT GOING. IF THEY EVER MAKE ME CARRY A RIFLE THE FIRST MAN I WANT TO GET IN MY SIGHTS IS L.B.J ... THEY ARE NOT GOING TO MAKE ME KILL MY BLACK BROTHERS.” (*WATTS V. UNITED STATES*).

Is this statement a “true threat”? Yes or No?

NO

EXPLANATION

“IF THEY EVER MAKE ME CARRY A RIFLE THE FIRST MAN I WANT TO GET IN MY SIGHTS IS L.B.J ... THEY ARE NOT GOING TO MAKE ME KILL MY BLACK BROTHERS.”

- Watts’s speech was made in the context of a discussion group about police brutality. It was at most a crude statement of political opposition to the President and did not amount to a threat.
- “The language of the political arena, like the language used in labor disputes, is often vituperative, abusive, and inexact.”
Watts v. United States.

ASSEMBLIES

UNLAWFUL



(click the links)

<https://www.youtube.com/watch?v=h72UiliGkvk>

LAWFUL



https://www.youtube.com/embed/_bySlyfhl_4

BALTIMORE CIVIL UNREST APRIL 2015

Three different after action reviews--by the Police Executive Research Forum, BPD FOP Lodge 3, and Johns Hopkins--found the following shortcomings in BPD's response to the unrest following the death of Freddie Gray:

- Planning for the 2015 civil unrest in Baltimore was inadequate.
- For approximately a week before the protests on April 25, BPD had been developing intelligence that protests were being planned. But BPD did not have an actual Incident Action Plan (IAP) in place for the planned protests that began on April 25.
- Direction was inadequate. Instructions to officers were unclear, indecisive, and/or conflicting throughout the riots.

BALTIMORE CIVIL UNREST APRIL 2015 (CONT.)

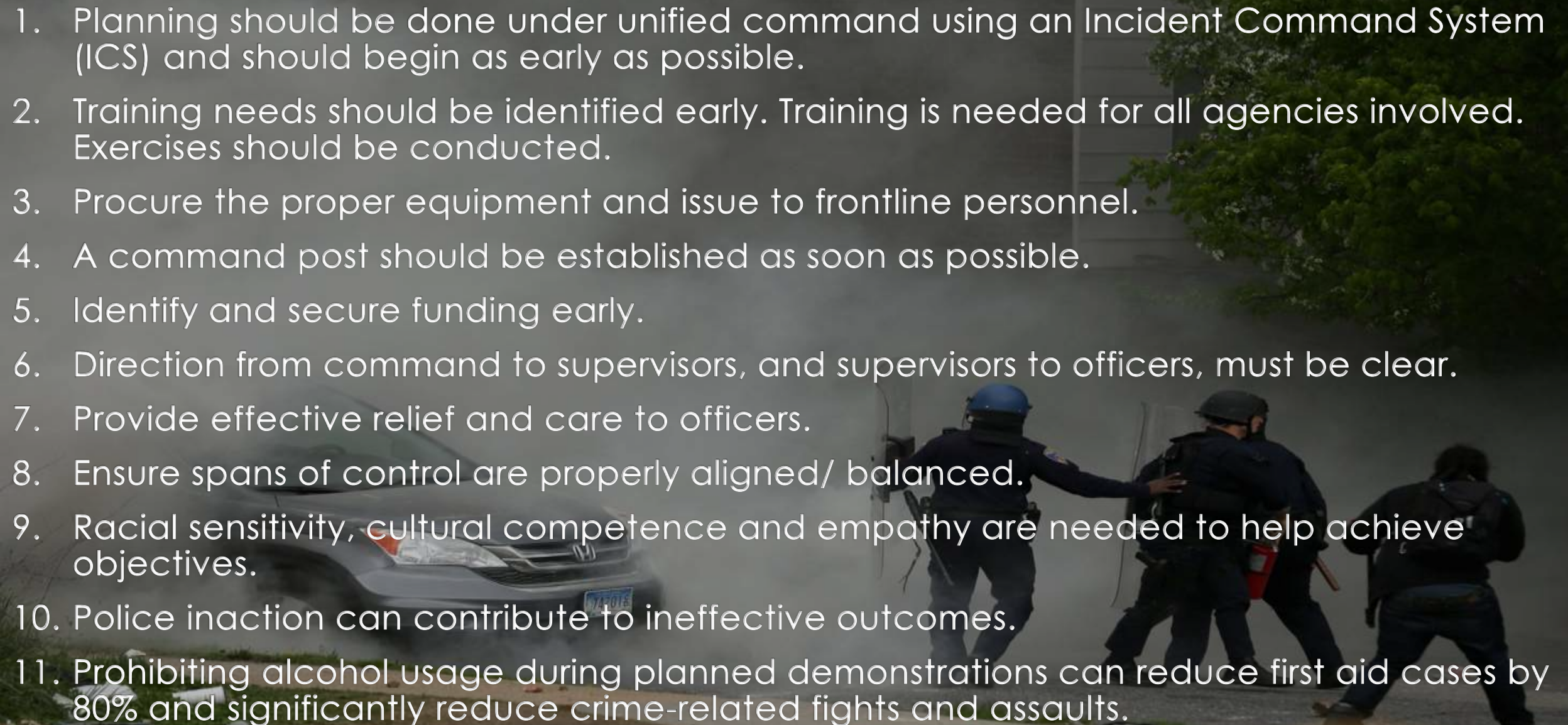
- Concerns regarding the uncertainty about the role of the EOC and location of Incident Command contributed to ad hoc communication and collaboration.
- There were unclear reporting structures among BPD personnel deployed in the field, with no clear chain of command or unity of command. Supervision and direction often defaulted to the highest ranking or most forthcoming officer on the scene, which at times varied rapidly from moment to moment.
- Supervisory personnel did not have a clear span of control in identifying which personnel they were supervising.
- Officer relief and care were inadequate.

IMPORTANCE OF LESSONS LEARNED

- It is important to study and learn from responses to past First Amendment Assemblies, including those that turned into Civil Disturbances.
- We can enhance our future ability to protect First Amendment freedoms while preventing or mitigating the potential negative impact of Civil Disturbances by understanding:
 - Tactics used by law enforcement and protesters.
 - Effects of planning and training.
 - Reasons why a First Amendment Assembly turned into a Civil Disturbance.



SUMMARY OF LESSONS LEARNED FROM THE PAST CIVIL DISTURBANCES

1. Planning should be done under unified command using an Incident Command System (ICS) and should begin as early as possible.
 2. Training needs should be identified early. Training is needed for all agencies involved. Exercises should be conducted.
 3. Procure the proper equipment and issue to frontline personnel.
 4. A command post should be established as soon as possible.
 5. Identify and secure funding early.
 6. Direction from command to supervisors, and supervisors to officers, must be clear.
 7. Provide effective relief and care to officers.
 8. Ensure spans of control are properly aligned/ balanced.
 9. Racial sensitivity, cultural competence and empathy are needed to help achieve objectives.
 10. Police inaction can contribute to ineffective outcomes.
 11. Prohibiting alcohol usage during planned demonstrations can reduce first aid cases by 80% and significantly reduce crime-related fights and assaults.
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- A background image showing police officers in riot gear, including helmets and shields, during a civil disturbance. A silver car is visible on the left, and a large tree is on the right. The scene is filled with smoke or tear gas.

LET'S REVIEW A FEW KEY DEFINITIONS FROM POLICY 804

First Amendment Assembly/ Demonstrations

An assembly of persons engaging in First Amendment protected activity. These may be scheduled events that allow for law enforcement planning, but also may include spontaneous gatherings. They include, but are not limited to, marches, protests, and other assemblies.



Civil Disturbance/ Unrest

A breach of the peace by gathering of persons where there is a threat of collective violence, destruction of property, or other unlawful acts. Such a gathering may also be referred to as a riot or unlawful assembly.

UNLAWFUL ASSEMBLIES

1. Declaring assemblies unlawful should be rare—only when they become or threaten to imminently become a **Civil Disturbance**.
2. Only a Major or above may declare assembly unlawful; must be based on threat to public safety (collective violence or property destruction); must later document in writing.
3. Dispersal orders may be given by Lt. or above only after assembly is declared unlawful and, absent exigency, after trying to communicate with leaders and participants; must be documented later.
4. To give fair opportunity for dispersal, orders must be audible and given three times by a supervisor before dispersal may begin.

UNLAWFUL ASSEMBLIES (CONT.)

5. **No force** unless imminent threat to officer safety or others.
6. **Supervisors must approve any arrest** for refusal to disperse or other nonviolent protest activity; arrests may be made without supervisory approval only for observed crimes that harm or pose imminent harm to persons or property.
7. **Individualized PC** of a crime required to arrest; no arrests based only on association with protest or other protesters who commit crimes.
8. If dispersed but later reconvened elsewhere, reassessment required; no automatic re-dispersal.

COMMAND RESPONSE TO AN ASSEMBLY

**PROTECT, OBSERVE,
APPROVE, AND
DOCUMENT**

- Ensure that subordinates **protect** protesters, including all speakers.
- Confirm any threats to public safety by **observing** behavior in real time, reviewing available BWC footage and/or other video sources; when an assembly becomes a threat to public safety, record and forward up the chain of command immediately for determination of whether assembly is unlawful.
- **Commanders who give a dispersal order must allow time and an avenue of egress.**
- **Approve** or disapprove citations/arrests for failure to comply with dispersal orders and any other non-violent crime.
- **Document** any declaration that an assembly is unlawful, and any dispersal orders, in writing.



Protection – Continuously assess how best to protect protestors and the public, which may include: redirecting traffic, separating counter-protestors, and identifying the protester liaison to enable easy communication with protesters. *See Policy 804 for other details.*



Communication – Provide situation reports to superiors, assembly leaders, safety officer, and work to cooperate with persons seeking to exercise their first amendment rights by consulting with stakeholders and/or asking that the organizers designate a liaison.



Coordination – The effective coordination of internal and external resources among members and partner organizations during protect activity is critical to achieving goals of protecting 1st Amendment freedoms and preserving public safety. Ineffective coordination was cited as a key BPD failure during the 2015 Baltimore riots.



Monitoring – Ensure compliance with IAP; deploy wellness personnel; document and archive elements of unlawfulness to include BWC footage.



Equipment – Inspect and ensure proper functioning, deployment, storage and control of all equipment.

SUPERVISOR PRIORITIES *FOR* *ASSEMBLIES*

Incident Action Plan (IAP) Refresher:

Planning for Demonstrations and Possible Unrest Arising from First Amendment Activity



Planning is the most important step in preparing for an operation. An IAP shall be developed by the Incident Commander or designee prior to all known significant pre-planned or anticipated public protests or assemblies (more than 50 anticipated participants). Preparation of an IAP includes:

Writing the rules of engagement into the operational plan to give the responding officers guidance during an event.

- Rules of engagement will also provide a proper course of action for line supervisors and commanders to follow.
- When training officers on weapons systems, make sure training corresponds to the agency's policies on use of force.
- Establishing clear guidelines on when the weapons systems are authorized for use.
- Most importantly, train only the most competent personnel in the use of high-powered weapons systems.

How to Prepare for an assembly/ demonstration?

IMPORTANT NOTE:

- As a refresher, in the slides to come, we will review the very basics for preparing an IAP. Please refer to Policy 804 for more details after this refresher.

As outlined in the Incident Command System, all IAPs must answer the following four questions:

- What do we want to do?
- Who is responsible for doing it?
- How do we communicate with each other?
- What is the procedure if someone is injured?



How to Prepare for an assembly/ demonstration?



The IAP developed for significant pre-planned or anticipated public protests or assemblies shall include the following:

- An effective traffic control plan for streets and sidewalks;
- A protocol for the role of Safety Officer, including health and safety guidance during pre-deployment briefings;
- To the extent possible, a plan for public information sharing before, during and after significant public assemblies.

PREPARING FOR AN ASSEMBLY

Designate appropriate personnel

- SAFETY OFFICER
- PUBLIC INFORMATION OFFICER
- PRIMARY POLICE LIASION
- SCRIBE

As a reminder, the highest-ranking member at the scene is always the incident commander until relieved.

SAFETY OFFICER RESPONSIBILITY

- Health and safety guidance during pre-deployment briefings;
- Ensuring the availability of mental health and medical professional(s) to provide health care to members;
- Ensuring the close monitoring and periodic affirmative checks of members' wellbeing by supervisors;
- Close monitoring of member fatigue and indications of stressors;
- During prolonged periods of demonstrations or unrest, the deployment of police counselors or psychologists to provide individual counseling to members and their family members.

PUBLIC INFORMATION OFFICER RESPONSIBILITY

To the extent possible, establish a plan for public information sharing before, during and after significant public assemblies.

Keep stakeholders, responders, and the public informed of on-going activities and potential impact of disruptions

Sample Incident Action Plan (IAP)

Basic forms of the *Incident Command System* (ICS), used by BPD to develop IAPs, include:



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FEMA ICS Forms

- **ICS Forms**
- 201 Incident Brief (includes Org Chart & Resource Summary)
- 202 Action Plan & Objectives
- 203 Org Assignment List
- 204 Tactical Assignment List
- 205 Comm Plan & Radio Frequencies
- 205A Phone List
- 206 Medical Plan
- 207 Incident Org Chart
- 209 Situation Summary
- 209A Sit Status Report (SitRep)
- 211 Check-In List (Resource Check-In)
- 213 General Message
- 214A Individual Log (Journal)
- 215 Ops Planning Worksheet (Resource Requirements)

UNCLASSIFIED



Sample Incident Action Plan (IAP)







IMPORTANT NOTE The sample IAP that follows is intended **only** as a general guide to developing a workable IAP and is not all encompassing. Examples illustrate some, but not all, of the IAP components.



Sample Incident Action Plan (IAP)

ICS Form 201: Incident Briefing

IAPs ensure that BPD commanders provide consistent information to officers across the department who may be involved in responding to the incident. The IAP should brief officers on the who, what, when, where and why so everyone knows what to expect.



 Incident Command Form 201 Incident Briefing 	
1. Incident Name: Halloween	2. Date/Time Initiated: 10/31/20
3. Map/Sketch	
	
	
4. Situation Summary (for briefing or transfer Command)	
<p>On Saturday, October 31, 2020, the Southeastern District and Southern District will expect large crowds to gather in the Fell's Point and Federal Hill Area for Halloween Celebrations. Attendance is unknown at this time, due to COVID-19 pre-cautions. Central District will also be provided additional resources for evening/night time coverage of the downtown areas.</p>	
5. Prepared by: Sgt. KC Zellars - Special Events Unit	Signature: <i>Sgt. KC Zellars</i>
ICS Form 201, Page 1	Date/Time: October 22, 2020

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Sample Incident Action Plan (IAP)

ICS Form 201: Incident Briefing

Setting goals and objectives in the IAP is necessary for transparency, and ensures that any competing strategies or objectives are identified and reconciled at the command level.



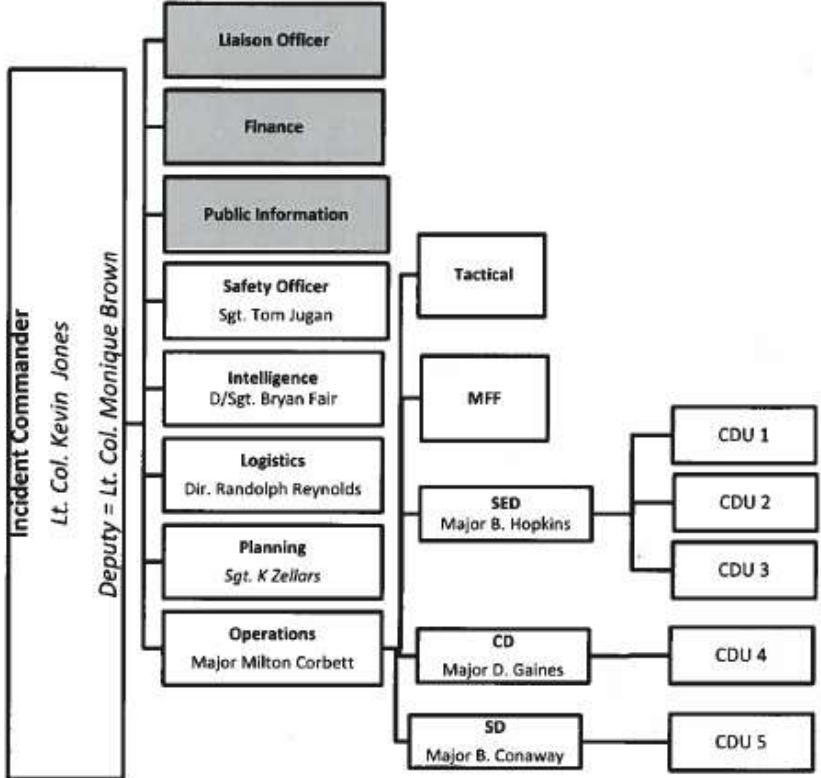
 Incident Command Form 201 Incident Briefing 	
1. Incident Name: Halloween	2. Date/Time Initiated: 10/31/20
6. Current and Planning Objectives <ul style="list-style-type: none">1. Provide for the safety of responders and citizens (traffic and pedestrian) for the duration of the events.2. Maintain a functional emergency response system with a coordinated communications plan.3. Plan sufficient resources within the perimeter of the events in order to manage issues without impacting resources outside of the events.4. Establish perimeter control as necessitated for each event.5. Quickly identify, isolate, and eliminate threats to the public or disruptions to the events.6. Provide a rapid response for immediate and on-going life, health, and safety needs.7. Maintain normal public safety services and other city services during these events.8. Maintain high police visibility throughout the event areas.9. Maintain vigilance in the event footprint (all employees).10. Provide for the wellbeing of all employees.11. Keep stakeholders, responders, and the public informed of on-going activities and potential impact of disruptions.12. Ensure that there are sufficient resources to provide for EMS and fire suppression services without impacting resources outside of the event area. Ensure that these resources are staged appropriately for response.13. Ensure that detailed traffic plans have been developed and reviewed by law enforcement to promote minimal traffic disruption. Ensure that adequate resources are staged and prepared for response at the request of law enforcement.14. Return all impacted areas to normal operations upon conclusion of the events as quickly as possible.	
7. Current and Planned Actions, Strategies, and Tactics:	
Time:	Action:
18:00	CDU 1 - SED
19:00	SED CDU 2-3 Roll Call
19:00	CD CDU 4 Roll Call CD
19:00	SD CDU 5 Roll Call SD
2:00	Bars Close Citywide
5. Prepared by: Sgt. KC Zellars - Special Events Unit Signature: <i>Sgt. KC Zellars</i>	
ICS Form 201, Page 2	Date/Time: October 22, 2020

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Sample Incident Action Plan (IAP)

ICS Form 201: Incident Briefing

The IAP also provides transparency about role clarity and hierarchy.



 Incident Command Form 201 Incident Briefing 	
1. Incident Name: Halloween	2. Date/Time Initiated: 10/31/20
8. Current Organization	
 <pre>graph LR; IC[Incident Commander Lt. Col. Kevin Jones Deputy = Lt. Col. Monique Brown]; LO[Liaison Officer]; F[Finance]; PI[Public Information]; SO[Safety Officer Sgt. Tom Jugan]; I[Intelligence D/Sgt. Bryan Fair]; L[Logistics Dir. Randolph Reynolds]; P[Planning Sgt. K Zellars]; O[Operations Major Milton Corbett]; T[Tactical]; MFF[MFF]; SED[SED Major B. Hopkins]; CD[CD Major D. Gaines]; SD[SD Major B. Conaway]; CDU1[CDU 1]; CDU2[CDU 2]; CDU3[CDU 3]; CDU4[CDU 4]; CDU5[CDU 5]; IC --- LO; IC --- F; IC --- PI; IC --- SO; IC --- I; IC --- L; IC --- P; IC --- O; SO --- T; SO --- MFF; SED --- CDU1; SED --- CDU2; SED --- CDU3; CD --- CDU4; SD --- CDU5;</pre>	
5. Prepared by: Sgt. KC Zellars - Special Events Unit	Signature: <i>Sgt. KC Zellars</i>
ICS Form 201, Page 3A	Date/Time: October 22, 2020

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Sample Incident Action Plan (IAP)

ICS Form 203: Org Assignment List



The Organization Assignment List specifies which personnel are assigned to which ICS functions.

		Incident Command Form 203 Organization Assignment List			
1. Incident Name: Halloween		2. Operational Period: Date From: 10/31/20 Date To: 11/1/20 Time From: 1800hrs Time To: Clear			
3. Incident Commander(s) and Command Staff		8. Operations Section			
I/C(s)	Lt. Col. K. Jones	Chief	Major Milton Corbett		
Deputy	Lt. Col. M. Brown	Fell Points			
Safety Officer	Sgt. Tom Jugan	MFF			
Public Info Officer		Tactical			
Liaison Officer		Branch	Southeastern District		
		Branch Director	Capt. B. Hopkins		
Command Post		CDU 1	Lt. Habib Kim		
4. Agency/ Organization Representatives:		CDU 2	Lt. Joanne Wallace		
OEM		CDU 3	Lt. Jodie McFadden		
Fire Dept.		Branch	Central		
Dept. of Trans.		Branch Director	Major D. Gaines		
MTA PD		CDU 4	Lt. Daniel Popp		
5. Planning Section:		Branch	Southern District		
Chief	Sgt. KC Zellars	Branch Director	Major B. Conaway		
Deputy		CDU 5	Lt. David Breault		
6. Logistics Section:					
Chief	Dir. R. Randolph				
Deputy					
Communication					
Hard Barrier					
Deputy					
7. Intelligence Section		9. Finance/Administration Section			
Chief	D/Sgt. B. Fair	Chief			
Deputy		Deputy			
		Proc. Unit			
		Claims Unit			
		Cost Unit			
7. Prepared by: Sgt. KC Zellars		Signature: Sgt. K.C. Zellars			
ICS Form 203A		Date/Time: October 22, 2020			

Sample Incident Action Plan (IAP)

ICS Form 204: Tactical Assignment List

The tactical assignment list ensures that involved supervisors can easily identify their counterparts and quickly communicate as necessary.



		Incident Command Form 204 Assignment List			
1. Incident Name: Halloween		2. Operational Period: Date From: 10/31/20 Date To: 11/1/20 Time From: 1800hrs Time To: Clear			
3. Assignment Identifier		4. Operations Personnel			
Branch	Operations	Section Chief	Major Milton Corbett		
Division	SED				
Check In	BPD/SED Parking Lot	Branch Director	Major Brian Hopkins		
Staging Area	<TBD>	Dic. Supervisor			
5. Resource Assignment					
Resource Identifier	Leader	# of Person	Contact Method	Remarks	
CDU 1	Lt. Habib Kim	17	11A	1800hrs x Clear	
Canton	Lt. Valencia Carter	8	11A	1800hrs x Clear	
CDU 2	Lt. Joanne Wallace	22	11A	1900hrs x Clear	
CDU 3	Lt. Jodie McFadden	25	11A	1900hrs x Clear	
6. Work Assignment					
1. Respond to roll call BPD/SED Parking Lot . Upon conclusion of roll call, personnel will deploy in vans to assigned areas. Supervisors should have marked vehicles					
7. Special Instructions					
1. Have available all issued civil disturbance equipment, shields, and PPE equipment if issued or trained.					
2. Have issued reflective vest and whistle.					
3. A physical inspection of all members and their assigned equipment shall be conducted prior to deployment for the operational period.					
4. Be prepared to re-deploy upon order of Field Commander and/or designee.					
5. Report any injuries to personnel to the EOC. Ensure proper documentation of incident.					
8. Communication					
Name	Functions	Radio Channel	Phone		
	Event Channel	BPD 11A			
	Supervisor Lateral	BPD 11C			
5. Prepared by: Sgt. KC Zellars - Special Events Unit		Signature:		Sgt. KC Zellars	
ICS Form 204		Date/Time:		October 22, 2020	

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Sample Incident Action Plan (IAP)

ICS Form 205: Communication Plan

Identifying and allocating radio channels helps ensure effective communication among field units and command.

		Incident Command Form 205 Communication Plan				
1. Incident Name: Halloween		2. Date Prepared: 10/31/20		3. Operational Period: Date From: 10/31/20 Time From: 1900hrs Date To: 11/01/20 Time To: Clear		
4. Basic Radio Channel Use						
Group	Channel #	Function	Name	Assignment	Freq.	Remarks
A	11A	Operations	TAC 2	LE	800 MHz	Detail Operations
A	11C	Supervisor	SPE 2	LE	800 MHz	Emergency Channel
	1A	BPD Central	CD	Central District Channel	800 MHz	Regular District Functions
	9A	BPD Southern	SD	Southern District Channel	800 MHz	Regular District Functions
	12A	BPD Citywide	CW1	BPD Citywide	800 MHz	General Function
5. Special Instructions - Tactical Units will also monitor BPD Citywide 12A						
5. Prepared by: < Communications Unit Leader >				Signature:		
ICS Form 205				Date/Time: October 22, 2020		

ICS Form 214: Activity Log

The Activity Log serves as a record of actions taken by ICS personnel. Commanders can review these logs for situational awareness. Also, the logs provide important information for after-action review.

[illegible]

QUESTIONS OR CONCERNS?

EMAIL:

INSERVICETRAINING@BALTIMOREPOLICE.ORG

