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SUBJECT: Police Policy Working Group to Present Protective Gear Policy to DPD at Public Meeting

BY: Kate Van Daele, Public Information Officer

Police Policy Working Group to Present Protective Gear Policy to DPD at Public Meeting

[Duluth, MN] After 10 months of 12 meetings, and over 30 hours of discussion, the Duluth Police Policy Working Group is ready to give their protective gear policy to the Duluth Police Department. The group will formally present the policy to Duluth Police Chief Mike Tusken at a public meeting on February 3 at Denfeld High School at 6:00 p.m. The public meeting is an opportunity to visit with those who crafted the policy, ask questions, and gain familiarity with the policy. All are welcome to attend.

“The Duluth Police Department has a history of including the public in crafting policies. Each time, we end up with a better product and the protective gear policy is no different,” said Duluth Police Chief Mike Tusken. “I want to show my gratitude for the organizations and citizens who put many hours of their personal time in helping us create a policy that helps us be a better police department for our community.”

This community-led process consisted of 20 core members of the community that included representatives from the Duluth Citizen Review Board, Duluth NAACP, Homeless Persons Bill of Rights, Indigenous Commission, and Showing Up for Racial Justice (SURJ). Working group meetings created goals that met the needs of those that were involved, which included both the public and the police department, researched similar policies from across the country, in addition to exploring scenarios where using the gear would be a possibility. By the end of the ten-month process, the group created a policy that includes oversight and accountability for the use of the gear.

“We made it happen regardless of how long it took. This is a proud moment for me and the committee,” said Archie Davis, President of the Duluth Citizen Review Board.

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Policy Text:

POLICY 432

Duluth Police Department

Duluth PD Policy Manual Final Draft

Crowd Management and Control

432.1 Purpose and Scope

The Duluth Police Department (“Department”) respects the rights to freedom of speech and assembly established in both the United States and Minnesota Constitutions.

The First Amendment of the United States Constitution states:

“Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of people to peaceably assemble, and to petition the Government for a redress of grievances.”

The Constitution of the State of Minnesota, Article I, Section 3, states:

“The liberty of the press shall forever remain inviolate, and all persons may freely speak, write and publish their sentiments on all subjects, being responsible for the abuse of such right.”

The purpose of this policy is to establish guidelines for managing crowds and preserving the peace during lawful events/assemblies and unlawful civil disturbances while respecting the rights, lives, and safety of all individuals.

432.2 Policy

The Duluth Police Department respects the rights of people to peaceably assemble. The Department recognizes its response to both lawful and unlawful assemblies has a role in determining how these events evolve. It is the policy of the 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. The Department will strive to effectively manage crowds during demonstrations and civil disturbances to prevent loss of life, personal injury, or property damage and minimize disruption to persons who are uninvolved. The Department will employ only objectively reasonable crowd management and/or crowd control tactics with the intent to de-escalate the situation. Officers encountering such incidents shall adhere to this policy to protect all lives, property and the exercise of freedom of speech rights regardless of race, color, creed, religion, national origin or ancestry, sex, marital status, familial status, disability, public assistance status, age, sexual orientation, local human rights commission activity, physical or mental disability, veteran status, genetic information, citizenship, gender identity, political affiliation, or socioeconomic status. (See Department Policy 401 Racial/Bias Based Profiling.)

432.3 Definitions

Civil Disturbance. A gathering that constitutes a breach of the peace or any assembly of persons where there is a credible 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:

1. **Unlawful Assembly. (Minnesota Statute 609.705).** When three or more persons assemble with the intent to commit any unlawful act by force; or with intent to carry out any purpose in such manner as will disturb or threaten the public peace; or without unlawful purpose, but the participants so conduct themselves in a disorderly manner as to disturb or threaten the public peace.
2. **Riot. (Minnesota Statute 609.71).** When three or more persons assembled disturb the public peace by an intentional act or threat of unlawful force or violence to a person or property.

Crowd Control. Techniques used to address civil disturbances, which may include police presence, crowd containment, crowd dispersal, and preparations for handling multiple arrests.

Crowd Control Protective Equipment. Worn in conjunction with the officer's standard equipment and includes the following:

- Ballistic helmet
- Clear face shield
- Chest protector with shoulder pads – a chest protector with “Duluth Police” on the front and back, and a white number on the left shoulder
- Groin and thigh protector
- Knee/shin/foot protector (one piece)
- Elbow pads – plastic over foam
- Forearm pads
- Clear shield
- 36-inch crowd control baton
- Body cameras mounted on the right shoulder

Crowd Management. Techniques used to manage lawful assemblies before, during and after the event for the purpose of maintaining their lawful status through event planning, pre-event contact with group leaders, issuance of permits when applicable, information gathering, personnel training, and other means.

Demonstration. A lawful assembly of persons organized primarily to engage in First Amendment activity. These may or may not be scheduled events that may or may not allow for law enforcement planning. They include, but are not limited to, marches, protests, and other assemblies.

Nonviolent Civil Disobedience. An unlawful assembly of persons organized to nonviolently engage in First Amendment activity.

Spontaneous Events. A public assembly which is not anticipated and for which the Department does not have adequate time to develop an operational plan or otherwise prepare for the event. A spontaneous event may or may not be lawful or may or may not create a risk to public safety and peace or damage to property.

432.4 General Considerations.

The plan outlined in this policy has operational flexibility, as it is impossible to create a policy to address all possible situations. The Department needs to be prepared to respond to both planned and spontaneous events. The attitudes necessary for managing crowds and civil disturbances include moderation, flexibility, controlled response, and professionalism. The listed procedures are a guide and not a substitute to sound judgement, proper command decision-making, and the desire of the Department to resolve civil disturbances in a peaceful fashion.

Law Enforcement personnel from other agencies, who respond to an event via mutual aid request, will only be used for purposes of crowd management and crowd control when the Department lacks sufficient personnel.

The primary objectives of the Department at a civil disturbance will be to:

- Protect persons, regardless of their participation in the disturbance
- Protect property in an equitable fashion that prioritizes the public wellbeing
- Disperse crowds that are disorderly or pose a credible threat of collective violence, destruction of property, or other unlawful acts in order to restore peace and order.
- Identify, remove, arrest and/or isolate persons inciting violent behavior.
- Ensure individuals can legally exercise their First Amendment rights.

The following restrictions and limitations on the use of force shall be observed during demonstrations and civil disturbances:

- Canine units shall not be deployed for crowd control. (Canines may be on scene for other purposes such as tracking or bomb detection. See Canine policy #308 for further information.)
- Water cannons shall not be utilized in crowd control.
- Motor vehicles of any kind may be used to surround and direct persons as appropriate, but shall not intentionally be brought into contact with them.
- Impact projectiles shall be used only for the purpose of restraint or arrest of actively resistant individuals and only when the individual can be accurately targeted. Impact projectiles shall not be fired indiscriminately into crowds.
- OC spray or forms of tear gas shall not be used indiscriminately against groups of people where bystanders would be unreasonably affected, or against passively resistant individuals.
- Electronic Control Weapons (ECWs) shall be used only for the purpose of restraint or arrest of actively resistant individuals and only when the individual can be accurately targeted. ECWs shall not be fired indiscriminately into crowds.
- Firearms shall not be used for crowd control. Fully automatic weapons shall not be deployed by DPD in the vicinity of a crowd control situation.
- Electronic jamming devices or equipment shall not be used for crowd control.
- Long-range acoustic devices or sound cannons shall not be used for crowd control.
- Crowd Control Protective Equipment shall only be used for its intended purpose.

The Department will avoid making mass arrests unless necessary.

When worn, Crowd Control Protective Equipment shall be worn in conjunction with the officer's standard equipment unless otherwise approved by the chief or designee.

432.5 Allocation of Police Personnel

Police personnel will generally be allocated on a tiered response:

Level One (1) – No police response required

Level Two (2) – Uniformed police presence by invitation and/or for observation only

Level Three (3) – Appropriate uniformed police response to ensure public safety

Level Four (4) – Crowd Control Protective Equipment response. Equipment donned to include staging or deployment due to credible threat of civil disturbance involving potential violence to persons or property.

The Chief, or designee (See Organizational Structure policy #200), will decide the appropriate police response to both planned and spontaneous events up to and including level three (3). The Chief, or acting chief, will decide on level four (4). The Department will continuously reevaluate the situation for appropriate response.

Information to be evaluated in making a decision regarding level of response (1 – 4) includes, but is not limited to:

- Number of participants
- Anticipated participants Anticipated counter demonstrations
- Credible threat information (threat to public safety)
- History of this demonstration and participants
- Communications with event organizers (identifying needs)
- Location of event
- Date and time of event

-Other events taking place at the same time

After Action Reports:

The Citizen's Review Board shall be notified as soon as possible that a level 4 response has taken place. Subject to the Minnesota Government Data Practices Act (Minnesota Statutes, Chapter 13) and other applicable law, the following information shall be provided to the Citizen Review Board as soon as possible but not longer than 30 days following a level four (4) response to a planned or unplanned/spontaneous even. In addition, the same information shall be provided when any force used is greater than handcuffing a cooperative person in accordance with current use of force reporting requirements.

-Threat assessment narrative/rationale

-Number of officers deployed

-Equipment utilized

-Number of arrests and citations

-De-escalation techniques utilized

-Use of force Incidents Was it used/why Progression of use of force Type of force Demographics Injuries to civilians and officers Property damage Outcomes (crowd dispersal) Complaints regarding police response Lessons learned

432.6 Planned Event Preparation

The Department routinely evaluates planned, public events in order to ensure public safety. This may include:

-Outreach to group organizers or leaders.

-Consideration of the potential time, duration, scope and type of planned activities.

-Consideration of any other information related to the goal of ensuring public safety and the peaceful demonstration of First Amendment rights.

Information will be obtained in a lawful manner and decision making shall not be based on the expressive content of the assembly or demonstration or the participant's race, color, creed, religion, national origin or ancestry, sex, marital status, familial status, disability, public assistance status, age, sexual orientation, local human rights commission activity, physical or mental disability, veteran status, genetic information, citizenship, gender identity, political affiliation, or socioeconomic status. (See Department Policy 401 Racial/Bias Based Profiling.)

432.6.1 Planned Event Operational Plans

The City of Duluth may impose reasonable restrictions on the time, place and manner in which persons engage in First Amendment activity. Based on the preparation information gathered on a planned event, the Department may develop an operational plan for police resources to ensure public safety. For planned events that require a level three (3) or level four (4) police response, the Department shall prepare an Incident Action Plan. The Incident Action Plan will include information describing the event to ensure accurate assignment of personnel and resources. The operational plan may include, but not be limited to:

-Type of event

-Date and time of event

-Location

-Permits issued

-Other planned, large-scale events taking place at the same time

-Number of participants

-Anticipated opposition to event if any

-Assembly areas and movement routes

-Anticipated actions, activities, or tactics including use of demonstrator devices designed to thwart arrest (for example dragon sleeves)

-Critical infrastructures in proximity to event

-Other agencies notified (for example fire and EMS)

-Mutual aid requested

-Off-duty personnel required

-History of conduct at similar past events

-Group leader cooperation level

The Incident Action Plan shall address provisions necessary for the effective utilization of resources and equipment such as:

-Command assignments and responsibilities

- Personnel, unit structure and deployment
- Liaison with demonstration leaders and impacted community stakeholders
- Liaison with outside agencies
- Release of information to the news media
- Transportation, support, and relief of personnel
- Staging areas for additional resources and equipment
- Traffic management
- Demonstrator devices, extrication teams, and equipment
- First aid stations established in coordination with emergency medical service providers
- Transportation of arrestees
- Arrestee detention areas

432.7 Spontaneous/Unplanned Events

Unless, in the officer's discretion, there is a need for immediate intervention, the first officer on scene at an unplanned or spontaneous event shall contact a supervisor and communicate as much of the following available information as possible:

- Location
- Number of participants
- Apparent purpose of the event
- Event leadership if necessary
- Any initial indicators of unlawful or disruptive activity
- Indicators that lawful use of public facilities, streets or walkways will be impacted
- Ability or need to continue monitoring the incident

The supervisor shall conduct an assessment of the event and determine the appropriate response to ensure the spontaneous event remains peaceful and protect the rights, lives, safety, and property of all individuals.

432.8 Unlawful Assembly Dispersal

Upon a determination by the Chief, or designee, that public safety is at risk or an assembly is deemed to be unlawful, a civil disturbance, or a riot, the crowd may be disbursed. Before ordering forced dispersal, lesser alternatives will be considered, and where possible or practical, implemented. These lesser alternatives include:

- Establish contact with crowd leaders to assess their intentions and motivations, and develop a mutually acceptable plan for de-escalation and dispersal.
- Communicate to participants that their assembly is in violation of the law and that the Department wishes to resolve the incident peacefully, but that acts of violence will be dealt with swiftly and decisively.
- Negotiate with crowd leaders for voluntary dispersal, or target specific violent or disruptive individuals for arrest.

When the Chief or designee makes a determination that forced crowd dispersal is the only alternative, and where time and circumstances permit, a warning shall be given prior to any action to disperse the crowd. The warning shall consist of:

1. An announcement citing the offenses and violations being committed;
2. An order to disperse;
3. Designated dispersal routes;
4. Information about what law enforcement actions will take place if illegal behavior continues

When time and circumstances permit, a second and third warning will be given at reasonable intervals before designated actions are taken to disperse the crowd. The warnings shall also be either audio or video recorded and the times of the warnings documented. A reasonable amount of time to disperse should be allowed following a dispersal order.

Specific crowd dispersal tactics shall be ordered, as necessary, where the crowd does not heed warnings. The Department will continually assess the crowd's compliance and adjust tactics appropriately with the understanding that some participants may have difficulty complying due to cognitive ability, mental health issues, or different physical abilities.

432.8.1 Non-Violent Civil Disobedience

In cases of non-violent civil disobedience where there is no credible threat of violence, participants will not be dispersed by force. In accordance with applicable law, reasonable force may be employed to arrest those engaged in non-violent civil disobedience.

When a determination has been made to arrest those engaged in non-violent civil disobedience, and where time and

circumstances permit, a warning shall be given prior to the commencement of arrests. The warning shall consist of:

1. An announcement citing the offenses and violations being committed;
2. An order to disperse;
3. Designated dispersal routes;
4. An indication that individuals who do not disperse will be subject to arrest.

When time and circumstances permit, a second and third warning shall be given at reasonable intervals before arrests commence. The warnings shall also be either audio or video recorded and the times of the warnings documented. A reasonable amount of time to disperse should be allowed following a dispersal order.

432.9 Use of Force

When engaged in crowd management and crowd control, the Department is governed by current department policies and applicable law (see the following policies: Use of Force #300, Control Devices #302, Conducted Energy Device #303, and Custodial Transportation #312).