

UNDERCOVER OPERATIONS – FIRST AMENDMENT ACTIVITY

610.1 Purpose and Scope

The Santa Cruz Police Department supports the right of citizens to freely associate without government interference, respects the protections afforded Americans by the First and Fourth Amendments to the Constitution of the United States and respects the right of privacy guaranteed to individuals under the State and Federal Constitutions. The following policy has been established for undercover operations with these precepts in mind.

610.2 Undercover Operations

Members of the Santa Cruz Police Department shall not undertake an undercover criminal operation¹ that entails the investigation of First Amendment activities of persons, community groups or organizations unless: (1) there is articulable and reasonable suspicion to believe that the subject of the investigation is planning criminal activity, or is engaged in criminal activity, that constitutes a hate crime or a crime that is reasonably likely to result in personal injury, property loss or property damage; and (2) the subject's First Amendment activities are relevant to the criminal investigation. Absent exigent circumstances that require an undercover investigation to commence immediately, the Police Department will not undertake any such undercover investigation unless it has first sought to gather information it seeks through direct and open communication with the subject of the investigation or the subject's membership. Authorized undercover investigations shall use the least intrusive techniques possible given the circumstances. Examples of less intrusive techniques include tactics such as researching departmental records or researching public records, the internet or other information sources accessible by the general public. When covert surveillance becomes necessary, the Police Department whenever feasible shall conduct that surveillance from a public location before undertaking surveillance from private property with or without the property owner's consent. Tactics employed by police personnel will comply with existing law, will not entail entrapment, and will not further criminal acts. Undercover officers shall not assume leadership positions in the organizations under surveillance and shall not attempt to direct organizational activities. Any such undercover investigation shall immediately cease when the investigation or other

¹ For purposes of this policy the terms "undercover criminal investigation," "undercover investigation" and "undercover operation" shall be defined to include covert surveillance whether conducted from public or private property.

information reveals that the reasonable suspicion which prompted the investigation is unfounded.

610.3 Documentation – Investigation

The Police Department shall keep no information on persons, community groups or organizations or their membership compiled pursuant to undercover investigations of First Amendment activity unless the information is directly related to a criminal investigation or criminal act referenced in Section 610.2. The maintenance of any files, documentation, photographs, etc. compiled pursuant to any such undercover investigation, shall comply with all state and federal laws and shall be maintained and disposed of pursuant to the Public Records Act and the City of Santa Cruz Records Retention Schedule. This provision shall not be construed to limit the Department's ability to film or photograph public events where police engagement is reasonably expected or for the purpose of supplementing a Department crime report or incident report; however any such film or photographs shall not be used in connection with the compilation of intelligence files regarding persons, community groups or organizations.

610.4 Approval

Absent exigent circumstances that require the commencement of an immediate undercover investigation of First Amendment activity, any request to commence such an investigation shall be first made in writing to the Police Chief or to a Deputy Police Chief. The request will explain the need for the undercover investigation and the efforts made in accordance with this policy to obtain necessary information by less intrusive means. Prior to approving any such request the Police Chief or Deputy Police Chief shall consult with the City Attorney's office. Where an immediate undercover investigation has been undertaken due to exigent circumstances, as soon as practicable after the investigation's commencement a memorandum shall be forwarded to the Police Chief or Deputy Police Chief explaining the nature of the investigation, the circumstances that prompted the immediate commencement of the investigation and any pre-investigation efforts to obtain pertinent information by less intrusive means. Upon receipt of the memorandum, the Police Chief or Deputy Police Chief shall consult with the City Attorney's office to determine whether the investigation should continue. No undercover investigation instituted per this policy shall extend for more than thirty days without the Police Chief or Deputy Police Chief's authorization to extend the investigation. Extension authorizations may not exceed thirty days in duration.

610.5 Reporting

On an annual basis, the Police Department Auditor shall report to the Public Safety Committee of the City Council the number of undercover operations conducted pursuant to this policy during the previous year. The Auditor shall review all such undercover investigations undertaken by the Police Department. The Auditor's annual report to the Public Safety Committee shall be a public record and shall delineate the number of undercover investigations of First Amendment activity undertaken by the Police Department, the number of authorizations sought for this type of investigation which were sought but denied, and the number of authorizations sought for this type of

investigation which were sought and approved. If in the Auditor's opinion any actions of the Police Department constituted possible violations of this policy, the Auditor shall report this determination to the City Manager. The Auditor's report to the City Manager shall generally describe the nature of the possible violation and the Auditor's rationale for concluding that the Police Department's action possibly constituted a violation. The City Manager shall thereafter review the Police Auditor's report and take any administrative action deemed necessary by the City Manager including but not limited to directing the Police Chief to initiate an Internal Affairs investigation to determine if a policy violation did indeed occur.



HOWARD SKERRY
Chief of Police