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CIVIL 03-6180

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

EL COMITÉ DE TRABAJADORES POR EL :
PROGRESO Y BIENESTAR SOCIAL, :
MONMOUTH COUNTY RESIDENTS :
FOR IMMIGRANT RIGHTS, NATIONAL :
DAY LABORERS ORGANIZING NETWORK, :
ALEJANDRO ARBARCA., JUAN G., PEDRO E., :
ADALBERTO JIMENEZ, RODOLFO RAMOS, :
FILBERTO JUAREZ, ESTABAN QUIROZ, and :
JOSEFINA BARRAGAN, on their own behalf and :

on behalf of all others similarly situated,	:	
	:	
Plaintiffs,	:	
	:	
	:	
	:	
-against-	:	
	:	Civil Action
	:	No. 03-6180 (AET)
FREEHOLD BOROUGH AND MAYOR	:	
MICHAEL WILSON, both in his individual and his	:	
official capacities as Mayor of Freehold Borough,	:	AGREEMENT, STIPULATION
	:	OF SETTLEMENT AND
Defendants.	:	ORDER OF DISMISSAL
	:	
	:	

AGREEMENT AND STIPULATION OF SETTLEMENT

This Agreement is entered into by and between, EL COMITÉ DE TRABAJADORES POR EL PROGRESO Y BIENESTAR SOCIAL, MONMOUTH COUNTY RESIDENTS FOR IMMIGRANT RIGHTS, NATIONAL DAY LABORERS ORGANIZING NETWORK, ALEJANDRO ARBARCA., JUAN G., PEDRO E., ADALBERTO JIMENEZ, RODOLFO RAMOS, FILBERTO JUAREZ, ESTABAN QUIROZ, and JOSEFINA BARRAGAN ("Plaintiffs"), and the BOROUGH OF FREEHOLD ("the Borough") as follows:

WHEREAS, Plaintiffs are representatives of a group of Latino day laborers who filed this action in Federal District Court in December 2003, contending, in part, that Freehold Borough was violating their constitutional rights by preventing them from congregating in public places and a specific site commonly referred to as the "Muster Zone" to solicit work, and by engaging in discriminatory enforcement of its housing code and unreasonable searches, in violation of its Latino residents' First, Fourth and Fourteenth Amendment rights; and

WHEREAS, the Borough is a municipal corporation of the State of New Jersey; and

WHEREAS, Conrail privately contends that it owns the bulk of the area used by the day laborers as the "Muster Zone" and has made it known to the Borough that it does not consent to day laborers gathering on its property for their own purposes of soliciting work; and

WHEREAS, Plaintiffs also alleged violations of constitutional rights in connection with the alleged selective enforcement of municipal ordinances and the issuance of loitering and so-called "officer's discretion" summonses and further challenged the validity of the municipal loitering ordinance; and

WHEREAS, Freehold rescinded its loitering ordinance in its entirety in January 2004; and

WHEREAS the Borough alleged that violations of its property maintenance code, specifically overcrowding violations, were seriously impairing its residents' quality of life; and

WHEREAS, the Borough alleged that it had created a Quality of Life Team ("QOL" Team) to address, among other issues, enforcement of the property maintenance code; and

WHEREAS, the First, Fourth and Fourteenth Amendments to the United States Constitution protect all residents of the Borough; and

WHEREAS, the Borough has denied any wrongdoing or liability in this action; and

WHEREAS, in March 2004, the court appointed Daniel J. O'Hern, a retired New Jersey Justice, to mediate the matters remaining in controversy and, in a long series of discussions, the parties exchanged views; and

WHEREAS, conceptually, the parties agreed that:

- Each of the parties will respect the rights and obligations of the other and agree to fulfill the duties imposed on them by law.
- In order to guarantee vindication of the rights and performance of their respective duties, the parties agreed on standards of performance that will govern the three core issues in dispute:

1. Concerning the workers' right to solicit employment, the parties agree that the Borough will not hinder the workers' rights to present themselves to prospective employers on public property and generally with the pick-up or discharge of day laborers, while the workers will respect all applicable municipal and State codes.

2. Concerning the Borough's Housing and Property Maintenance Code enforcement, the parties engaged in extensive discussions with the aid of a third-party neutral, Dennis Bliss, former Director of Municipal Court Services for the Administrative Office of the Courts of New Jersey and developed Housing Code Enforcement Protocols that are agreeable to the parties.

3. Concerning the Borough's Criminal Code Enforcement, the parties, through the efforts of Mr. Bliss, agreed on Criminal Code Enforcement procedures that will ensure that selective police enforcement or racial profiling does not occur; and

WHEREAS, this settlement seeks to respect the rights and interests of the residents of Freehold, including the Latino residents and workers in the community; and

WHEREAS, in consideration of the covenants and undertakings set forth herein and, intending to be legally bound thereby, the Plaintiffs and the Borough, and each of them, agree to the terms of this Agreement:

NOW, THEREFORE, it is hereby agreed as follows:

ARTICLE I
SOLICITATION FOR EMPLOYMENT ON PUBLIC PROPERTY

- 1.1 Nothing contained in this Agreement shall prevent Freehold Borough from enforcing all motor vehicle and other laws, so long as the enforcement of such laws does not unlawfully interfere with the lawful use of public property, including the use thereof for the pick-up and discharge of day laborers.
- 1.2 The Borough will not unlawfully hinder, delay or burden the exercise of free speech , including the solicitation of employment, by day laborers on public lands, including any portion of the "muster zone" for which a public right of access exists. Plaintiffs agree to respect all applicable municipal and state codes while using public lands within the Borough. Infractions by individual plaintiffs while using public lands shall not constitute a breach of this Agreement.
- 1.3 Nothing in Section 1.2 of this article shall prohibit the Borough from placing reasonable restrictions as to the time, place, and manner of the lawful use of public property so long as such restrictions do not interfere with the lawful use of public property, including the use thereof for the pick-up and discharge of day laborers.

ARTICLE II
PROPERTY MAINTENANCE CODE ENFORCEMENT

- 2.1 The Borough agrees to adopt and abide by the written protocol attached to this Agreement as Exhibit A to govern enforcement of its property maintenance code. The Borough agrees that, absent emergency circumstances, no inspection shall

take place without adherence to the protocols. The parties agree that overcrowding, by itself, does not constitute emergency circumstances.

- 2.2 The Borough agrees to train its code enforcement officers and law enforcement officers to comply with the written protocol attached as Exhibit A.
- 2.3 Complaints or reports alleging property maintenance violations will be recorded in writing on a worksheet, a model of which is attached to this Agreement as Exhibit B.
- 2.4 No residential code enforcement inspection shall be conducted without first providing notice to a resident of their rights regarding whether or not to permit an inspection and seeking written consent from the resident. In order to seek consent to inspect a residence, the Code Officer must follow the written protocol attached as Exhibit A.
- 2.5 If a law enforcement official is assigned to the QOL Team, this official will be governed by the protocol attached as Exhibit A. The law enforcement official will not accompany the code officer on the inspection without a documented, articulable law enforcement basis for believing the law enforcement officer's presence is necessary.
- 2.6 When seeking consent, the Borough agrees to notify residents of rights regarding administrative inspections by utilizing the script of the Inspection Statement, attached to this Agreement as Exhibit C. This script shall be read prior to accepting consent from a resident.

- 2.7 The Borough agrees to obtain written consent from residents prior to conducting inspections. Such consent shall be obtained by using the form attached to this Agreement as Exhibit D.
- 2.8 If an eligible adult resident is unable to understand English, the Borough agrees to comply with the protocol attached as Exhibit A Part II, §5, ¶3. No inspection will occur until informed consent is obtained.
- 2.9 This Agreement does not affect the Borough's ability to conduct an inspection if it has obtained a court-issued warrant to search the premises, or as otherwise permitted by law .

**ARTICLE III.
LAW ENFORCEMENT**

A. GENERAL POLICY

- 3.1 The Freehold Borough Police Department has adopted and will abide by Attorney General Law Enforcement Directive 2005-01, "Official Statewide Policy Defining and Prohibiting the Practice of 'Racially-Influenced Policing'" attached as Exhibit I.
- 3.2 In order to remain informed about and sensitive to the needs and concerns of the entire community, Freehold Police, in consultation with representatives of the immigrant community residing in Freehold, will continue to engage in community outreach activities, including an annual rights class at Freehold High School, back to school nights at elementary school, participation on the Human Relations Committee, through a liaison with the Freehold Center Partnership, the DARE

program, the "Night Out" program, and through interaction with community organizations and through community policing programs.

B. VIDEO RECORDING

- 3.3 The Borough currently intends to install video recorders in all of its patrol vehicles, and agrees to notify Plaintiffs should it abandon this intention.
- 3.4 The operation of video recorders installed within patrol vehicles shall be governed by the MVR Policy attached as Exhibit E to this Agreement.
- 3.5 The operation of all other video recorders shall be governed by a protocol attached as Exhibit F to this Agreement.

C. USE OF K-9

- 3.6 The use of dogs by law enforcement officers shall be governed by the K-9 Policy attached as Exhibit G to this Agreement.

D. INTERNAL AFFAIRS COMPLAINTS

- 3.7 The Borough agrees to facilitate complaints regarding the conduct of its law enforcement officers. Such complaints shall be handled by the Borough Police Department's Internal Affairs Division in accordance with the model Internal Affairs Policy & Procedures (hereinafter "IAP") promulgated by the New Jersey Attorney General and attached to this Agreement as Exhibit H (and as amended by the NJAG from time to time). In particular, the Borough agrees that it will continue to adhere to the following existing policies:
 - a) Law enforcement officers shall not discourage any person, whether an officer or a civilian, from making a complaint. Inter-departmental

complaints are further governed by Rule of Conduct 4:1 attached to this Agreement as Exhibit 1, which the Borough will continue to enforce. Complaints will be accepted as set forth by the IAP, pp. 11-16 to -18.

b) The Borough shall utilize a form substantially similar to IAP Appendix C for each complaint.

c) All instances of substantiated misconduct shall result in discipline in accordance with the Collective Negotiating Agreement and Civil Service regulations.

3.8 The Borough shall use its best efforts to provide an interpreter at the time of a complaint, and will follow up if no interpreter is initially available, so that communications of the complaint and ensuing investigation is facilitated. In the event of exigent circumstances, the Borough will make every effort to provide an interpreter as soon as possible.

3.9 An information sheet, attached as Exhibit H shall be available at Borough Hall, the Borough Police Headquarters, and through the Borough Police Department website, accessible at <http://www.fbpd.net>.

ARTICLE IV. RECORDKEEPING AND OVERSIGHT

A. Housing Code Inspections

4.1 The QOL Team and the Housing Code Inspection office shall maintain an inspection worksheet, attached to this Agreement as Exhibit B, for every complaint or report of a suspected property maintenance code violation.

4.2 During the term of this Agreement, the Borough shall maintain copies of all documents required to be maintained pursuant to Exhibit A, other written

documents that are required to be maintained pursuant to housing code protocols agreed upon as part of this Agreement and any written complaints concerning housing code violations. In addition, the Borough shall maintain copies of all written complaints filed with the Borough concerning the manner in which an inspection was conducted.

- 4.3 Upon seven (7) calendar days' written notice to the Borough, attorneys for the plaintiffs shall have the right to inspect and copy any of the documents included in Section 4.2 relevant to the Borough's compliance with this Agreement.

Notwithstanding the above, the Borough shall not be required to disclose to the plaintiff's attorneys:

- (1) the existence of any internal investigation of a code official or a police IA investigation; or
- (2) any civilian complaint subject to an ongoing investigation; or
- (3) the name and address or personal information of any civilian complainant.

Plaintiff's attorney may request the information set forth in (2) and (3) above from the Monitor who shall release same to Plaintiff's attorneys only upon the consent of the complainant.

- 4.4 The Borough shall select an employee who will serve as the Compliance Officer for this Agreement. Starting 60 days from the date of this Agreement, and every 90 days thereafter, the Compliance Officer shall review the inspection worksheets for compliance with the procedures required by this Agreement. This

review will involve inspection of 35% of randomly selected worksheets completed during the previous 90 days.

4.5 Starting 90 days from the date of this Agreement, and every 180 days thereafter, the Compliance Officer shall issue reports to the attorneys for the plaintiffs. The Compliance Officer shall also issue a Final Report at the end of the term of this Agreement. Generally, these reports shall include the Compliance Officer's determination as to whether the Borough complies with this Agreement accompanied by the factual basis for this determination. Each report shall include a determination of whether:

- (1) the Borough maintains worksheets pursuant to Section 4.1;
- (2) the Borough conducts pre-inspection investigations pursuant to the QOL Protocol attached as Exhibit A;
- (3) the Borough adheres to the proper procedures for obtaining consent to inspect a property pursuant to the QOL Protocol attached as Exhibit A;
- (4) the Borough properly utilizes translation and interpreter services whenever they are required;
- (5) the Borough has conducted the training required in Section 2.2 of this Agreement; and
- (6) the Borough adheres to the restriction on the use of law enforcement officer's during housing inspections as set forth in Section 2.

- (7) the Borough conducted its investigations in the order in which the complaints are received.

B. Law Enforcement

- 4.6 During the term of this Agreement, the Borough shall retain all records, forms, logs, reports, and other written documents that are required by Article IV of this Agreement and the protocols attached hereto.
- 4.7 During the term of this Agreement the Borough shall retain all data recorded and stored on any computerized system that may be developed in the future to assist the Freehold Police Department in assuring compliance with sections of this Agreement prohibiting ethnic or racial profiling and interference with the lawful use of public property, including the pick-up and discharge of day laborers.
- 4.8 During the term of this Agreement, the Borough shall retain all complaints by citizens concerning allegations of racial and ethnic discrimination in law enforcement as well as the Borough's investigation and disposition of such complaints, as set forth in Article III of this Agreement.
- 4.9 The Borough Police Department shall note all uses of dogs and non-vehicular video recorders in any appropriate daily log or incident report.
- 4.10 Upon seven (7) calendar days' written notice to the Borough, the attorneys for the plaintiffs shall have the right to inspect and copy any of the documents or data delineated in this Article relevant to the Borough's compliance with this Agreement. Upon reasonable notice to the Borough Administrator, the employee and the union representative, Plaintiff's

attorney may interview Borough employees who have relevant knowledge or information of the Borough's compliance with this agreement. The employee shall have the right to legal and union representation.

4.11 *Notwithstanding the above paragraph, the Freehold Police may not disclose to the attorneys:*

- (1) identifying information concerning any civilian complaint subject to an ongoing investigation; or
- (2) any law enforcement record or juvenile court record that must be confidential pursuant to any New Jersey law; or
- (3) the name and address or personal information of any civilian complainant.

Plaintiff's attorney may request the information set forth in (1) and (3) above from the Monitor who shall release same to Plaintiff's attorneys only upon the consent of the complainant.

4.12 Upon Motion, with advance notice to Freehold's attorney, the plaintiff's attorneys may disclose information contained in the materials specified in Section 4.10 above to the Court.

ARTICLE V. FUNDS FOR REIMBURSEMENT OF CERTAIN FINES

A. CONVICTIONS UNDER BOROUGH ORDINANCE 9.08

5.1 Freehold Borough shall establish a Fund for reimbursement of fines for conviction of summonses issued under Borough Ordinance 9.08.010 through 9.08.060 during the time period of January 1, 2002 through the date of this Agreement, inclusive. This shall not apply, and no person shall be entitled to

relief or reimbursement of fines for a conviction or plea of guilty to Borough Ordinance 9.08.010 et.seq. where the plea or conviction was a downgrade from an initial charge other than Borough Ordinance 9.08.010 et. seq.

5.2 All Latino persons qualified under Section 5.1, who have been convicted of a violation of Borough Ordinance 9.08.010-9.08.060 during the relevant period, shall be entitled to reimbursement of fines actually paid upon application to the Administrator of the Fund. All applications for reimbursement must be filed with the Administrator of the Fund no later than sixty days from the date of Notice published pursuant to this Agreement. To qualify for relief, Applicants must offer the following:

(a). identification evidencing that the applicant is the person convicted of the offense and that the conviction occurred during the relevant period; and

(b). evidence that applicant paid the fine for which reimbursement is sought.

If the Borough claims that a conviction of Ordinance 9.08 was the result of a downgrade, the Borough shall present such evidence to the Administrator.

B. HOUSING VIOLATIONS

1. Notice to Cure/Correct

5.3 Freehold Borough shall establish a Fund for reimbursement of fines for conviction of housing code violations, other than violations issued for overcrowding, issued during the relevant time period (set forth in 5.1) under

Borough Ordinance 8.40.010 et seq in those instances where no notice to cure or correct was given and such notice was required.

- 5.4 All Latino persons qualified under Section 5.3 shall be entitled to reimbursement of the fines actually paid upon application to the Administrator of the fund. All applications for reimbursement must be filed with the Administrator of the Fund no later than sixty days from the date of Notice published pursuant to this agreement. To qualify for relief, Applicants must offer the following:

- (a). identification evidencing that the applicant is the person convicted of the housing code violation, other than overcrowding, and that the conviction occurred during the relevant period; and
- (b). evidence that applicant paid the fine for which reimbursement is sought.

If the Borough claims that a notice to cure or correct for the subject violation is not required, the Borough shall present such evidence to the Administrator.

2. Anonymous Complaint and Lack of Articulable Suspicion

- 5.5 Freehold Borough shall establish a Fund for reimbursement of fines for conviction of housing code violations during the relevant time period (set forth in 5.1), as a result of a housing inspection, the basis of which was an anonymous complaint and was not founded on an articulable suspicion as defined in Section 3, ¶¶3,5 of the protocols attached in Exhibit A.
- 5.6 All Latino persons, qualified under Section 5.5 shall be entitled to reimbursement of the fines actually paid upon application to the Administrator of the Fund. All applications for reimbursement must be filed with the Administrator of the Fund

no later than sixty days from the date of Notice published pursuant to this Agreement. To qualify for relief, Applicants must offer the following:

- (a). identification evidencing that the applicant is the person convicted of the offense and that the conviction occurred during the relevant period; and
- (b). applicant paid the fine for which reimbursement is sought; and
- (c). the inspection was based on an anonymous complaint.

If the Borough claims that there was nonetheless contemporaneous evidence of articulable suspicion for the inspection, as defined in the protocols attached as Exhibit A, the Borough shall present such evidence to the Administrator.

C. ADMINISTRATIVE PROCEDURES

- 5.7 Freehold shall establish a Fund in the amount of \$33,000 for reimbursement of the fines referred to in paragraphs 5.1, 5.3, and 5.5, above. All applications for reimbursement must be made within 60 days from the date of Notice published pursuant to this Agreement announcing the availability of the funds by the Administrator. If the total amount of the applications for reimbursement shall exceed \$33,000, the Administrator shall pay each applicant an amount reflecting the proportion of the applicant's claim to the total claimed by all applicants. If the total amount of the applications for reimbursement shall be less than \$33,000, the Administrator shall pay each applicant the amount of his or her claim and shall pay the remainder to the New Jersey Intergovernmental Insurance Fund. The Administrator shall determine the qualifications of each applicant for reimbursement.

- 5.8 The Administrator shall publish the availability and eligibility requirements of the Funds by causing Notice, in a form agreed to by the parties, to appear in a local English and Spanish newspaper and by posting copies of such Notice in Borough Hall and the Municipal Court.
- 5.9 The Administrator will make payments from the Fund to Latino persons in accordance with the provisions of Article 5.

ARTICLE VI. MONITOR AND COMPLIANCE

- 6.1 The parties hereby agree that Dennis Bliss ("Monitor" and "Administrator") shall monitor compliance with this Agreement and administer the Fund provided for in Article 5. Both the Monitor and Plaintiffs shall have a reasonable opportunity to inspect records required to be kept pursuant to this Agreement.
- 6.3 If the Monitor determines that there has been a breach of this Agreement by the Borough and so notifies the Borough, the Borough shall within fifteen (15) days of receipt of such notice submit in writing to the Monitor its position on the Monitor's determination of noncompliance, and, if necessary, submit a plan to address the non-compliance.
- 6.4 If Plaintiffs allege that there has been a breach of this Agreement by the Borough and so notify the Borough and the Monitor, the Borough shall within fifteen (15) days submit in writing to the Monitor and Plaintiffs' counsel its position on Plaintiffs' allegation of noncompliance, and, if necessary, submit a plan to address the non-compliance.

- 6.5 At either party's request, the parties and the Monitor may meet to discuss the Monitor's findings, Plaintiffs' allegations, and the Borough's response.
- 6.7 The Monitor may propose remedies to the Borough for any problems identified by either the Monitor or Plaintiffs. If the Monitor does not propose any remedies or if the Borough does not implement such remedies within 30 days, Plaintiffs may apply to the Court for the imposition of these and/or other remedies pursuant to Article VII below.

ARTICLE VII. ATTORNEY'S FEES

- 7.1 Defendants shall pay \$245,000 to counsel for the Plaintiffs, New Jersey Appleseed Public Interest Law Center and Puerto Rican Legal Defense and Education Fund, within sixty (60) days of approval of this Agreement by the court in satisfaction of any claim they may have for fees and costs in this case. The check shall be made to the two organizations jointly and shall be deposited in a New Jersey attorney trust account for disbursements.

ARTICLE VIII. ENFORCEMENT

- 8.1 The Court shall retain jurisdiction over the parties and this matter for the term of two years from the date of the Agreement.
- 8.2 Either party may seek enforcement of this Agreement by application to the United States District Court for the District of New Jersey in the event of a breach of this Agreement, which is not resolved under the procedures of Article VI above. The

Court shall retain all legal and equitable powers necessary to enforce the terms of this Agreement and remedy any breaches thereof.

**ARTICLE IX.
AMENDMENTS/MODIFICATIONS OF PROTOCOLS**

- 9.1 Any amendments or modifications to the Borough's written protocol during the terms of this Agreement and Order of Settlement shall be consistent with the terms and requirements of this Agreement. If the Borough proposes to amend or otherwise change any policy embodied in the Exhibits to this Agreement during the term of the Agreement and Order of Settlement, the Borough shall notify Plaintiffs counsel in writing 30 days prior to such proposed change. If Plaintiffs reasonably object to the change, they shall have the right to seek appropriate relief from the Monitor. In the event the Monitor, through negotiations with the parties, is unable to reach a solution acceptable to all parties, either party may apply to the court for relief.

**ARTICLE X.
TERM AND SCOPE**

- 10.1 The term of this Agreement shall be two years and shall commence on the date the Agreement is approved by the Court.
- 10.2 This Agreement shall automatically terminate on the second anniversary of the approval date of the Agreement, unless otherwise extended by the Court for good cause shown.

**ARTICLE XI
ENTIRE AGREEMENT/PROVISION AS TO PARTIES**

- 11.1 This Agreement embodies the entire agreement of the parties respecting the

subject matter. There are no promises, terms, conditions or obligations other than those contained herein. This Agreement supersedes all previous communications, representations or agreements, either verbal or written, between the parties.

11.2 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

11.3 The following parties shall be dismissed: Plaintiffs Alejandro Abarca; Juan G.; Thomas V.; Filberto Juarez; Defendant Mayor Michael Wilson, both in his individual and his official capacities as Mayor of Freehold Borough.

IN WITNESS WHEREOF, Plaintiffs and the Borough hereto, intending to be legally bound hereby, have executed this Agreement on the date written below.

PLAINTIFFS

Dated: 12/28/06

Renée Steinhagen
New Jersey Appleseed Public Interest Law Center
By: Renée Steinhagen

Dated: _____

Puerto Rican Legal Defense and Education Fund
By:

DEFENDANT, FREEHOLD BOROUGH

Dated: _____

Podvey, Meanor Catenacci Hilner Coccoziello &
Chattman, PC
By: Robert L. Podvey

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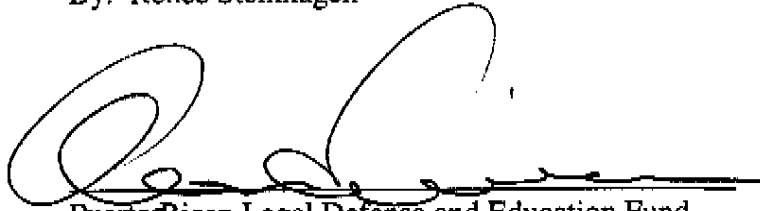
IN WITNESS WHEREOF, Plaintiffs and the Borough hereto, intending to be legally bound hereby, have executed this Agreement on the date written below.

PLAINTIFFS

Dated: _____

New Jersey Appleseed Public Interest Law Center
By: Renee Steinhagen

Dated: _____



Puerto Rican Legal Defense and Education Fund
By: Alan Levine

DEFENDANT, FREEHOLD BOROUGH

Dated: _____

Podvey, Meanor Catenacci Hilner Coccoziello &
Chattman, PC
By: Robert L. Podvey

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Dated: _____

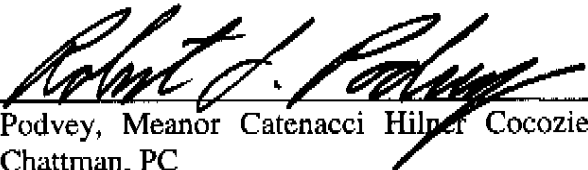
New Jersey Appleseed Public Interest Law Center
By: Renee Steinhagen

Dated: _____

Puerto Rican Legal Defense and Education Fund
By:

DEFENDANT, FREEHOLD BOROUGH

Dated: 12/29/06



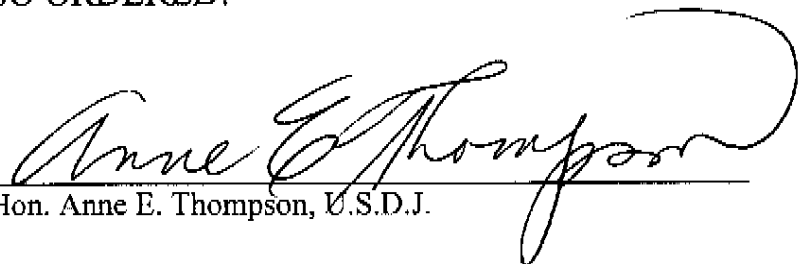
Podvey, Meanor Catenacci Hilner Coccoziello &
Chattman, PC
By: Robert L. Podvey

DEFENDANT, FREEHOLD BOROUGH

Dated: _____


McKenna DuPont Higgins & Stone, PC
By: Kerry E. Higgins

SO ORDERED:


Hon. Anne E. Thompson, U.S.D.J.

PART I

**QUALITY OF LIFE TEAM:
MISSION AND STRUCTURE**

1. The mission of the Quality of Life Team (hereinafter "QOL Team") is to enforce Borough Ordinances, New Jersey Statutes, and other enumerated Rules and Regulations, violations of which have been determined to negatively affect the quality of life within the Borough, including but not limited to the following:
 - a. Borough Code Chapter 8.52 (Weed, Brush and Debris Removal)
 - b. Borough Code Chapter 8.40 (Property Maintenance Code)
 - c. Borough Code Chapter 8.28 (Littering)
 - d. Borough Code Chapter 8.36 (Noise), in particular 8.36.020(D)- Horns
 - e. Borough Code Chapter 9.04 (Offenses Against Public Peace and Decency), in particular 9.04.020 – Public Urination, and 9.04.030 – Consumption of alcohol in public
 - f. Borough Code Title 6 (Animals)
 - g. Unsafe vehicles/excessive passengers
 - h. Abandoned Vehicles
 - i. Obstruction of Traffic
2. The QOL Team shall consist of at least two members, and include one (1) law enforcement officer and one (1) code enforcement officer.
3. This Protocol shall govern the conduct of the QOL Team.
4. The code enforcement officer shall be responsible for investigating, responding, and enforcing the QOL issues set forth in paragraph 1(a)-(b) & (h) above.
5. The law enforcement officer shall be responsible for investigating, responding, and enforcing all quality of life issues other than those which are the responsibility of the code enforcement officer.
6. Members of the Team shall not engage in ethnic or racial profiling. Members may not consider the race or ethnicity of any civilian in deciding to surveil, stop, detain, interrogate, request consent to inspect or issue a summons. Members may rely in part on race or ethnicity when complaints or information received specify suspected activity and describes a specific suspect.

Exhibit A

PART II

PROPERTY MAINTENANCE CODE ENFORCEMENT

Section 1 – Basic Provisions

1. Among the enumerated missions of the QOL Team is enforcement of the Borough's Property Maintenance Code, set forth in Borough Ordinance 8.40 et seq. These ordinances currently adopt standards published by Building Officials and Code Administrators, International Inc. ("BOCA") in *Basic Property Maintenance Code* (2nd Ed. 1981). The Borough retains the right to adopt revisions to the Property Maintenance Code or to adopt the standards set forth in the 2000 International Property Maintenance Code, as revised from time to time.
2. The QOL Team is authorized to conduct property inspections in accordance with Section 3 herein to determine whether a property maintenance violation exists:
 - a. pursuant to a property inspection plan
 - b. in response to a complaint of code violation received by the Borough's Quality of Life Hotline, made to any Borough employee or at a public meeting
 - c. in response to a report of code violation from a law enforcement official or Borough employee
 - d. if a member of the QOL team has probable cause to believe such a condition exists based upon their personal observations.
3. This Protocol governs all Property Maintenance Code inspections, except those conducted pursuant to a property inspection plan.

Section 2 – Duties of Law Enforcement Officer

1. The law enforcement officer's primary responsibility during property maintenance code enforcement actions is to ensure the safety of the code enforcement officer and members of the public. While the code enforcement officer seeks consent to inspect the property, the law enforcement officer shall remain at the patrol vehicle. While an inspection is in progress, the law enforcement officer shall remain outside the dwelling, the law enforcement officer and the code enforcement officer shall be able to contact each other by radio.
2. If, at any time prior to or during an inspection, the QOL team develops an articulable basis for believing that a threat to the safety of the code enforcement officer exists, the law enforcement officer will accompany the code enforcement officer for the duration of the inspection. The articulable basis shall be documented on the Worksheet.

3. If an inspection is being conducted pursuant to an administrative warrant, the law enforcement officer may accompany the code enforcement officer for the duration of the inspection provided that articulable basis for believing that a threat to the safety of the code enforcement officer exists.
4. The law enforcement officer shall not investigate criminal matters other than those within the mission of the QOL Team. If the law enforcement officer has probable cause to believe that other criminal violations are occurring, he or she shall immediately notify the shift supervisor to inquire as to the appropriate action to be taken.

Section 3 - Responding to Complaints/ Reports of Code Violations

1. Absent exigent circumstances, no investigation shall take place without a) consent, or b) an administrative warrant. For purposes of this protocol, instances of overcrowding or sleeping in a non-habitable area shall not constitute exigent circumstances sufficient to justify entry without other circumstances that threaten immediate danger to life or property.
2. Upon receipt of a complaint or report of a property maintenance violation, the QOL Team will determine whether to 1) seek consent to inspect the property, 2) attempt to obtain a search warrant based upon the information available, 3) conduct an investigation to develop sufficient facts to obtain a search warrant, or 4) take no further action.
3. Anonymous complaints or reports may not provide the sole basis for an attempted inspection. The QOL team shall conduct an investigation to verify the basis of these complaints or reports prior to seeking consent.
4. The QOL Team will maintain a Property Maintenance Inspection Worksheet (attachment A) for every complaint or report of a property maintenance code violation, and will also complete a report which shall be attached to this Worksheet.
5. Prior to seeking consent to inspect any property for property maintenance code violations, the QOL Team must have a reasonable and articulable suspicion that a code violation or unsafe condition exists. The reasonable and articulable suspicion shall be documented on the Worksheet.
6. Prior to seeking consent to inspect, the QOL Team must determine whether that property, or its occupants, is currently the subject of any outstanding warrant or any ongoing criminal investigation. In the event a warrant is outstanding or an investigation is pending, the QOL team should not attempt an inspection without obtaining the prior approval from the Chief of Police.

7. The first step in responding to a complaint or report of a property maintenance code violation is determining the owner of the subject property. This is to be done by the code enforcement office.
8. The second step is determining whether the subject property is registered as a rental property. This is to be done by the code enforcement office.
9. If a property is registered as a rental property, the occupancy limit should be stated on the rental registration form. In the absence of any such indication, this limit should be computed pursuant to the BOCA or IPMC Code referenced in the Borough ordinance, as set forth in Section 1, Paragraph 1 of this Protocol.
10. If a property is not registered as a rental property, it should be determined whether it should be so registered. The code office will make that determination. The occupancy limits are to be computed pursuant to the BOCA or IPMC Code referenced in the Borough ordinance, as set forth in Section 1, Paragraph 1 of this Protocol.

Section 4 – Property Inspections

1. When seeking consent to inspect a property, the QOL Team should attempt to obtain the consent of a) the owner, unless the property is a rental property b) a registered adult tenant, or c) an adult resident. If consent cannot be obtained from any of the above, the inspection shall not proceed at that time and the team may seek an administrative warrant pursuant to Section 6 below.
2. Consent is to be sought by the code enforcement officer. The law enforcement officer should act in accordance with Section 2, Paragraph 1 of this Protocol.
3. The code enforcement officer should seek consent by utilizing the language set forth in the Inspection Statement (attachment B) and by having the Consent to Inspect form (attachment C) signed by an authorized adult. No inspection shall begin until the code enforcement officer obtains a Consent to Inspect Form signed by a consenting party. The members of the QOL Team may serve as witnesses. A copy of the Consent Form shall be given to the consenting party.
4. Communication by the inspector must be with an adult 18 years of age or older. Children under age 18 shall not be questioned during inspections.
5. Inspections conducted pursuant to consent may only be conducted between 8 A.M. and 9 P.M.
6. The QOL Team will adhere to any scope restrictions indicated by the consenting party. The team must leave the premises at the request of the consenting party.

7. The code enforcement officer will take the appropriate actions for code violations, including the issuance of citations or notices to cure to the responsible party/parties.
8. In the event that the inspector does not find any code violation, he/she shall not attempt to conduct or conduct any additional inspections of that residence unless the inspector receives subsequent to the completion of the first inspection one complaint based upon information that is additional or independent from the complaint which resulted in the first inspection.

Section 5 - Special Considerations for Non-English Speaking Occupants

1. The QOL Team shall utilize the inspection statement in all inspections.
2. In recognition of the fact that *immigration matters are not within the mission of the QOL Team*, the QOL Team will not notify other persons of suspected undocumented immigration status unless legally compelled to do so. The inspection statement will include a statement to this effect.
3. If no eligible consenting adult understands English, the QOL team should contact the shift supervisor and request the presence of an interpreter. If the team is advised that an interpreter is not available, it should then utilize AT&T Language Services. The inspection may not proceed until such time as interpreting services are available and informed consent received. Under no circumstances will the QOL Team interpret through children under the age of 18.

Section 6 - Investigations – Administrative Warrants

1. Investigations pursuant to an administrative warrant shall be conducted pursuant to the standard operating procedure set forth herein and any restrictions set forth in the warrant.
2. Any property search/administrative warrants shall be obtained from a duly appointed municipal court judge with jurisdiction in Freehold Borough, including by way of cross-assignment.

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Property Maintenance Investigation Worksheet

1 - COMPLAINT/REPORT OF PROPERTY MAINTENANCE CODE VIOLATION

Type of Complaint/Report

- ☐ Hotline (5812)
☐ Main Line (4903)
☐ Walk In
☐ Borough Employee
☐ Other:

Name of Complainant: _____

(Anonymous ☐)

Address: _____

Date of Complaint: _____

Nature of Complaint: _____

2 - INSPECTION OF PUBLIC RECORDS FOR SUSPECT PROPERTY

Address: _____

Zoned : Single Fam Dwelling ☐

Mult Fam Dwelling ☐

Owner of Record: _____

Maximum Occupancy: _____

Rental Certificate Filed With Borough: ☐ -Registered tenant(s): _____

Inspected within the last 90 days: ☐ -Most Recent Inspection Date: _____

QOL Worksheet # _____

3 -TYPE OF INSPECTION/INVESTIGATION

- ☐ Consent
☐ Warrant (Skip Parts 4 and 5)
☐ No Further Action (Skip Parts 4-7)

Basis for reasonable suspicion of violation:

4 - CONSENT

☐ Consent obtained

From: ☐ Owner/Landlord
☐ Registered Tenant
☐ Adult Resident

Date: ____ / ____ / 200__

Time: ____ AM/PM

☐ Consent Not Obtained (Indicate Reason, Skip Parts 5-7)

Reason: ☐ No answer at door
☐ No one present eligible to give consent
☐ Foreign language issues
☐ Consent refused
☐ Other (specify) _____

Apparent race or ethnicity of person from whom consent was sought/obtained: _____ (Unable to determine: ☐)

Team unable to communicate in English with owner/tenant/resident: ☐ (If unchecked, skip part 5)

5 - NEED TO COMMUNICATE IN FOREIGN LANGUAGE

☐ Team member able to communicate.

Language Spoken: ☐ Spanish
☐ _____

Team member: _____

☐ Team unable to communicate

Interpreter Requested: ☐

Interpreter Provided: ☐

☐

Name: _____

☐ AT&T Language Service

6 - RESULTS OF INSPECTION

Violation(s) found: ☐

Specify violation(s) and basis:

7 - ACTION TAKEN

Landlord: Description: _____

Tenant(s): Description: _____

COMPLETED BY: _____

Print Name

Signature

Date

Inspection Statement

Show identification. Hello, my name is _____. I am a Code Enforcement Officer with the Borough of Freehold.

Do you speak English?
Do you understand English?
Are you 18 years or older?
Do you live here?

Is there an adult over 18 who speaks and understands English?

With your consent, I would like to conduct an inspection of this residence. I have reason to believe that [insert particular violation], hazardous or unsafe conditions, code or ordinance violations may exist based upon:

____ A complaint received.
____ Observation or investigation by a Freehold Borough code office employee or other employee.
____ Information received from _____.

You have the right to refuse to allow me entry into your residence to conduct the inspection.

You have the right to limit the scope or area of the inspection. In my discretion, I may choose not to conduct or continue the inspection due to the limitation.

Only residents of this dwelling unit, who are at least 18 years of age, may give their consent to the inspection.

If you give consent, you can, for any reason, at any time during the inspection, revoke the consent and stop the inspection.

You are not being detained and have the right to leave at any time or to stay and be present during the inspection.

Immigration matters are not within the mission of the Quality of Life Team. Unless legally compelled to do so, we will not notify other persons of suspected undocumented immigration status.

If you give your consent, I will ask you to sign this form acknowledging that you have been advised of your rights and that you voluntarily consent to the inspection.

May I inspect your residence?

Declaración para Inspección de Vivienda

Muestre identificación. Hola, mi nombre es _____. Yo soy un Agente de Cumplimiento del Código de Vivienda de la Municipalidad de Freehold.

¿Usted habla Inglés?

¿Usted entiende inglés?

¿Usted tiene 18 años o más?

¿Usted vive aquí?

¿Hay algún adulto de por lo menos 18 años que hable y entienda inglés?

Con su consentimiento, me gustaría realizar un inspección de esta casa. Yo tengo razón para creer que [mencione la infracción específica], condiciones peligrosas, infracciones de código u ordenanza pueden existir basado en:

____ Una queja recibida.

____ Observación o investigación de un empleado del Cumplimiento del Código de Vivienda de la Municipalidad de Freehold o otro empleado.

____ Información recibida de _____.

Usted tiene el derecho de negarme el permiso para entrar a su residencia para realizar la inspección.

Usted tiene el derecho de limitar el área de la inspección. A mi discreción, yo puedo decidir no realizar ni continuar la inspección debido a la limitación

Solamente residentes de esta unidad, que tengan por lo menos 18 años de edad, pueden dar permiso para la inspección.

Si usted da permiso, usted puede, por cualquier razón, durante la inspección, revocar el permiso y detener la inspección.

Usted no está detenido y tiene el derecho de salir en cualquier momento o puede permanecer y estar presente durante la inspección.

Asuntos relacionados con inmigración no están dentro de la misión de "The Quality of Life Team". A menos que seamos obligados legalmente, nosotros no notificaremos a otras personas de sospechas relacionadas a status migratorio.

Si usted da su consentimiento, le pediré que usted firme este formulario que reconoce que usted ha sido aconsejado de sus derechos y que usted esta conciente que voluntariamente da permiso a la inspección.

Me da permiso para inspeccionar su casa?

CONSENT TO HOUSING INSPECTION

I, _____, hereby authorize an inspection of my residence, dwelling unit or other premises/structure located at

_____ by the Freehold Borough Code Enforcement Officer or Fire Marshall. The purpose of the inspection is to determine whether any hazardous or unsafe conditions exist or whether there are any housing code violations. It is NOT the purpose of this inspection to gather information for immigration purposes or criminal investigations.

I have been advised of and understand the following:

- 1) I have the right to refuse to allow entry into my residence or dwelling unit to conduct the inspection. _____
- 2). I have the right to revoke my consent to inspect at any time and may stop the inspection at any time. _____
- 3). I have the right to be present while the inspection is being conducted. _____

I have given this permission voluntarily of my own free will without coercion, fear or threat. _____

Signature

Date/time

Witness _____

Date/time

10-1-04

Exhibit D eng

Consentimiento Para Inspección de Vivienda

Yo, _____, por la presente autorizo una inspección de mi residencia, apartamento u otro local/estructura localizado en

_____ por un Agente de Cumplimiento del Código de Vivienda (Code Enforcement Officer) o un Official del Cuerpo de Bombero (Fire Marshall) de la Municipalidad de Freehold. El propósito de la inspección es para determinar si existe alguna condición peligrosa o si hay infracciones de código de vivienda. Esta inspección NO es para reunir información para propósitos de inmigración ni investigaciones criminales

He sido aconsejado y entiendo lo siguiente:

- 1) Yo tengo el derecho de no permitir la entrada en mi residencia o apartamento para realizar la inspección. _____
- 2) Yo tengo el derecho de revocar mi permiso/consentimiento para inspeccionar en cualquier momento y puedo detener la inspección en cualquier momento _____.
- 3) Yo tengo el derecho de estar presente mientras la inspección se esta realizando. _____

He dado este permiso voluntariamente sin coerción, temor o amenaza. _____

Firma

Fecha/Hora

Testigo _____

Fecha/Hora

**FREEHOLD BOROUGH POLICE
USE OF MOBILE VIDEO RECORDERS
(MVR)
POLICY**

I. PURPOSE

The purpose of this policy is to establish guidelines for the implementation and use of Mobile Video Recorder (MVR) in Freehold Borough Police department vehicles.

II. MECHANICS

A. USE OF THE MOBILE VIDEO RECORDER SYSTEM

All police officers assigned to patrol or special enforcement duties utilizing a vehicle equipped with a MVR system shall follow these procedures.

As a prerequisite to using this equipment, an officer must first receive approved department training and demonstrate proficiency in the system's use and application. Training should address, as a minimum, the following:

- (1) review of all applicable policies, procedures and manufacturer's literature;
- (2) operation of the VCR;
- (3) equipment programming and activation;
- (4) camera positioning and operation including zoom features;
- (5) recording procedures;
- (6) effective placement and use of wireless microphone;
- (7) effective and legal use of rear seat microphone;
- (8) recording termination procedure; and
- (9) battery replacement procedures (if applicable)

B. PROGRAM COORDINATOR

The Chief of Police has designated the following officers to function as co-coordinators for the Mobile Video Recorder Program. Their duties shall include the following:

1. Operations Officer –

- (a) Maintain the storage of full or used videotapes differentiating between those which are held as evidence, those which are held pending recycling, and those held for other reasons;

- (b) erase and recycle full or used videotapes that were deemed to have no evidentiary value after a 180 day holding period has expired;
- (c) erase and destroy tapes after their fourth use;
- (d) make duplicate videotapes as required; and
- (e) maintain the MVR Logbooks.

2. Administrative Officer –

- (a) ensure sufficient supply of blank videotapes is maintained;
- (b) ensure sufficient supply of batteries, replacement microphones and other appropriate equipment and forms are maintained;
- (c) arrange for the repair of a defective or broken MVR in a timely fashion; and
- (d) ensure MVR units/systems receive regular maintenance

III. PROCEDURES

A. EQUIPMENT PROCEDURES

1. Utilization of MVR equipment installed in patrol vehicles is the responsibility of the officer assigned to that vehicle and shall always be operated according to manufacturers recommendations as well as county and departmental policy.
2. MVR equipment assigned to a police vehicle is the responsibility of the officers(s) assigned to the vehicle and must be maintained in accordance with the manufacturer's recommendations.
3. At the beginning of each shift the assigned officer must determine whether the MVR equipment is working satisfactorily. This functional check must include both audio and video components. To accomplish this requirement, officers should familiarize themselves with the following steps:
 - a. Activate the MVR unit by depressing the main power button.
 - b. Document the tape counter's reading on your daily Vehicle Check List.
 - c. Check individually to see that the MVR System will begin recording when the:
 - overhead or emergency light system is activated;
 - the record button on the unit is manually depressed;
 - or the remote microphone is turned on.

- d. At some point during the procedures listed in step "c" the officer should conduct an audio test.
 - e. When steps "c" and "d" are complete, the tape should be rewound and played to confirm the system is operating correctly.
4. If the officer finds that the equipment is not working properly they will immediately advise the shift supervisor. The officer is never to attempt any repair of the MVR equipment unless authorized by a program coordinator or through departmental policy.

The Shift Supervisor will document the problem (in as much detail as possible) on a yellow activity card and forward same to the Administrative Officer. The officer should then be reassigned to a car with a working MVR, if one is available.

5. Power to the MVR shall remain on from the commencement until end of the officer's shift, when it can be turned off by depressing the power button.
6. The remote microphone shall be activated during all citizen contacts when the MVR is in operation.
7. The MVR shall be set to automatically begin recording when the overhead or emergency light system or siren is activated. Once the MVR system is activated, it shall remain activated until the incident or contact is concluded.

B. ACTIVITIES TO BE RECORDED

1. The following is a list of activities which shall be recorded by police vehicles having MVR equipment:
- (a) All motor vehicle stops
 - (1) Normal traffic violations should be recorded from the point where lights and/or sirens are activated continuously through the entire stop concluding when the violator drives away or is placed into the patrol vehicle.
 - (2) In cases of suspected D.W.I., recording should begin when the officer first suspects erratic driving and should continue through the stop, any field sobriety tests and the arrest, if applicable.

(b) All police pursuits

2. The following is a list of activities, which may be recorded by any police vehicle which has MVR equipment:
 - (a) Any arrests for indictable and non-indictable offenses;
 - (b) any events likely to be evidential in a criminal case (this includes but is not limited to any crime in progress, any crime scene or portion thereof any arrest or activity leading to arrest, any field interviews and any evidence recovered);
 - (c) any law enforcement activity when the contact with a citizen becomes adversarial in nature;
 - (d) anytime an officer feels that creating an audio and/or visual record of a contact with a citizen is appropriate;
 - (e) citizen actions during roadside interviews, "Terry" stops, or field sobriety tests;
 - (f) custody transportation situations
 - (1) The MVR system shall remain in the record mode until the suspect has been removed from the vehicle at police headquarters or other appropriate location.
 - (2) When a person is being transported, it is appropriate to point the camera to the rear. This also applies to transportation of individuals with mental disorder, juveniles, persons of the opposite sex of the police officer, and persons under the influence of alcohol or drugs. At the termination of the incident and removal of the person from the vehicle, the camera shall be returned to the forward position.
 - (g) circumstances at crime and/or accident locations if the officer believes the recording of the scene will assist in the investigation.
 - (h) actions taken while en route to a high priority call or anytime lights and sirens are activated.
 - (i) other situations where an officer's best judgement based on training and experience is to record a situation, event or activity.
3. The MVR shall remain in the record mode until the entire activity is completed. If for some reason the recording must be terminated, the justification must be verbally recorded prior to deactivation and appropriately documented in a police report.
 - (a) In some instances an officer may wish to deactivate the audio portion of the MVR to discuss strategy with another officer or to share intelligence. This is acceptable as long as the subject(s) of the police activity remains visible on the

camera. The officer should verbally record the reasons for deactivation prior to turning the microphone off and should re-activate the audio portion as quickly as possible. At no time should the MVR be deactivated while an officer is interacting verbally or physically with a subject.

4. This section applies to adult and juvenile incidents.

C. INTERIOR MICROPHONE

1. Each Freehold Borough Police Department vehicle equipped with a MVR system has an interior microphone located in the rear seat area capable of recording statements made by the suspects or other occupants.
2. The use of MVR equipment as audio recording equipment falls within the purview of the New Jersey Wiretap and Electronic Surveillance Control Act as set forth in N.J.S.A. 2A:156-1 et seq.
 - (a) The use of video recording equipment only does not implicate the act.
3. Audio interception/recording within a patrol car is only permissible when the law enforcement officer is a party to the communication. It is ordinarily unlawful to intercept an oral communication, N.J.S.A. 2A:156A – 3a, but an exception exists when a police officer who is a party to a conversation, records that conversation. An officer may lawfully use the MVR to record a conversation to which they are a party.
4. An officer can not, however, lawfully record any conversation in the car to which the officer is not a party.
 - (a) When there is one (1) or more subjects in the police vehicle and the officer is not inside the vehicle, the officer will generally not be considered to be a party to any conversation between subjects or comments made by a subject. Therefore, the officer can not lawfully record that conversation/comment.
 - (b) Similarly, the subject may, in the presence of the officer, be speaking softly or whispering in the back seat beyond the human hearing range of the officer. To record this would also be impermissible because the officer would be considered not a party to the conversation.
5. Interior microphones installed in department vehicles have been set at default off. The microphone may only be activated manually by the officer when they are in the vehicle.

6. A violation of the wiretap statute constitutes a crime of the third degree. A person whose conversation is unlawfully recorded may have a civil action against the police officer. (See N.J.S.A. 2A:156A-24.)

D. TAPE REPLACEMENT

MVR tapes shall be immediately removed and replaced for the following reasons:

1. The tape is full.
 - (a) The MVR system has been designed so that the counter number will begin to flash when there is approximately thirty minutes of recording time left. When this occurs the officer shall return to headquarters and have the tape replaced by the officer in charge.
 - (b) Once removed, the officer in charge will place the used tape into the evidence drop and document the required information on the MVR log.
2. The tape will be needed as evidence for the prosecution of an indictable crime and/or contains recordings of the following events:
 - (a) an indictable crime in progress;
 - (b) any indictable crime scene or portion thereof;
 - (c) any arrest or activity leading to an arrest for an indictable crime;
 - (d) any field interviews regarding indictable crimes;
 - (e) any recovery of evidence in an indictable crime;
 - (f) any other event of apparent evidential value in an indictable case; and
 - (g) any proof which would tend to establish a violation of a restraining order.
3. Any DWI or other incident of evidential value in a municipal court proceeding.

****ANY TAPE REMOVED FOR THE REASONS DESCRIBED IN § III. D. 2(A-G) AND 3 MUST BE:**

- immediately logged into evidence in a manner identical to the way any other recovered evidence would be handled and consistent with the requirement of the Monmouth County Uniform Evidence Procedures Manual;

- noted on all appropriate evidence/property reports;
- noted conspicuously in the police report of the officer who operated the vehicle which recorded the tape; and,
- when appropriate, referred to through reports, to detectives investigating the indictable crime.

4. Supervisory Discretion

- (a) A supervisor of this department has the discretion to immediately remove from service a tape containing any other recorded activity not described herein.
- (b) Although the decision to remove a tape must be made by a supervisor, the request can originate from an officer or other source.
- (c) The supervisor will then document these reasons on an Operations Report, placing a copy along with the tape in the evidence drop.

E. TAPE CONTROL AND MANAGEMENT

1. Only the OIC or other command personnel shall have the authority to remove or replace an MVR tape from the recording unit in the trunk of the vehicle.
2. Only videotapes issued by the police department and specifically approved for MVR use shall be utilized.
3. A key to access the MVR equipment will be stored in the shift supervisor's office along with the replacement videotapes and MVR logbook.
4. Tapes will be removed/replaced using the following procedure:
 - (a) The officer in charge or other commanding officer will retrieve the MVR access key from the shift supervisor's office.
 - (b) Insert the key into the MVR lock, applying a small amount of pressure inward on the door of the recorder and turn the key. This will allow the door to open.
 - (c) Depress the eject button on the left side of the inner face plate. There may be a delay of several seconds before the tape ejects.
 - (d) Once ejected, remove the tape. Place the replacement tape in the slot and push it in lightly until it goes into the recorder automatically.
 - (e) Lock the MVR box and return the key to the shift supervisor's office.

5. The officer in charge will document the required information in the MVR logbook.
6. The officer in charge will forward the used tape, designating how it should be stored as follows:
 - (a) Evidence – submit the tape in a properly completed, sealed evidence bag with property report.
 - (b) Held other – submit the tape in an uncompleted but sealed evidence bag, attaching on operations report indicating the reason why tape is being held.
 - (c) Recycle – submit tape by placing it into evidence drop.
7. Except as consistent with this policy, no officer is authorized to erase, reuse or in any other manner alter the video/audio portion of a recorded tape.
8. Officers are permitted to review tapes to assist in the preparation of a police report.

F. EVIDENCE CONTROL AND DISCOVERY (Coordinators)

Any tape removed from a vehicle and taken as evidence must be handled as any other item of evidence and shall be processed according to this department's standard operating procedures for evidence collection and storage.

1. Indictable Crimes
 - (a) Tapes must be stored in a case specifically designated for tape storage and maintained in an area that is temperature and humidity controlled.
 - (b) Any tape held in evidence for an indictable crime is discoverable by the defendant. A copy of the entire relevant portion of the tape must be forwarded to the Intake Section of the Monmouth County Prosecutor's Office with the complaint, police report, and other case documents. Original tapes will not be mailed, and as evidence will be handled within a strict chain of custody.
 - (c) The following procedure shall apply to the original videotape.
 - (1) The tab on the tape housing will be broken off immediately to prevent accidental erasure or recording over. This will be done when the tape is being processed within the evidence vault.
 - (2) The original videotape shall be marked and tagged as evidence.

- (3) Duplicate(s) of the relevant portion of the tape should be made.
 - (4) Tapes containing recordings of anything that could possibly be evidentiary in nature should be processed as evidence.
 - (5) Requirements set forth in this section apply to all adult and juvenile cases.
- (d) No tape which constitutes evidence of an indictable crime will be destroyed or recycled without first receiving written permission from the Monmouth County Prosecutor's Office consistent with their Evidence Procedures Manual.

2. Municipal Court Cases

- (a) Any tape which has evidential value in a municipal court proceeding is discoverable and shall be removed from service and placed into evidence.
- (b) Tapes must be stored in a case specifically designated for tape storage and maintained in an area that is temperature and humidity controlled.
- (c) The following procedure shall apply to the original videotape:
 - (1) The tab on the tape housing will not be broken for cases that will be heard in municipal court.
 - (2) No tape will be recycled until it is ascertained that the municipal court proceedings and any appeals are complete.
 - (3) The original tape must be maintained as evidence.
 - (4) Discovery is to be provided through the procedures previously established by the Freehold Borough Municipal Prosecutor and the police department.

G. DISCOVERY OF TAPES BY NON-DEFENDANTS

- 1. The police department may receive a subpoena or other request for videotapes from a criminal defense attorney, an attorney contemplating civil litigation, members of the media or some other party.

Copies of tapes should never be provided to any party unless and until authorization is first obtained from the Monmouth County First Assistant Prosecutor or his designee.

H. QUALITY CONTROL AND REVIEW

- 1. All supervisors are responsible for ensuring that department personnel adhere to procedures established by this policy for the operation of MVR equipment.

2. Supervisors shall conduct a random review of videotapes and recordings to assist in evaluating officer performance.

I. MVR LOGBOOK

In order to properly track the videotapes dedicated for use within the MVR system, the Freehold Borough Police Department will utilize the following two (2) logbooks:

1. MOBILE VIDEO RECORDER (MVR) LOG – APPENDIX “A”

The mobile video recorder logbook will be kept in the shift supervisor's office. Its purpose is to track videotapes when they are being used outside the immediate control of an evidence officer. The use of this log is mandatory for all videotapes and must be completed each time a tape is installed or removed.

The following fields require completion:

TAPE NUMBER

In sequential numerical order, it must coincide with the identically numbered videotape.

INSTALLATION

Car Number – The vehicle number where the tape will be installed

Date – The date the tape is installed

Time – The time the tape is installed

OIC Badge Number – The badge number of the supervisor installing the tape.

REMOVAL

Date – The date the tape is removed.

Time – The time the tape is removed.

OIC Badge Number – The badge number of the supervisor removing the tape.

REPLACED BY NEW TAPE NUMBER

The number of the new videotape installed to replace the one removed.

STATUS

Place an “X” in one of the three (3) boxes to indicate the reason for the tape removal

E – Submitted as “Evidence”

HO – Submitted as “Held Other”

R – Submitted for “Recycling”

NOTES/REMARKS

Additional information the supervisor feels necessary to record

**2. MOBILE VIDEO RECORDER (MVR) EVIDENCE LOG –
APPENDIX "B"**

The Mobile Video Recorder Evidence Log will be kept inside the Evidence Vault. Its purpose is to track videotapes once they are submitted through the evidence drop. The use of this log is mandatory for all videotapes and must be completed regardless of the tape's status.

The following fields require completion:

TAPE NUMBER

In sequential numerical order, it must coincide with the identically numbered videotape.

DATE RECEIVED

The date when the videotape was removed from the "drop"

STATUS

Place an "X" in one of the three (3) boxes to indicate the reason for the tape removal.

E – Submitted as "Evidence"

HO – Submitted as "Held Other"

R – Submitted for "Recycling"

DEFENDANT INFORMATION (Only for evidence)

Name – Enter the defendant's last name

Arrest Date – The date of defendant's arrest

Charges – The statute or brief description of the most serious charge filed against defendant.

OFFICER'S BADGE NUMBER (for evidence or held other only)

Enter the badge number of the officer submitting the evidence or who requested the videotape to be held for other reasons.

CASE NUMBER (for evidence or held other only)

Enter the department's assigned incident number of this department.

DISPOSITION NOTES

Additional information the evidence officer decides necessary to record.

J. REQUESTS TO CHANGE VIDEOTAPE STATUS

In the event an officer needs the status of a MVR tape changed, the following procedure shall be followed:

Recycle to Evidence –

Submit a Supplemental Report requesting the status change along with a completed Property Report to the operations officer.

Recycle to Hold Other –

A supervisor will submit an Operations Report requesting the status change to the operations officer. This can be done as the result of a subordinate's request.

Hold Other to Evidence -

Submit a Supplemental Report requesting the status change along with a completed Property Report to the operations officer.

Hold Other to Recycle –

The supervisor who initially requested the "hold" will submit a supplement to the original Operations Report requesting the status change. The tape will then be recycled 180 days from the date the Operations Report was completed.

Evidence Tapes –

The status of a videotape submitted as evidence cannot change. When the judicial process is completed and an Evidence Destruction Request approved, the tape will be erased and then destroyed.

By order of:

MICHAEL BEIERSCHMITT
CHIEF OF POLICE

APPENDIX “B”

M.V.R. EVIDENCE LOG

APPENDIX “A”

M.V.R. LOG

Doc. # 175357 v.2

**FREEHOLD BOROUGH POLICE
HAND HELD VIDEO POLICY**

I. PURPOSE

The purpose of this policy is to provide guidelines for the use of hand held video cameras by members of the Department while engaged in law enforcement activities.

II. USE

1. Hand held video cameras may be used to record the following :

- a. community relations activities, such as educational training, seminars, back to school night, cruise night, and antique fest.
- b. public disturbances, criminal activities, and activities likely, in the officer's best judgment based upon training and experience, to lead to civil disobedience, public disturbance or criminal activity.
- c. any aspect of a criminal investigation, including a crime in progress, crime scene, field interviews, and any evidence recovered.
- d. any law enforcement activity reasonably likely, in an officer's best judgment based upon training and experience, to become adversarial in nature, including execution of a warrant and any arrest.
- e. accident scenes

2. Hand held video cameras may also be used where, in an officer's best judgment based upon training and experience, a video recording would prove beneficial to law enforcement. Whenever a video camera is used for reasons other than those set forth in Section 1 above, the officer will note usage of a video camera as well as the basis for its use in any report filed in relation to the recording.

III. TAPE CONTROL AND MANAGEMENT

- 1. Each time a hand held video is used for police purposes, the tape shall be removed and processed as evidence pursuant to the standard operating procedures for evidence collection and storage. The tape shall be submitted to the officer in charge of evidence in a properly completed, sealed evidence bag with property report.
 - a. Tapes held as evidence for indictable crimes must be stored in a case specifically designated for tape storage and maintained in an area that is temperature and humidity controlled. Such tapes are discoverable by the

defendant and a copy of same must be forwarded to the Intake Section of the Monmouth County Prosecutor's Office with the complaint, police report and other case documents. Such tapes will not be mailed and will be handled as evidence within a strict chain of custody.

- b. Tapes with evidential value in municipal court are discoverable and shall be stored as set forth above.
- c. Tapes held as evidence shall not be released to a non-defendant unless authorization is received from the Monmouth County First Assistant Prosecutor or designee.

IV. LOGBOOK

In order to properly track videotapes used for police activity, the Freehold Borough Police Department shall maintain a logbook detailing the date, time and person using the camera for each use of the camera for police/criminal related activities. This shall not include use of the camera for activities such as training, seminars, back to school night and similar community activities.

A report shall accompany each tape used for evidentiary purposes, detailing the nature of the activity, date, time, civilians and officers involved.

By Order of: _____
Chief Michael Beierschmitt

TO: All Personnel
FROM: Chief Michael F. Beierschmitt
DATE: June 8, 2001
SUBJECT: K-9 Operations and Procedures- S.O.P.

POLICY

It shall be the policy of the Freehold Borough Police Department to provide for the positive and efficient utilization of the Departments K-9 teams in a manner that will be most effective in attaining the Departments goals in serving the community.

The use of a canine is a legitimate tool in attaining the goals of law enforcement in our society. The canine teams greatest value lies in the deterrent effect of their presence.

All members of the department must bear in mind that the use of a canine team in making or maintaining an arrest constitutes the use of force or the implied use of force. Therefore, it is imperative that the canine handler be fully cognizant of all the facts and circumstances available surrounding the situation before a decision is made to use a canine for other than deterrent patrol.

Purpose

The primary mission of the K-9 Unit is to provide trained canine teams to assist in the prevention and detection of crime. The tracking of persons sought by the police, protection of police officers, and such other duties as may be directed by competent authority. All members of the Department shall cooperate and assist the K-9 Unit in achieving these objectives.

The personnel of the K-9 Unit shall perform the regular duties of the K-9 Unit, except when their services are required for special details and/or training purposes. The handlers assignment of the K-9 Unit shall in no manner relieve them from conforming to and complying with orders of this Department or general provisions of the Department's Police Manual.

Procedures

1. Request For Use of Canine Service

A. Use within Freehold Borough

Exhibit G

1. Request for the immediate tactical utilization of the services of the K-9 Unit in accordance with the guidelines of this policy may be made by the duty supervisor.
2. Such a request shall be made to the police radio dispatcher, who shall direct that canine assistance be dispatched.
3. Upon the arrival of the canine handler at the scene, he/she shall be responsible for determining whether or not the circumstances of the incident justify the use of a canine and for determining the tactical utilization of same.
4. The handler shall make the final decision on the deployment of the canine.

B. Use outside of Freehold Borough

1. All requests for dispatch of K-9 Unit personnel for the use in areas outside shall be directed to the K-9 Unit. All such request will be afforded immediate and careful consideration, and when the services can be provided from the resources available and the need appears to justify the use of a canine, the request shall be approved and the following action taken:
 - a. Advise the requesting agency of the decision concerning its request for special canine support and the approximate time the team(s) from the K-9 Unit will arrive at the designated area to furnish the requested assistance.
 - b. A follow-up written report shall be submitted to the Division Commander furnishing complete information relative to the request, the services needed, the action taken on the request and the results of the assistance provided.

II. Guidelines on the Use of Force in Canine Deployment

- A. This section is provided to assist the K-9 handlers in making appropriate decisions on the deployment of their canine partners when the use of force to effectuate a lawful arrest would become necessary.
- B. It is imperative that handlers fully understand that they may only use that amount of force which is necessary to effectuate a lawful arrest. Therefore the deployment of police canines to effectuate lawful arrests should only be considered when the use of force would be justified in effectuation of the arrest.

- C. Regardless of whether the particular situation is an offense and /or crime, or if the suspect(s) is fleeing or hiding, the actual and/or implied use of a properly trained police canine is lawful to locate suspect(s).
1. The fact that a suspect is fleeing and/or hiding creates a potentially dangerous situation for pursuing police officers.
 2. Police officers are at a strategic disadvantage when pursuing a fleeing suspect or attempting to locate one that is hiding since:
 - a. It is usually unknown if the suspect is or has become armed,
 - b. it is usually unknown if the suspect plans to inflict harm or upon the pursuing police officers and/or the public.
 3. Therefore the use of canine assistance would usually be appropriate in the following situations:
 - a. Protection of the handler.
 - b. Protection of police officers and/or third persons.
 - c. Suspected criminal(s) who flee after a lawful order to stop.
 - d. Hiding suspect(s) who refuse to surrender.
 - e. When the canine is assaulted.
 - f. To be used as a search tool for minor offenses and missing persons.

III. Authorized Deployment and Use Situations for Police Canines

A. Building Searches

1. When it is believed that unauthorized entry has been gained into a building or a suspect(s) has fled into and concealed him/herself in a building; and
 - a. Where probable cause exists to believe that the suspect(s) hiding within has committed a crime as defined by the laws of the State of New Jersey; and
 - b. The use of force is justified to effectuate the arrest of the suspect(s).
2. The initial responding officers shall immediately establish a perimeter and exhaust all available efforts to determine if innocent

person(s), including police personnel, are within the building without entering same.

3. The initial responding officer shall exhaust all available efforts to avoid further contamination of affected areas unless emergency situations dictate otherwise.
4. The handler shall make the following search warning announcement upon entering the building and prior to beginning the search with his canine partner:

"THIS IS THE POLICE. YOU ARE UNDER ARREST. I HAVE A TRAINED POLICE DOG. IF YOU DO NOT COME OUT, I WILL TURN HIM LOOSE".

5. The handler will then wait a reasonable period of time, depending on the building size, to allow the suspect(s) to surrender and/or innocent person(s) to exit.
6. In large offices and/or warehouse type structures, the search warning announcement will be given by the handler prior to commencing the search on each separate floor of the building.
7. The search will be conducted in a systematic manner as determined by the handler.
8. All searches may be conducted off lead except when in the opinion of the handler the dog's safety would be jeopardized.
9. When searching vacant buildings, the search should be conducted on lead.

B. Field, Marsh, and/or Swamp Searches

1. When it is believed that a suspect(s) has fled into a field, marsh, and/or swamp area; and
 - a. Where probable cause exists to believe that the suspect(s) hiding in said area have committed a crime as defined by the laws of the State of New Jersey; and
 - b. The use of force is justified to effectuate the arrest of the suspect(s).
4. The initial responding officers shall immediately establish a perimeter and exhaust all available efforts to determine if innocent

person(s) including police personnel, are contained within the established perimeter area without entering same.

5. The initial responding officers shall exhaust all available efforts to avoid further contamination of affected areas unless emergency situations dictate otherwise.

6. The handler shall make the following search warning announcement upon entering the area to be searched and prior to beginning the search with his canine partner:

"THIS IS THE POLICE. YOU ARE UNDER ARREST. I HAVE A TRAINED DOG. IF YOU DO NOT COME OUT I WILL TURN HIM LOOSE".

7. The handler shall then wait a reasonable period of time, depending on the area's size, to allow for the suspect(s) to surrender and allow innocent person(s) to exit.
8. The search will be conducted in a systematic manner as determined by the handler
9. Searches can be conducted off lead. The safety of perimeter officers has to be taken into consideration when working the K-9 off lead.

C. Tracking

1. Tracks can be conducted by the K-9 teams for various situations including, but not limited to, i.e., children, elderly, etc. or suspects who have fled a particular area or location.
2. The initial responding officers shall immediately establish a perimeter and exhaust all available efforts to determine if innocent and/or unrelated person(s) including police personnel are contained within the established perimeter area without entering same.
3. The initial responding officers shall exhaust all available efforts to avoid further contamination of affected areas, especially that in which the individual(s) to be tracked were last seen, unless emergency situations dictate otherwise.
4. Tracking will be conducted on lead at a sufficient length to be determined by the handler. The handler shall also decide whether or not a back-up officer(s) will be utilized on the track based on the particular circumstances of the situations.

5. When tracking a suspect for disorderly person offenses, or M.V. violations, a police dog will be used as a search tool only, unless the incident escalates to a crime while in the course of the track.

D. Criminal Apprehension

1. When probable cause exists to believe that a suspect(s) has committed a crime as defined by the laws of the State of New Jersey; and
 - a. The use of force is justified to effectuate the arrest of the suspect(s)
2. In most situations, criminal apprehensions will be accomplished off lead. However, it is important to emphasize that criminal apprehension can also be accomplished when the canine is still on lead
3. Whenever possible, the handler shall allow the suspect(s) to surrender by giving the following warning announcement prior to releasing their canine partner for an apprehension:

"POLICE, YOU ARE UNDER ARREST. STOP OR I WILL RELEASE MY POLICE DOG"

4. If the suspect(s) surrenders, the canine apprehension will be terminated, and the suspect(s) will be handcuffed and searched in accordance with subsection 8 and 9 of this Article.
5. Under absolutely no circumstance should any police personnel other than the handler interfere with the canine once he has been committed to make the apprehension unless specifically directed by the handler.
6. The canine will effectuate the apprehension as trained
7. The handler will immediately advise the suspect to stop fighting and/or resisting the canine, and the handler will command the canine to release the suspect.
8. Once the suspect has complied and submits to the arrest, the handler will immediately command the canine to release the apprehension and call the canine into a watch position.

9. The handler will then advise the suspect that if they attempt to assault the police officers and/or canine, they will again be apprehended by the canine.
10. If other officers are available, they may be summoned by the handler to handcuff and search the suspect, otherwise this will be accomplished by the handler who shall leave his canine partner in a watch position. In the event the suspect(s) are handcuffed by the assisting officers, the handler will put the canine on lead before calling in the back-up officers.
11. Once the suspect(s) has been successfully handcuffed and searched, the handler will ensure that the suspect(s) are provided with immediate medical attention for any injuries sustained during the arrest. The suspect(s) may be transported to a medical facility or the Freehold First Aid Squad may be dispatched to assist the suspect.
12. If the suspect(s) refuses medical attention, the suspect(s) will sign the medical treatment refusal form. In the event that the suspect(s) refuses to sign, the handler's working Street Supervisor will be notified, and the supervisor will note the suspect(s) refusal to sign on the refusal sheet.
13. This section shall apply to all instances in which the K-9 teams have successfully located and/or apprehended a suspect(s).

E. Article/Evidence Search

1. When it is believed that an article and/or instrument of an offense and/or crime has been discarded in a particular area by the suspect(s) involved in the incident.
2. The initial responding officers shall immediately establish a perimeter and exhaust all available efforts to determine if innocent person(s) including police personnel are contained within the established perimeter area without entering same.
3. The initial responding officers shall exhaust all available efforts to avoid further contamination of affected areas unless emergency situations dictate otherwise.
4. The search will be conducted in a systematic manner as determined by the handler.

5. The handler will decide if the search will be conducted on lead or off lead based on the particular circumstances of the situation.

F. Public Disturbances

1. At the scene of riots, imminent riots, or other unruly public disturbances, K-9 teams may be dispatched only upon the direction of the Commanding Officer or his designate for the deployment and use as determined by the K-9 team where the circumstances justify such action. K-9 teams main role shall be officer safety and to address specific situations as they arise.
2. Under no circumstances shall K-9 teams be used for crowd control and/or deterrent effects at the scene of peaceful demonstrations.

G. Scent Searches

1. When situations arise that require the special skills and abilities of a scent detection canine, i.e. arson, explosive, and/or narcotic detection, to locate specific items of contraband and/or evidence of disorderly persons offense and /or crime, their deployment is authorized as outlined in this policy.

H. Community Relations – Public Demonstrations

1. Public demonstrations conducted by the K-9 Unit are usually very well accepted and offer an excellent opportunity for police personnel to relate and interact with the community on a positive note.
2. Since public acceptance and support of the K-9 Unit is essential to maintaining the professional integrity of the K-9 Unit and the department as a whole, all request for same shall be handled as follows:
 - a. Requests shall be directed to the Commanding Officer, who shall approve and coordinate the request(s) with the K-9 Unit Supervisor.
 - b. All reasonable efforts shall be made by K-9 Units personnel to fulfill all demonstration requests approved by the Chief Executive Officer.
 - c. Care shall be taken by all K-9 handler(s) that their appearance and presentations reflect a respectable and professional image on the Department.
 - d. K-9 handler(s) shall maintain complete control over their dogs to ensure the utmost safety to the public.

- e. Civilian contact with Department dogs should be extremely limited and is at the discretion of the handler.

IV. Processing Arrestee(s)

- A. When a suspect(s) is arrested as a result of a canine search, assisting officers will handle the arrest processing procedure of the suspect(s) so the K-9 team may return to service. However, the handler will sign all complaints arising from a canine apprehension.
 - 1. The K-9 handlers will write a detailed supplementary report explaining the involvement of the K-9 team which shall include, but is not limited to:
 - a. The deterrent effects the K-9 team's presence had on the situation, if any.
 - b. Complete documentation and explanation of all situations in which the suspect(s) surrendered as a result of the K-9 team's presence and/or utilization.
 - B. It is imperative that all instances relating to the K-9 team's utilization and/or deterrence effect on any situation be properly and completely documented by the handler on the appropriate report forms.
 - 1. The completed reports are to be forwarded directly to the Division Commander without unnecessary delay. Such situations would include but are not limited to:
 - a. Surrenders
 - b. Physical apprehensions
 - c. Non-physical apprehensions (finds)
 - d. Contraband and/or evidence discovery
 - C. In addition to all other appropriate charges, officers are reminded of N.J.S.A. 2C:29-3.1, Purposeful Injury to Animals used for Law Enforcement, which clearly establishes that "Any person who purposely kills, maims, or otherwise inflicts harm upon a dog, horse or other animal owned or used by a law enforcement officer or agency who interfered with any law enforcement officer using an animal in the performance of his duties commits a 4th degree crime.
- #### V. Duties and Responsibilities of Initial Responding Officers
- A. Upon arrival at all suspected disorderly persons offense and/or crime scenes or situations, shall immediately assess the situation to determine if the K-9 Unit could be beneficial to the investigation.

B. When the initial responding officer(s) and/or supervisor(s) determine that canine assistance is required, they shall take all reasonable actions to ensure that appropriate perimeters are established as outlined in the policy and shall gather as much information as possible for the K-9 team(s) as notified by duty supervisor.

1. Perimeters shall be maintained until relieved by the handler or other competent authority.
2. Officer(s) maintaining perimeters shall do so as tactically as possible while maintaining the integrity of the secured area and remaining alert for possible hazards.

C. In all instances where the handler has deployed a canine, whether on-lead or off-lead, all officers must remain completely alert to the canine's presence in the area and the potential of the canine to make physical apprehensions.