

	ROSENBERG POLICE DEPARTMENT	
	General Order 1.02 Authority	
	Effective Date: 1-9-2014	Replaces: 120
	Approved:  Chief of Police	
	Reference: N/A	

I. POLICY

All personnel take an oath of office before assuming sworn status. Rosenberg Police Department personnel are to use individual discretion and alternatives to arrest in the best interest of justice, fairness and welfare of the public, and protect the constitutional rights of every person.

II. PURPOSE

This General Order mandates an oath of office for sworn personnel as required by the State of Texas and furnishes guidelines for individual discretion by employees of the Rosenberg Police Department. It also details the authority, guidelines and circumstances where sworn personnel should use alternatives to arrest and pre-arraignment confinement.

Police employees have a responsibility to protect the innocent from fear and preserve freedom from chaos. Liberty lies in a balance of order and personal freedom. They must recognize and follow civil rights established by Constitutions of the United States and Texas, federal and Texas Revised Statutes, and judicial interpretations that broaden or restrict law enforcement discretion. Always safeguard the individual and constitutional rights of all persons.

III. PROCEDURES

A. Oath of Office

Ordinances of the City of Rosenberg establish the Rosenberg Police Department. Each police officer takes the oath of office as prescribed by the city before assuming duties of a law enforcement officer.

B. Official Authority

Texas Revised Statutes and ordinances of the City of Rosenberg grant full law enforcement authority and powers to police personnel when they take the oath of office.

C. Base Actions on Legal Justification

Employees must have legal justification for their actions in every situation. What is reasonable for proper law enforcement action, or what is probable cause, varies with each situation. Different facts may justify either an investigation, a detention, a search, an arrest, or no action. Always act reasonably within the limits of your authority to protect the rights of both individuals and the public.

D. Equality of Enforcement

For uniform enforcement of the law, employees must use the element of evenhandedness for its application. If you do not enforce the law in an evenhanded manner, there is a consequent reduction in respect for the law, and resistance to its enforcement.

1. Uniform Application of the Law - The department uses flexibility in deployment and methods of enforcement to respond to varying law enforcement needs in different parts of the city. The department formulates enforcement policies on a citywide basis and applies them uniformly.
2. Actions Based on Circumstances - Like circumstances call for like treatment for all groups and individuals, but ultimately, methods used to get compliance with the law or to make arrests are determined by circumstances existing for each particular situation as guided by departmental directive.
3. Willful Misuse of Authority - Any conduct that exceeds an employee's lawful authority is unauthorized. Misuse of authority is justification for disciplinary action, and several federal civil rights acts serve to protect citizens. These laws provide for both criminal and civil penalties. If found innocent of criminal charges in state court, you may still be liable for a federal civil rights violation, resulting in further criminal charges or a civil lawsuit.

4. Use of Discretion

Arrests for offenses which carry a fine only penalty, typically traffic offenses or Class C misdemeanors, will be made only in circumstances when issuance of a citation would not achieve enforcement goals or for public safety. This does not include circumstances where the violator refuses to sign a citation or promise to appear.

Police officers, by the nature of their job, are required to exercise discretion in the performance of their duties. The department provides officers with written policies, rules, departmental orders, directed patrol assignments, and training in order to aid them in making discretionary decisions in performing their duties.

Within the boundaries of departmental rules and regulations, departmental goals generally provide officers with guidelines in exercising their discretion. It is up to the individual officer to consider the relevant facts, the situation, and then, using knowledge, training, and good judgment, make appropriate decisions. Supervisors must closely observe the use of discretion by their subordinates and point out factual errors or alternatives that may be more appropriate.

5. Custodial Arrests for Class C Offenses:

- a. Officers are authorized by applicable law, with certain statutory exceptions, to arrest persons for violations of class C offenses which carry a fine only penalty upon conviction. Officers will use good judgment and discretion in determining whether to arrest or issue a citation for such violations.

b. The following factors must be considered and documented by the officer upon making an arrest for any offense which carries a fine only penalty upon conviction:

1. Danger to others if the violator is released;
2. Probability that the violator will or will not appear for court;
3. Whether the violator is a repeat offender;
4. Other charges or aggravating factors; or
5. Whether enforcement goals may be equally achieved with a citation rather than with a custodial arrest.

6. Arrest Restraints:

Officers will generally handcuff all arrested persons behind the back during transport. Officers may, in the exercise of their discretion as directed by these general orders, handcuff prisoners in front or not at all in the following circumstances:

Prisoners who are physically disabled, elderly, children or pregnant, or, other circumstances where, in the officer's discretion, restraint by handcuffing behind the back is not necessary to prevent risk of escape, assault or injury to the prisoner. In exercising this discretion, officers shall consider the risk of harm to the prisoner or others, risk of escape, and severity of offense consistent with the goals of Department general orders and legal rights of the prisoner.

7. Alternatives to Arrest and Confinement

NOTE: Employees may not release any arrestee in custody on a valid warrant until such arrestee has posted the proper bond.

a. Types of Alternatives to Arrest

It is important that employees are aware of the alternatives to arresting and confinement. Alternatives of this nature include:

1. Citations;
2. Warnings;
3. Referral; and
4. Informal Resolutions.

b. Alternatives to Arrest: Citations

Officers may use *citations* for Class 'C' violations of Texas Revised Statutes and City of Rosenberg Codes, except where directives authorize arresting and confinement.

c. Alternatives to Arrest: Warnings

The department authorizes officers to exercise discretion and issue warnings for minor traffic and ordinance violations. Generally, do *not* use warnings for major violations or for those violations specifically addressed in a departmental directive.

d. Alternatives to Arrest: Referral

Officers should make proper referral to other components of the Rosenberg Police Department, City of Rosenberg, other government agencies or social service agencies. Situations may include, but are not limited to:

1. Federal Law Violations - You may refer federal law violations to the proper federal authorities.
2. Mental Health - You may refer persons with mental problems to a mental health organization.
3. Child Abuse - You *must* refer all suspected child abuse cases to the Children's Protective Service for concurrent investigation.

4. Hot Checks - Refer cases involving hot checks to the District Attorney's Office, Hot Check Division.

e. Alternatives to Arrest: Informal Resolution

Some problems, officers may solve without arrest, citation or referral. Informal resolution is an excellent method to deal with *minor* violations.

1. Agreement/Probable Cause - An essential element to informal resolution is the agreement by all involved parties that no arrest should happen, or a determination by the investigating officer that inadequate probable cause exists.
2. Victims Decline Charges - Informal Resolution usually should be used in disputes such as neighborhood squabbles, landlord/tenant disagreements, when victims do not wish to file charges, etc.

f. Exercising Alternatives to Arrest

Officers must consider the following factors when exercising alternatives to arrest:

1. Probable Cause - Presence or absence of probable cause;
2. Cooperation - Level of cooperation by victims and witnesses;
3. Law - Existing laws and elements of the offense;
4. Severity - Severity of the offense;
5. Resources - Available resources; and

6. Directives - Departmental policies, procedures, rules and regulations, and orders.

NOTE: Your personal feelings shall not guide the decision whether to make an arrest.

g. Constitutional Rights

No person has a constitutional right to violate the law; nor may you deprive persons of their constitutional rights merely because you suspect them of having committed a crime. You violate the binding force of the law that you have sworn to uphold if you exceed your authority by unreasonable conduct.

h. Enforcing the Law

Officers must seek to properly enforce the law as it exists. The task of determining constitutionality of a statute lies with a court of proper jurisdiction, not with you.

1. Valid Laws/Rights - Once sworn, you may enforce any federal or state statute, or ordinance of the City of Rosenberg which is valid on its face without fear of abrogating the constitutional rights of the person violating that law.
2. Acting within Authority - When you lawfully act within the scope of your authority you do not deprive persons of their civil liberties.
3. Police Activities - You may within the scope of your authority make reasonable inquiries, conduct investigations, and arrest on probable cause.

i. Safeguarding Individual Rights

You shall recognize and follow those rights granted to individuals by Constitutions of the United States and the State of Texas, federal and Texas Revised Statutes, and judicial interpretations affecting law enforcement. Your responsibilities include, but are not limited to the following:

1. Confessions/Admissions - Do not coerce a person to admit or involuntarily confess to a crime in any manner.
2. Arraignment Delays - Do not make any needless delay in arraignment.
3. Defendant Rights - Inform arrestees of their rights against self-incrimination.
4. Right to Counsel - Do not deprive any arrestees of their right to counsel.
5. Pretrial Publicity - Do not contribute to any pretrial publicity that would tend to prejudice a fair trial.