



KANSAS CITY MISSOURI POLICE DEPARTMENT

PROCEDURAL INSTRUCTION

DATE OF ISSUE

4/7/2021

EFFECTIVE DATE

4/7/2021

NO.

21-04

SUBJECT

First Amendment-Protected Activities

AMENDS

REFERENCE

PPBM: 201- "Code of Ethics and Rules of Conduct."
P.I.: "Emergency Operations Procedures"
"Internally Recorded Digital Media Records."
Critical Incident Management Plan
Retention Policies
Revised Statutes of Missouri Section 574.040 & 574.050

RESCINDS

I. INTRODUCTION

- A. This written directive establishes guidelines and procedures for members of this Department when engaging with individuals who are participating in First Amendment-protected activities.
- B. The First Amendment of the United States Constitution provides individuals and groups the right to organize and participate in assemblies on city streets, sidewalks, other public ways, in parks, and near the object of their assembly, so long as the individuals and groups do not unreasonably obstruct vehicle or pedestrian traffic, understanding varying degrees of disruption is inevitable.
- C. It is the Department's mission to safeguard and protect the Constitutional rights of all individuals participating in First Amendment activities and assemblies.

II. TERMINOLOGY

- A. **Assembly** – A peaceful and lawful gathering or coming together of several individuals, usually for a particular purpose protected by the First Amendment, whether religious, political, educational, or social.
 - 1. These gatherings may include but are not limited to, demonstrations, marches, protests, and rallies.
 - 2. These gatherings present little to no threat to public safety and require little to no police response.
- B. **Buffer Zone** – A safety zone implemented by command and maintained by officers which designates an area as safe, usually between counter-protesting assemblies.
- C. **Kettling** – A tactic used by law enforcement to control crowds in which officers surround a group of individuals from all sides, preventing points of egress, sometimes to make arrests or contain individuals.

- D. **Riot** – An incident of civil unrest that constitutes a clear and present danger of violent and unlawful acts such as destruction of property, arson, looting, injury towards persons, or other similar threats/acts. A person commits the offense of rioting if they knowingly assemble with six (6) or more other participants in the assembly and are agreeing to violate any state or federal law with force or violence, and thereafter, while assembled and in fact violating any of said laws with force or violence as outlined in Revised Statutes of Missouri (RSMo.) Section 574.050.
- E. **Unlawful Assembly** – An assembly that has met a specific set of criteria as outlined in RSMo. Section 574.040 that occurs when seven (7) or more participants in the assembly agree to collectively engage in activity with force or violence *in violation of state or federal law* – not municipal law.

III. GENERAL GUIDELINES

- A. First Amendment rights are subject to reasonable time, place, and manner restrictions. These restrictions will be the least prohibitive reasonable and available means at that time to accomplish a lawful goal in accordance with city, state, and federal law.
- B. Members are encouraged to attend and participate in meetings with community stakeholders and assembly sponsors for pre-planned large-scale anticipated assemblies.
- C. Whenever possible, members will attempt to contact sponsors and organizers of large-scale spontaneous assemblies to establish communication and cooperation and send a clear message that the Department is there to protect their Constitutional rights.
- D. Members will coordinate efforts with the Media Unit to establish communication via social media regarding an unlawful assembly.
- E. At All Assemblies Protected by the First Amendment:
 - 1. Responding members will:
 - a. Perform all duties impartially without favoritism or preference and without regard to race, color, national origin, limited English proficiency, sex, sexual orientation, gender identity, age, religion, disability, or economic status, in accordance with the current written directive entitled, “Code of Ethics and Rules of Conduct.”
 - b. Enforce laws appropriately and courteously in carrying out their responsibilities. Members will strive to obtain maximum cooperation from the public in accordance with the current written directive entitled, “Code of Ethics and Rules of Conduct.”

- c. Protect the public's right to security and privacy in accordance with the current written directive entitled, "Code of Ethics and Rules of Conduct" and "Internally Recorded Digital Media Records."
 - d. Be aware that:
 - (1) Generalized threats of future harm are never the cause for arrest in First Amendment situations.
 - (2) Only *genuine threats of immediate violence* given the totality of circumstances that would result in harm to an individual or substantial harm to an organization, or other entity are cause for arrest.
2. Members will not:
- a. Infringe on an individual's right to lawfully assemble and associate with others.
 - b. Obtain information on individuals for documentation solely based on status, age, sex, gender, race, color, religion, disability, gender identity, sexual orientation, national origin, support for unpopular causes, social beliefs, associations, limited English proficiency, or economic status.
 - c. Allow personal feelings, animosities, or friendships to influence their official conduct.
 - d. Intentionally escalate tensions between law enforcement and individuals gathering during an active assembly by expressing their personal, political, or religious views while on-duty and in the performance of their duties.

IV. PROCEDURES

- A. Small Scale and Peaceful First Amendment Assemblies
- 1. Generally, member involvement and oversight is not necessary unless members are called to respond.
 - 2. If called to respond, members will contact a supervisor/commander and assess whether the allegations of law violations for which they were called are likely occurring, and, if so, will address such violations consistent with their training and duties.
 - 3. If no law violations are occurring, members will consult with a supervisor/commander for further direction, but generally keep the peace from a distance and in a manner that does not escalate the situation.

4. If a small scale peaceful assembly becomes large and potentially unlawful, members will contact a commander who will refer to Section B below.

B. Large Scale, Protracted and Potentially Unlawful Assemblies

1. Commander Responsibilities

- a. For planned First Amendment activities, a single identifiable incident commander (IC) will be designated by the Chief of Police or their designee.
 - (1) The IC or designee will make reasonable efforts to meet with assembly organizers in advance to discuss plans, rules of engagement, and foster a professional and cooperative relationship.
 - (2) Reasonable time, place, and manner restrictions on the assembly will be included in discussions.
- b. If an active assembly emerges spontaneously, a commander from the effected patrol division will assume the responsibility of the IC. If not available, the Duty Commander will assume the responsibilities of the IC.
- c. The IC responsibilities generally include, but are not limited to:
 - (1) Monitoring, observing, and assessing the event from a distance with a minimum amount of interference or display of force as possible.
 - (2) Determining the level of force response (display of force), such as donning personal protective equipment, as stated below.
 - (3) Distinguishing between minor inconveniences and the disruption of normal activities when addressing crowd control situations through the exercise of reasonable judgement.
 - (4) Recognizing that any event involving a large number of individuals may result in a varying degree of disruption of normal activities.
 - (5) Determining whether a buffer zone is necessary to ensure public safety and maintain order when counter-protesting groups are present.

- (6) Determining if and when an assembly will be designated as unlawful.
- (7) Evaluate and determine whether it is reasonable and appropriate to use weapons, munitions, or chemical agents to address any threats as they may arise.

2. Display of Force – Generally

- a. The display of armored vehicles, personal protective equipment, or other displays of force will be minimized to the extent safely possible while having such equipment within proximity.
- b. The IC will continuously evaluate the situation to determine if law enforcement presence is aggravating the situation and if so, make adjustments accordingly.

3. For Protracted Events Occurring Over Several Days

- a. Create a formal plan.
 - (1) The plan will include a mechanism for direct communication and feedback from members involved regarding the formal plan and any updates or modifications.
 - (2) The formal plan will clearly define the strategic and tactical goals for the operation, including plans for collaboration with partner agencies and elected officials and plans for member wellness.
- b. If possible, establish protocols with any assisting outside agencies regarding the guidelines addressed with ranking members.

C. Unlawful Activities During an Active Assembly

1. If an assembly becomes disruptive, commanders will use their best efforts to employ a gradual approach to restore order consistent with the health and safety of the surrounding community, its inhabitants, and its property.
2. If possible, assembly organizers and sponsors, or individuals of leadership roles within the assembly, will be engaged by the IC to communicate expectations and to issue warnings if disruptive activities are not resolved.
3. Members will make all reasonable efforts to allow law-abiding individuals to continue to exercise their First Amendment protected rights, and will focus efforts on those individuals in the active assembly who violate the law.

4. It is understood that some situations will require members to employ immediate control and/or enforcement procedures.
- D. Designating an Active Assembly as an Unlawful Assembly
1. The IC may designate the active assembly as an unlawful assembly *if the criteria for such a designation are met* pursuant to the RSMo. Section 574.040 and only after reasonable efforts to gain voluntary compliance have failed.
 2. Dispersal orders will only be given after the IC determines:
 - a. No less than seven (7) participants in the assembly are collectively engaging in activity with force or violence in violation of state or federal law; and
 - b. There is a clear and present danger of riot, immediate violence, or other immediate threats to public safety; and
 - c. There is no longer a reasonable likelihood that voluntary compliance or targeted enforcement of non-compliant individuals will result in eliminating the violence, interference, or threats to safety; or
 - d. A State of Emergency has been declared by the Mayor, the Governor, or the President of the United States that requires such dispersal.
 3. The IC or their designee giving the dispersal order will document the state or federal violation(s) by whatever means are feasible at the time.
 4. Clear and unambiguous warnings to disperse will be utilized.
 5. While issuing the order and when possible, the IC or their designee will:
 - a. Give the dispersal order from multiple locations via an amplification system. The warnings should be loud enough for individuals in the rear of the assembly to hear the orders, if possible.
 - b. Announce the direction of egress to the group of individuals assembling unlawfully.
 - c. State the dispersal orders in English and in other languages that are appropriate for the audience.
 - d. Record via audio/video the time, date, and location of the dispersal order.

6. An example of dispersal orders is:

"I am (rank and name), of the Kansas City Missouri Police Department. I hereby declare this to be an unlawful assembly in violation of Missouri Revised State Statute Section 574.040 and order all individuals assembled here at (specific location) to immediately and peaceably disperse (insert direction of egress). If you do not do so, you will be arrested.

7. Members will provide a sufficient and reasonable opportunity for all individuals to heed the warnings, follow the rules of egress, and exit the area.

8. Kettling

- a. This is a practice that is not preferred because it eliminates points of egress and denies potentially peaceful protesters the opportunity to remove themselves from escalating situations.

- b. Kettling will only be used when authorized by an IC after concluding that it is reasonable and necessary to protect the public or members from physical harm.

9. Dispersal orders will be given repeatedly until the crowd has dispersed, or the IC determines that the crowd unlawfully assembling does not intend to disperse and authorizes the deployment of a chemical agent. Dispersal orders and directions on how to follow the rules of egress will continue as often as reasonably possible after a chemical agent is deployed to encourage protesters to leave the area.

E. Use of Force to Disperse or Control Crowds

1. Generally, the IC is responsible for evaluating and determining if and when it is reasonable and appropriate to use less-lethal weapons, munitions, or chemical agents to neutralize threats in an assembly.
2. Members will refrain from deploying less-lethal weapons, munitions, or chemical agents before the IC's authorization unless given the totality of the circumstances there is an immediate need to protect themselves or others from physical injury.
3. Less-lethal weapons and munitions, other than chemical agents, will not be used for crowd-dispersal purposes.
4. All use of force actions will be thoroughly documented in accordance with current written directives.

F. Arrests

1. Generally, the IC will approach First Amendment assemblies with the goal of making arrests only to the extent necessary and with a focus on identifying any specific individuals who are breaking the law and avoid mass arrest situations.
2. The IC will communicate that enforcement activity in connection with a *designated* unlawful assembly will focus on the violation of state and federal law(s) that led to the assembly being declared unlawful, and on those individuals responsible for the state and federal violations.
3. Any other violations of city, state, or federal criminal laws witnessed by or reported to members will be handled according to training and current written directives.
4. If possible, the appropriate county or city prosecutor will be notified of large-scale events that have the potential for unlawful activity that could result in arrests.
5. Members will refer to the Critical Incident Management Plan and the current written directive entitled, "Emergency Operations Procedures," regarding arrest procedures for Area Commands/Field Forces.

G. Information Dissemination

Information determined to be disseminated concerning First Amendment-protected activities will be released in accordance with the Department retention policy.



Richard C. Smith
Chief of Police

Adopted by the Board of Police Commissioners this 23 day of March 2021.



Mark Tolbert
Board Vice President

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