



# FIRST AMENDMENT RIGHTS



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## I. PURPOSE

This directive:

- A. establishes the Department policy related to the First Amendment and members of the public engaged in First Amendment conduct.
- B. describes the First Amendment and the rights of members of the public upon the public way.
- C. outlines the responsibilities when responding to First Amendment activities, including managing crowds and issuing crowd dispersal orders.
- D. informs members of their obligations to protect the First Amendment rights of law-abiding individuals who encounter a hostile audience threatening to create public disorder, as described in the judgment order entered in *Nelson v. Streeter, et.al.*, No. 88 C 5434.

## II. DEFINITIONS

- A. **First Amendment assembly** - a gathering conducted for the purpose of persons expressing any opinion, idea, or belief.
- B. **Speech peddling** - when licensed peddler sells or exchanges for value anything containing words, printing, or pictures that predominantly communicates a non-commercial message (MCC 4-244-141).
- C. **Field commander** - the highest ranking on-scene Department member who reports directly to the overall incident commander and is responsible for the Department's on-scene response to the incident.
- D. **Incident commander** - the designated Department member who is responsible for the Department's overall response to the incident.
- E. **Crowd dispersal order** - a lawful command given by a Department member for all persons to leave a designated area when three or more persons are committing acts of disorderly conduct that are likely to cause substantial harm in the immediate vicinity.
- F. **Public way** - any street, alley, or other parcel of land open to the outside air leading to a public street, which has been deeded, dedicated, or otherwise permanently appropriated to the public for public use, and which has a clear width and height of not less than 10 feet (410 ILCS 25/3).

## III. THE FIRST AMENDMENT

- A. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."
- B. First Amendment conduct means speech or activity related to the freedom of speech, free exercise of religion, freedom of the press, the right to assemble, and the right to petition the government. The First Amendment protects, but is not limited to, the following rights:
  - 1. The right to hold any opinion, idea, or belief.

2. The right to communicate or receive opinions, ideas, beliefs, or information.
  3. The right to associate and to assemble with others for the purpose of expressing, receiving, or exchanging ideas, beliefs, or information.
  4. The right to advocate for ideas or beliefs, including the right to advocate for an alternative system of government and to advocate for "the use of force or of law violation," except where such advocacy is directed to inciting or producing imminent lawless conduct and is likely to incite or produce such action.
  5. The right to petition the government or governmental officials for redress of grievances.
  6. The right to associate for the purpose of seeking and giving legal advice as well as advancing litigation.
  7. The right to observe and record events, including approaching individuals to ask questions for news gathering purposes, and disseminating information.
- C. First Amendment rights exercised in a public forum may be subject to reasonable time, place, and manner restrictions, which means content-neutral time, place, and manner restrictions that are narrowly tailored to serve a significant governmental interest and leave open alternative communication channels.

#### IV. DEPARTMENT POLICY

- A. All Department members will treat all persons with the courtesy and dignity which is inherently due every person and will act, speak, and conduct themselves in a courteous, respectful, and professional manner. The Department and all Department members will act in accordance with the Constitution of the United States of America, including the First Amendment, and will comply with the law and Department policy.
- B. Department members **will not**:
1. disrupt, intimidate, harass, or discriminate against, or arrest any persons engaged in First Amendment conduct for any unlawful purpose, including for the purpose of preventing the person from lawfully exercising their First Amendment rights.
  2. make comments about the views expressed by persons exercising their First Amendment rights.
  3. use force to punish, retaliate against, deter, or respond to the lawful expression of First Amendment rights.
  4. hinder or prevent members of the public from recording Department members who are in the performance of their law enforcement duties in a public place or when the member has no reasonable expectation of privacy consistent with the Illinois Compiled Statutes (720 ILCS 5/14-2(e)).
- NOTE:** Department members may take reasonable action to maintain safety and control, secure crime scenes and accident sites, protect the integrity and confidentiality of investigations, and protect the public safety and order (ILCS 720 ILCS 5/14-2(e)).
5. interrogate or otherwise question participants concerning their views unless essential to an investigation of an apparent violation of law or as part of an authorized investigation directed toward First-Amendment-related information consistent with the Department directive titled "[Investigations Directed at First Amendment-Related Information](#)."
  6. arrest any persons engaged in First Amendment conduct:
    - a. for minor or petty offenses, including traffic or business offenses, or

- b. that pose no immediate threat to the safety of the community, or others, or of causing property damage.
- C. Consistent with the Department directive titled "[Vision, Mission Statement, and Core Values](#)," the Department protects the lives, rights, and property of all people in Chicago, including protecting public health, safety, welfare, property, and the interest of persons not participating in a First Amendment assembly to use the streets, sidewalks, and other public ways to travel to their intended destinations and use the parks for recreational purposes.
- D. Department members will only use force that is objectively reasonable, necessary, and proportional consistent with the Department directive titled "[De-escalation, Response to Resistance, and Use of Force](#)," including using the minimum amount of force needed based on the totality of the circumstances.
1. Prior to the use of physical force, Department members will provide a warning and allow persons to voluntarily comply with lawful verbal direction prior to the use of physical force, when it is safe and feasible to do so, consistent with the Department directive titled "[Response to Resistance and Force Options](#)."
  2. Consistent with the Department directive titled "[Baton Use Incidents](#)," batons may not be used to intentionally strike a subject in the head or neck except when deadly force is justified.
  3. Consistent with the Department directive titled "[Oleoresin Capsicum \(OC\) Devices And Other Chemical Agent Use Incidents](#)":
    - a. a personal OC device is an authorized force option against passive resisters that are part of noncompliant groups, crowds, or an individual taking part in a group or crowd only after obtaining authorization from the Superintendent or his or her designee.
    - b. a personal OC device is an authorized force option against active resisters as described in Department directive [Oleoresin Capsicum \(OC\) Devices And Other Chemical Agent Use Incidents](#) . If an active resister is part of a group or crowd, a Personal OC device is authorized only after obtaining approval from the Superintendent or his or her designee.
    - c. special weapons that dispense the Capsaicin II powder agent or larger volumes of chemical agents are authorized force options against active and passive resisters that are part of noncompliant groups, crowds, or an individual taking part in a group or crowd only under the following conditions:
      - (1) when the chemical agent is used only for area saturation, and
      - (2) only after obtaining authorization from the Superintendent or his or her designee.
- NOTE:** The use of special weapons that dispense Capsaicin II powder agent or larger volumes of chemical agents is only authorized for units that have received appropriate training. Any unit that has not received the appropriate training does not have access to special weapons that dispense Capsaicin II powder agent or larger volumes of chemical agents.
4. The Superintendent will only authorize the use of oleoresin capsicum (OC) devices and other chemical agents during a First Amendment assembly if there is a threat or attack against Department members, the public, or property.

**EXAMPLE:** Threats or attacks against Department members, the public, or property may include, but are not limited to, throwing objects at Department members, members of the public, or at storefront windows causing windows to break, or threatening to harm Department members or members of the public by driving erratically near or on designated protestor routes.

5. Department members will document reportable uses of force consistent with the Department directive titled "Incidents Requiring the Completion of a Tactical Response Report."
- E. Consistent with the Department directive titled "Prohibition of Retaliation," the Department prohibits any and all forms of retaliation, including arrest, against any member of the public for engaging in protected lawful exercise of First Amendment rights. (e.g., protected speech, lawful demonstrations, observing or filming police activity, or criticizing the Department, a Department member, or a member's conduct).
- F. Consistent with the Department directive titled "Body Worn Cameras," Department members equipped with a body worn camera (BWC) will activate the camera at the beginning of all law-enforcement-related activities, such as issuing a dispersal order or making an arrest.
- G. Any allegations of misconduct or policy violations will be reported, initiated, and investigated consistent with the Department directive titled "Complaint and Disciplinary Procedures." In response to allegations of misconduct or policy violations, the Superintendent of Police retains the discretion to take action to restrict the duties of an active duty sworn Department member.

## V. FIRST AMENDMENT RIGHTS UPON THE PUBLIC WAY

- A. The public way generally includes public property held open to the public such as sidewalks, parks, and public plazas such as Federal Plaza.
- B. Persons on the public way have a right to:
  1. express their views through any form of communication, including distribution or sale of newspapers, magazines, handbills, or other printed matter; and
  2. solicit financial contributions.
- C. Persons on the public way may freely distribute, without charge to others, material or messages containing First Amendment protected ideas.

**NOTE:** Generally, persons giving away items containing First Amendment protected messages are not considered peddlers or itinerant merchants and ordinances applicable to itinerant merchants and peddlers do not apply to persons freely distributing First Amendment protected messages. For example, campaign literature.

## VI. LIMITS ON FIRST AMENDMENT ACTIVITIES

- A. The rights protected by the First Amendment and exercised on the public way are not absolute and are subject to time, place, and manner restrictions, as well as other applicable laws.

**EXAMPLE:** Persons expressing views protected by the First Amendment on the public way are required to comply with laws prohibiting physical obstruction of the movement of persons and vehicles on the public way or place and damage to public or private property.

- B. Speech Peddling
  1. Speech Peddling is defined by the Municipal Code of Chicago as a licensed peddler that sells or exchanges for value anything containing words, printing, or pictures that predominantly communicates a non-commercial message (MCC 4-244-141(b)).

2. Persons engaged in Speech Peddling are subject to geographic restrictions and permit requirements contained in the Municipal Code of Chicago (MCC 4-244-141(b)). (E.g., No person shall be allowed to engage in speech peddling within the Central District without a speech peddling permit.)

**NOTE:** Speech peddling does not include individuals freely distributing materials or messages containing First Amendment protected messages as outlined in Item V-C of this directive.

- C. After a reasonable amount of time after the issuance of a crowd dispersal order, participants in a First Amendment assembly who disobey a lawful crowd dispersal order issued as prescribed in this directive are subject to Department enforcement actions that may include the issuance of a citation or arrest for MCC 8-4-010(d).

## VII. PROTECTIONS OF FIRST AMENDMENT RIGHTS IN A HOSTILE AUDIENCE ENVIRONMENT (CASE 88C5434)

- A. [Judgment Order 88 C 5434](#), Nelson v. Streeter, et al., relates to Department members' responsibilities at public exhibitions of ideas that may result in hostile reactions from those viewing or hearing the exhibition.
- B. Department members will protect the free speech rights of all persons, no matter what the particular message, position, or philosophy espoused, and even if other people are offended by it, as long as the person expressing that message, position, or philosophy is not violating the law and has abided by any reasonable time, place, and manner restrictions placed on the expression of such ideas.
- C. If an incident where a hostile audience threatens a speaker, artist, exhibitor, or artwork or there is a danger of harm to persons or property, Department members will:
  1. if artwork or other expressive material is involved, attempt to ascertain who owns or has right of custody of the material;
  2. advise the speaker, artist, or exhibitor, if present, of the right to continue the expression at the current site;
  3. begin or continue police protection so as to allow the speaker, artist, or exhibitor to continue the expression of speech or art; and
  4. request that a supervisor respond to the scene.
- D. When an expression of speech or art is threatened by a hostile audience, the incident commander will determine if the assignment of additional police personnel will allow for the continuation of the expression.
- E. If it is determined that the expression cannot continue at the original site due to the activities of persons hostile to the expression, the on-scene the incident commander will consider if:
  1. all police resources reasonably available have been deployed to maintain the peace and allow the expression to take place;
  2. police efforts to take direct action against those violating the law have not been successful; and
  3. there remains a threat of imminent violence that police personnel are unable to control.

**NOTE:** If reasonably possible, members should consult with the Legal Affairs Division or City of Chicago legal advisors prior to taking action to discontinue a public expression of speech or art.

- F. The expression may be discontinued at the original site when the field commander determines that:
  1. order can be restored:

- a. only by taking the expressive material into custody, or
  - b. otherwise discontinuing the expression.
2. available alternatives of continuing private custody have been considered but cannot be deployed.
  3. when expression is discontinued, it should be permitted to resume as soon as the incident commander determines that order has been restored and can be maintained if the expression resumes.
- G. Any expressive material taken into protective custody will be inventoried according to existing inventory procedures. The owner of the material will be advised of the right to immediately reclaim the material at the unit of inventory.

## VIII. CROWD MANAGEMENT DURING FIRST AMENDMENT ASSEMBLIES

- A. The primary objectives of crowd management are to:
1. support and protect lawful First Amendment activity, including the public's right to free speech and of free speech expression;
  2. observe the crowd and assess for potential safety concerns;
  3. communicate with the crowd and its leaders; and
  4. obtain voluntary compliance to lawful direction and orders with minimal Department response or enforcement actions.
- B. Department communications with the crowd should convey law enforcement expectations and support of lawful First Amendment activity. The field commander will:
1. ensure on-scene communications, instructions, or warnings given to the crowd are clear, understandable, and attainable;
  2. attempt to give instructions and warning to the leaders or spokesperson of the crowd or the other participants in regards to potentially unlawful actions or about any observed unlawful conduct;
  3. allow sufficient time for individuals and the crowd to receive and comply with the communications, to the extent feasible; and
- REMINDER:** When encountering noncompliance to lawful verbal direction, Department members will consider, to the extent feasible, if the noncompliance may be due to limited English proficiency or other language barriers, a medical condition, or disability.
4. use multiple methods of communication to provide effective communication with the crowd, including people with disabilities, to extent feasible.
- EXAMPLE:** Multiple methods of communication may include a device to amplify sound, qualified language interpreters, visual aids (e.g. gestures, writings, or posted written communications), and digital messaging (e.g., social media, electronic notification services).
- C. In managing the crowd, the field commander must consider the following:
1. establishing contact with crowd leaders to assess their intentions and developing a mutually acceptable plan for the lawful expression of the First Amendment rights as well as cooperation of the crowd in identifying specific individuals suspected of undermining the lawful expression of the message of the First Amendment assembly.

2. isolating specific individuals engaged in unlawful activity for enforcement actions, such as citations or arrest for specific offenses, while allowing the First Amendment assembly to continue.
  3. the potential positive and negative impact of a significant display of a law enforcement presence including officer line formations, vehicles, bicycle units, and the Mounted Patrol and combinations thereof.
- D. Department members will attempt to avoid arrest of members of the news media who are credentialed consistent with the Department directive titled "[News Media Credentials](#)" by giving verbal direction before taking enforcement action.

## IX. CROWD DISPERSAL ORDERS DURING FIRST AMENDMENT ASSEMBLIES

- A. During a First Amendment assembly, crowd dispersal orders **will not** be issued unless three or more persons are committing acts of disorderly conduct in the immediate vicinity and those acts are likely to cause substantial harm (MCC 8-4-010(d)).
- B. The primary objectives of crowd dispersal orders are to:
1. provide lawful orders to the crowd and its leaders;
  2. attempt to gain voluntary compliance with lawful direction and orders; and
  3. clearly identify the designated and available dispersal routes.
- C. During a First Amendment assembly, the field commander is the issuing authority for a crowd dispersal order.
- D. Before issuing a crowd dispersal order, the field commander must consider if there are and attempt any available less intrusive options to stop the unlawful behavior necessitating the issuance of the crowd dispersal order. In considering whether a less intrusive option is available, the field commander will consider whether attempting such option would result in an immediate risk of physical harm to a person or property or would be clearly ineffective under the circumstances at the time.
- E. When a determination has been made to disperse a crowd and give a dispersal order, the guidelines listed below will be followed:
1. The field commander will:
    - a. issue, or direct a supervisor to issue, the crowd dispersal order. The crowd dispersal order will:
      - (1) include a lawful order for the crowd to disperse by order of the Chicago Police Department;
      - (2) be clearly audible, understandable, and contain attainable instructions;
      - (3) clearly identify the designated and available dispersal routes;
      - (4) provide clear direction that the crowd is expected to immediately disperse and leave the area; and
      - (5) be given multiple times, except where there is imminent danger of personal injury or substantial harm to property.
    - b. allow sufficient time for individuals and the crowd to receive and comply with the dispersal order, to the extent feasible.

### REMINDER:

*When encountering noncompliance to lawful verbal direction, Department members will consider, to the extent feasible, if the noncompliance may be due to limited English proficiency or other language barriers, a medical condition, or disability.*

- c. use multiple methods of communication to provide effective communication with the crowd, including people with disabilities, to extent feasible.

**EXAMPLE:** Multiple methods of communication may include a device to amplify sound, qualified language interpreters, visual aids (e.g. gestures, writings, or posted written communications), and digital messaging (e.g., social media, electronic notification services).

- d. document the crowd dispersal order with Department-authorized video and audio recording devices, if available.
- e. provide notification to the Office of Emergency Management and Communications (OEMC) of the dispersal order to be documented on the incident Police Computer-Aided Dispatch (PCAD) event, including, but not limited to:
  - (1) the location of the crowd being dispersed;
  - (2) the size of the crowd;
  - (3) the time of the initial dispersal order; and
  - (4) if multiple dispersal orders were given, the number of dispersal orders issued and the time the additional orders were given.
- f. prior to arresting individuals for failure to disperse (MCC 8-4-010(d)), provide a reasonable amount of time after issuing the crowd dispersal order and seek to ensure that the individual has heard and understood the dispersal order.

2. After the issuance of a dispersal order, nothing in this Directive, except as provided in Items Sections IV-B-1, IV-B-6, and IV-E, restricts the ability of the Department members to take appropriate enforcement action against any member of the public who:

- a. commits a Class A misdemeanor offense that involves a threat to a personal's physical safety or property, or a more serious criminal offense;
- b. poses an immediate threat to the safety of the community, or others, or of causing property damage; or
- c. fails to comply with dispersal order after being given the opportunity to do so.

F. Members of the news media who are credentialed consistent with the Department directive titled "News Media Credentials" and who display or tender their credential will not be required to disperse following the issuance of a crowd dispersal order issued during a First Amendment assembly.

## **X. REPORTING REQUIREMENTS FOR CROWD DISPERSAL ORDERS**

A. Following any crowd dispersal order issued during a First Amendment assembly, the incident commander will ensure that the circumstances leading to the issuance of the crowd dispersal order are documented in an incident case report with the offense code of 5015, which is unique to crowd dispersal orders issued during First Amendment assemblies. This report will include:

- 1. an articulation of the acts likely to cause substantial harm;
- 2. the consideration of less intrusive options that were available to stop the unlawful behavior necessitating the issuance of the crowd dispersal order;
- 3. a description of less intrusive options that were attempted and any other available less intrusive options that were considered; and
- 4. the content of the crowd dispersal order, including the dispersal routes.

- B. When Department members formed into squads physically respond to a crowd's actions or inactions in response to verbal directions, squad supervisors will document the issuance of the crowd dispersal order on the Incident Response ([CPD-11.302](#)) form consistent with the Department directive titled "[Reporting the Response to Crowds, Protests, and Civil Disturbances](#)."
- C. Any supervisor assigned to an event may complete a Special Event Evaluation Report ([CPD-11.466](#)) documenting any observations, evaluation, or recommendations to improve Department response to future incidents.
- D. Following a crowd dispersal order issued during a First Amendment assembly, the incident commander will ensure an After-Action Review (AAR) is completed consistent with the National Incident Management System (NIMS) principles. The AAR will:
- document any recommended actions or identified improvements to the Department's response for future incidents.
  - be forwarded to the First Deputy Superintendent and the Deputy Chief, Training and Support Group.

(Items indicated by italics/double underline were added or revised)

David O. Brown  
Superintendent of Police

20-049 JJR/MWK/TSS/ASH

**ADDENDA:**

1. G02-02-01 - Investigations Directed at First Amendment-Related Information