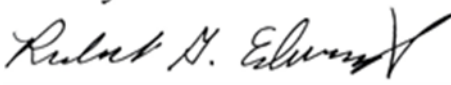




RICHMOND POLICE DEPARTMENT GENERAL ORDER



Subject: PROTECTION OF FIRST AMENDMENT RIGHTS		Chapter 1	Number 22	Pages 7
References: CALEA1.2.4, 1.2.5 1.2.9a 18.2-405, 18.2-406, 18.2-408, 18.2-411	Related Orders: General Orders 01-01, 01-05, 03-12, 07-27 Operational Manuals 10-01, 11-08		Effective Date: 11/4/2024 Revised By: New	
<i>If any provision of this General Order conflicts with any collective bargaining article, the collective bargaining agreement shall govern.</i>				
Chief of Police: 				

I. PURPOSE

The purpose of this policy is to delineate the First Amendment rights of individuals and to identify the proper procedures when police intervention is necessary and the limitations of police intervention.

II. SUMMARY OF CHANGE

This is a new general order.

III. POLICY

It is the policy of the Richmond Police Department (RPD) to ensure that the First Amendment rights guaranteed by the United States Constitution are protected for all individuals and to permit police involvement in the exercise of those rights only to the extent necessary to provide for the legitimate needs of law enforcement in investigating criminal activity.

The First Amendment protects individual's rights to free religion, speech, press, to peaceably assemble and to petition the Government for a redress of grievances. These fundamental rights extend to all individuals in the United States regardless of race, color, religion, age, sex, national origin, disability status, genetics, protected veteran status, sexual orientation, gender identity or expression or any other characteristic protected by federal, state or local laws. The Richmond Police Department does not profile, target, or discriminate against any individual for exercising one's First Amendment rights. The Department is committed to treating all who peacefully gather to express themselves with dignity, fairness and respect, while protecting their rights and providing equal protection under the law. The Department recognizes its responsibility to balance First Amendment rights with public safety and

prevention of breaches of the peace. If breaches of the peace occur, Richmond Police officers will restore the peace and ensure the safety of our community.

[CALEA 1.2.9a]

IV. ACCOUNTABILITY STATEMENT

All employees are expected to fully comply with the guidelines and timelines set forth in this general order. Failure to comply will result in appropriate corrective action.

Responsibility rests with the Division Commander to ensure that any violations of policy are investigated and appropriate training, counseling and/or disciplinary action is initiated.

This directive is for internal use only and does not enlarge an employee's civil liability in any way. It should not be construed as the creation of a higher standard of safety or case in an evidentiary sense, with respect to third party claims. Violation of this directive, if proven, can only form the basis of a complaint by this Department and then only in a non-judicial administrative setting.

V. DEFINITIONS

- A. CIVIL DISTURBANCE – An unlawful assembly that constitutes a breach of the peace or any assembly of persons where there is imminent danger of collective violence, destruction of property or other unlawful acts.
- B. FIRST AMENDMENT AUDITOR – Individual(s) who films inside public buildings or in public spaces for the purpose of judging the proper (or improper) response of law enforcement to the presence of someone recording, or at worst, trying to bait law enforcement into violating the subject's constitutional rights.
- C. LEGAL OBSERVER – Trained volunteers who support the legal rights of activists. They provide basic legal guidance and are independent witnesses during protests.
- D. MEDIA – Means of communication, such as radio, television, newspapers, magazines and the internet, that reach an audience of people.
- E. UNLAWFUL ASSEMBLY – Whenever three or more persons assembled share the common intent to advance some lawful or unlawful purpose by the commission of an act or acts of unlawful force or violence likely to seriously jeopardize public safety, peace or order, and the assembly actually tends to inspire persons of ordinary courage with well-grounded fear of serious and immediate breaches of public safety, peace, or order. VA Code §18.2-406.
- F. RIOT – Any unlawful use, by three or more persons acting together, of force or violence that seriously jeopardizes the public safety. VA Code § 18.2-405.

VI. PROTECTED FIRST AMENDMENT ACTIVITIES

A. ASSEMBLIES

1. Individuals have a First Amendment right to peaceably assemble in public

places. Such events do not require the approval of RPD; however, organizers are encouraged to notify the Department's Homeland Security/Criminal Intelligence Unit before the activity, if possible.

2. Civil disturbances may take many forms and vary in size and degree of danger posed to the public. The primary concern with any civil disturbance is to protect the lives of all citizens and maintain order. Officers must be able to respond to any civil disturbance, isolate it from the remainder of the community, protect life and property and maintain control.
3. Crowds that assemble and incite violence are not protected under the First Amendment or Virginia law.
4. Declaration of an Unlawful Assembly
 - a) Officers may not disperse a demonstration or crowd event before demonstrators have acted illegally or before the demonstrators pose a clear and present danger of imminent violence. The mere failure to obtain a permit, such as a parade permit or sound permit, is not a sufficient basis to declare an unlawful assembly. **There must be criminal activity or a clear and present danger of imminent violence.**
 - b) The fact that known demonstrators or organizing groups have engaged in violent or unlawful acts on prior occasions or during other demonstrations is not grounds for declaring an assembly unlawful.
 - c) Unless emergency or dangerous circumstances prevent negotiation, crowd dispersal techniques shall not be initiated until after attempts have been made through contacts with demonstration or crowd event leaders, if identifiable, to negotiate a resolution of the situation, so that the unlawful activity will cease, and the First Amendment activity can continue.
 - d) After an unlawful assembly has been declared and the crowd disperses, if individuals subsequently re-assemble at a different geographic location and begin to engage in non-violent and lawful First Amendment activity, such an assembly cannot be dispersed unless it has been determined that the new assembly is an unlawful assembly, and the required official declaration has been adequately given.
 - e) If a peaceful assembly becomes unlawful, RPD will permit and command the individuals to immediately disperse. If those who are unlawfully assembled do not disperse immediately, the officers may use reasonably necessary force, as defined by General Order 01-05, Use of Force, to disperse the crowd and may arrest those who fail to comply. RPD will use every endeavor to disperse those who are unlawfully assembled before force is exercised, as permitted by Virginia Code § 18.2-411. All steps necessary to protect officers, citizens, and property will be taken in accordance with Virginia law and RPD Operational Manuals 10-01 (Emergency Operations Plan) and 11-08 (Crowd Management Team).

5. Crowd Management

- a) During civil disturbances, peaceful protests or peaceful demonstrations, RPD will attempt to facilitate the peaceful exercising of the participant's constitutional rights. During instances resulting in riots, violent protests, violent demonstrations, or violations of law, the Richmond Police Department will take the appropriate action to safely contain, deescalate, stabilize and, if necessary, affect the arrest of violators. RPD will resolve all incidents with regard for the preservation of human life and the safety of all persons involved and the community at large.
- b) All incidents should be resolved as quickly and effectively as possible through the use of approved and effective crowd management techniques. RPD will uphold the constitutional rights of free speech and assembly while using the least amount of physical force required to address crowd control issues.
- c) Crowd dispersal shall be in accordance with RPD Operational Manual 11-08, Crowd Management Team.

NOTE: Crowd management directives shall not preclude individual supervisors and officers from defending themselves or others from imminent danger when the delay in requesting permission to take action would increase the risk of injury.

6. Media Presence and Coverage

- a) The media has a right to cover assemblies, demonstrations and riots by recording the event on video, film, in photographs, or by livestreaming at their own risk. RPD officers shall not prohibit the media from covering these events and will permit close enough access to observe arrests or crowd dispersal unless their proximity would unduly interfere with the medical or law enforcement action.
- b) The media, legal observers, and/or organizers shall never be targeted for dispersal or enforcement action because of their status.

B. CROWD MANAGEMENT TEAM USE AND ACTIVATION

- 1. The Crowd Management Team (CMT) shall be deployed in response to planned assemblies as well as unplanned civil disturbances or riots.
 - a) When the Department becomes aware of planned incidents, the CMT Commander, or designee, shall attempt to make contact with the event organizer to establish a line of communication and gather intelligence regarding the estimated crowd size, planned actions, potential counter-protestors and any other pertinent information to determine the level of response required.
 - 1) The CMT Commander or designee shall prepare a written plan designating assignments, responsibilities, assisting agencies,

communications, weather, etc. when deploying personnel to planned assemblies.

- b) For unplanned or spontaneous incidents, the initial responding officer shall assess the incident and notify a supervisor to respond. The supervisor shall respond to the scene and determine if additional resources are needed. If so, it is the supervisor's responsibility to notify the Precinct Commander or Watch Commander (based on time of day) and send out an All Page via the Department of Emergency Communications, Preparedness and Response (DECPR). The Precinct Commander or Watch Commander will notify the on-call CMT Supervisor.
 - 1) While awaiting the arrival of the CMT team, the on-scene supervisor shall establish a temporary Command Post, designate a staging area and assign officers to monitor the crowd size, assess the availability of improvised or deadly weapons in the crowd, track current activities (i.e. blocking traffic) and provide updates on crowd location and/or direction of movement and identify ingress/egress routes for emergency vehicles.
 - 2) Once the CMT Commander or designee arrives on scene, the CMT Commander shall assume tactical command of the incident and will assume the responsibilities of tracking personnel, deployment (all decisions regarding crowd dispersal, strategies employed for crowd containment or crowd redirection, multiple simultaneous arrests, planned individual arrests or planned use of force) and demobilization of the CMT.

C. RECORDING POLICE ACTIVITY

1. It is increasingly common for uninvolved bystanders at the scene of police activity to photograph and/or video record the actions of police officers and their conduct. Members of RPD should assume that, at any time, a member of the general public is likely to be observing, photographing, video recording or livestreaming their activities. As a result, no member of RPD may prevent or prohibit any person's ability to observe, photograph and/or make a video recording (with or without a simultaneous audio recording) of police activity that occurs in the public domain.

NOTE: The fact that the bystander had been observing, photographing and/or video recording police activity, by itself, does not constitute probable cause and should not be the reason for the arrest.

2. An officer may only prohibit a bystander from photographing and/or video recording if any of the following circumstances occur:
 - a) The life of any person, including the bystander or a police officer, is placed in jeopardy;

- b) An officer is prevented from executing or performing their official duties;
- c) The bystander violates any City code or state/federal law;

NOTE: An individual's expression of criticism of the police, including the use of foul language, without any other action intended to interfere with officers performing their duties, shall not constitute obstruction of justice.

- d) The bystander intrudes into any crime scene, private property or other location under lawful police control and/or not normally accessible to the general public;
- e) The bystander threatens, by words or actions, any person; or,
- f) The bystander attempts to incite an immediate breach of the peace or incites others to commit another violation of law.

3. Members of the press and members of the general public enjoy the same rights in any area accessible to the general public. Individuals are not required to display "press credentials" to exercise their right to observe, photograph, video record or livestream police activity taking place in an area accessible to, or within view of, the general public.

4. Securing Photographic or Video Evidence

- a) No officer shall demand, review, seize, damage, erase or otherwise inspect the contents of a bystander's camera, cellular phone or other video recording device unless such content is deemed to be evidence of a crime.
- b) If a bystander is believed to possess material that is, or could reasonably be considered, evidence related to a crime and/or the identification of a person involved in a crime, the officer may request the bystander to voluntarily provide their camera or other recording device to police.
- c) If the bystander consents to an officer's request, the officer will present the bystander with a PD-083, Permission to Search form.
- d) If the bystander refuses an officer's request, the officer will take the following actions:
 - 1) In the absence of exigent circumstances, develop the necessary probable cause to support an application for a search warrant;
 - 2) If there is probable cause to believe that evidence exists on a bystander's device and there are facts that support a reasonable belief that the evidence is in immediate jeopardy of being tampered with, deleted or destroyed, the officer may temporarily seize the device for safekeeping/preservation of the evidence. Such temporary seizure shall only continue for the time necessary for the seizing officer to make the appropriate application for a search warrant;

- 3) Apply for, execute, and return the search warrant in accordance with Department policy.
 - e) All obtained recording devices or mediums shall be handled in accordance with General Order 03-12, Handling Property and Evidence, and General Order 07-27, Digital Evidence Procedures.
- [CALEA 1.2.4]
5. Arrest Procedures
 - a) Prior to an arrest, if tactically feasible, the officer shall inform the bystander that their actions may, if continued, rise to the level of a criminal offense, and could subject the bystander to arrest. If possible, the officer will recommend a less-intrusive location to the bystander from which they may continue to observe, photograph or video record the police activity.
 - b) If it becomes necessary to affect the arrest of a bystander who is or has been observing, photographing, video recording or livestreaming police activity, the officer will ensure that legitimate probable cause exists to affect an arrest for a criminal offense (e.g., disorderly conduct, obstruction of justice, assault, etc.).
 - c) Upon affecting an arrest of a bystander who was photographing or recording, the officer shall notify their supervisor of the arrest and the circumstances that led to the arrest.

[CALEA 1.2.5]

D. FIRST AMENDMENT AUDITORS

1. First Amendment Auditors may freely occupy any area accessible and open to the public (e.g., sidewalks, streets, parking lots, parks or city, state, or federal buildings) and in any public area surrounding the police department. They are not allowed in any secured area.
 - a) RPD personnel may ask the First Amendment Auditor to move a reasonable distance away from where an investigation is being conducted. The distance First Amendment Auditor may be asked to move is based on the totality of the circumstances.
2. The First Amendment allows for heckling, provocation, profanity and raised voices. RPD employees are reminded to exercise restraint and maintain a professional demeanor at all times in accordance with General Order 01-01 Code of Conduct. However, speech that rises to the level of incitement of a riot, as defined in Virginia Code §18.2-408, or that is threatening is not protected by the First Amendment. Before any action is taken for incitement or threats, RPD personnel should consult with a supervisor.

VII. FORMS

A. PD-083, Permission to Search