

## FREDERICK POLICE DEPARTMENT GENERAL ORDER

**Section 7:** Force, Detention and Arrest  
**Topic:** FIRST AMENDMENT RIGHTS  
**Approved:** 12/03/19  
**Review:** Annually in December by Professional Services Division Commander  
**Supersedes:** G.O. 701 dated 10/01/2012

**Order Number:** 701  
**Issued by:** Chief of Police

### **.01 PURPOSE:**

To specify guidelines for police response to, and intervention during, public protests, labor strikes, and other activities involving First Amendment rights.

### **.02 CROSS-REF:**

City of Frederick Parade/Walkathon/Race Policy dated 9/14/95

### **.03 DISCUSSION:**

The First Amendment to the U.S. Constitution guarantees the right of all persons to freedom of speech, religion, press, to peaceful assembly, and to petition the government for a redress of grievances. This right grants individuals the right to speak their opinions and beliefs, make proclamations, distribute literature and peaceably assemble together for a common cause. This right is not without some limitation, and it is those limits that this General Order addresses.

Limitations to the right to freedom of speech and assembly require that a clear and present danger be evidenced before any law enforcement action can be taken. This means that a police officer must observe a clear and present danger to the health, safety and welfare of the general public, or a violation of the City Code or State Criminal Code before he may engage in enforcement action against those involved in First Amendment activity.

### **.04 POLICY:**

It is neither the intention nor the desire of the Department to suppress or restrain lawful speech, assembly, religion or any other lawful activity. The Department will expend whatever resources are necessary and appropriate to protect those lawfully exercising their rights pursuant to the First Amendment. However, the Department will require police officers to take appropriate enforcement action whenever there is a clear and present danger to the health, safety, and welfare of the general public, or a violation of the City Code or State Criminal Code.

### **.05 DEFINITIONS:**

FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES: "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 peaceable to assemble, and to petition the government for a redress of grievances."

### **.10 EQUALITY OF TREATMENT:**

Police department personnel will treat all persons asserting rights under the First Amendment to the U.S. Constitution lawfully.

## **.20 PERMISSIBLE ACTIONS:**

1. As long as the activity does not constitute a clear and present danger to the health, safety and welfare of the general public, and does not violate the City Code or State Criminal Code, the individual may:
  - A. assemble, preach, distribute literature, picket and protest on public property;
  - B. participate in public parades (with the proper permit) and public celebrations; and,
  - C. burn a flag.
  - D. Individuals have a First Amendment right to record police officers in the public discharge of their duties. The right to record is not limited to streets and sidewalks—it includes areas where individuals have a legal right to be present, including an individual's home or business or other private property where the person has a right to be present.
2. Public property includes public streets, sidewalks, parks and other common areas so designated. Public property has been defined by the U.S. Supreme Court to be a traditional public forum where individuals may freely express their views, even though those views may be unpopular or offensive to other members of society.
3. First Amendment activity on public property is fully protected, subject only to reasonable time, place and manner restrictions. Time, place and manner restrictions may be placed on First Amendment activity so long as those regulations are content neutral, serve a significant governmental interest, and leave open ample alternative channels of communication. Police personnel must consider time, location, and decibel level before attempting to interfere with any First Amendment activity. For example, activities around schools, hospitals, convalescent homes, churches, and other specified locations may be subject to time, place, and manner restrictions because of the special nature of those entities. Activities in those specified locations may also be subject to restriction based on state statutes or City ordinances.
4. Frederick City Code, Section 15-27.1 gives officers the authority to order individuals to disperse who are obstructing the free passage of, or who are interfering with, citizens on any public street, public highway, public sidewalk, or any other public place or building. The officer must first warn the individual(s) and advise them to move on or disperse. Any person who fails or refuses to obey such orders shall be guilty of a violation of the Section, which is a misdemeanor. Section 10-201 of the Criminal Law Article of the Annotated Code of Maryland may also be utilized for charging with "Disturbance of the Public Peace and Disorderly Conduct."

## **.30 NON-PERMISSIBLE ACTIONS:**

1. Individuals engaged in First Amendment activity may NOT:
  - A. obstruct the path of persons utilizing a public sidewalk;
  - B. interfere with the business of another by use of sound, by blocking entrances to buildings or dwellings; or by obstructing motor vehicles or pedestrian traffic;

- C. assemble in a manner that disrupts a person's right to tranquility in the person's home;
  - D. demonstrate, assemble, distribute literature, or preach on private property against the will of the owner or lawful tenant of that property; or,
  - E. commits crimes under State statute or City ordinance while asserting First Amendment Rights.
2. If the elements of a criminal offense, e.g., trespass or harassment, or of a violation of City ordinance, are committed by a person engaged in such activity, enforcement action may be taken.

**.40 TREATMENT OF PERSONS ASSERTING FIRST AMENDMENT RIGHTS:**

- 1. When police officers are confronted with cases involving individuals engaged in First Amendment activity in a manner which the officer has reason to believe is a violation, but does not require immediate arrest, (e.g., imminent bodily injury, destruction of property, etc.), the responding officer will notify a supervisor who will respond to the scene.
- 2. The supervisor and/or officer will approach the individuals and provide a warning of the suspected offense. If the individuals do not respond to the warning and do not comply with any applicable time, place or manner restriction, the responding officer and supervisor, upon probable cause, will take action necessary to protect the public safety, health and welfare or to prevent the commission of a crime.
- 3. If the supervisor has reason to believe that the situation requires legal interpretation, the State's Attorney's Office will be notified and, if possible, will respond to the scene. If the attorney is unable to respond, officers will ensure they gather the complaining parties' information, as well as any other pertinent information; document in an incident report; and forward to the Office of the State's Attorney for further review.

**.50 PICKET LINES AND LEAFLETS/PAMPHLETS:**

Many labor organizations engaged in strikes will utilize picket lines to demonstrate their cause and will distribute information in the form of leaflets or pamphlets. Picketers will adhere to the following guidelines:

- 1. Picket lines are permitted on public sidewalks when they do not obstruct pedestrian traffic. Picketers are not permitted on roadways, cannot obstruct traffic in any manner, and cannot be located on private property without the permission of the owner.
- 2. There is no maximum number of participants established for pickets, providing their conduct conforms to these guidelines.
- 3. Picketers are not permitted to block a door, passageway, driveway, crosswalk or any other entry or exit to a house, plant, or place of business. Pedestrian, vehicular or commercial vehicle traffic will not be impeded.
- 4. Picketers are permitted to distribute informational leaflets and/or pamphlets. Litter problems will be addressed by City ordinance.

5. Employees, suppliers, or customers of the target of the picket have the right to freely pass.
6. Intimidation of employees, suppliers, or customers is not permitted. Union officials or picketers have a right to talk to persons going in and out of a picketed area, provided they are orderly.

**.60 ACTIVITIES REQUIRING A PERMIT:**

1. The City of Frederick has, through its Parade/Walkathon/Race Policy, established a reasonable process by which individuals can exercise their rights guaranteed to them by the First Amendment to the U. S. Constitution. The policy permits processions, marches, walkathons, or other demonstrations which use the public streets, alleys or sidewalks provided that the individual and/or organization, association or entity conducting the event submits and has approved by the City of Frederick an application prior to the event.
2. The policy further states that no individual and/or organization, association, or entity may engage in, participate in, aid, form or start any parade, walkathon, race, or similar event on any street, lane, alley, thoroughfare or sidewalk of the City of Frederick, unless a permit is first obtained from the City of Frederick in keeping with the procedures outlined therein.
3. Funeral processions supervised by a licensed mortuary, events organized and managed by the City of Frederick or any of its agencies acting within the scope of its authority, and picketing/demonstrating which occurs on a sidewalk are exempted from the provisions of the administrative policy and procedure.
4. Anyone seeking a permit shall file an application with the Streets and Sanitation Committee of the City of Frederick.

**.70 RECORDING OF POLICE OFFICERS IN THE DISCHARGE OF THEIR DUTIES:**

Members of the press and members of the general public enjoy the same rights in any area accessible to the general public to record police officers in the discharge of their duties. No individual is required to have or to display 'press credentials' in order to exercise his/her right to observe, photograph, or record police activity taking place in an area accessible to, or within view of, the general public.

1. Officers must not search or seize a camera or recording device without a warrant except under very limited circumstances as described herein.
2. Officers are prohibited from threatening, intimidating or otherwise discouraging any individual from recording police activities.
3. Officers must not intentionally block or obstruct cameras or recording devices in any manner.
4. Officers are prohibited from deleting recordings or photographs, and from damaging or destroying recording devices/cameras under any circumstances.

5. Obstructing/Hindering. A person may record public police activity unless the person engages in actions that jeopardize the safety of the officer, the suspect, or others in the vicinity, violate the law, or incite others to violate the law. Examples of such actions include:
  - A. Repeatedly instructing a witness being questioned by a police officer not to respond to the officer's questions;
  - B. Persistently engaging or attempting to engage an officer in conversation while the officer is in the midst of their duties;
  - C. Hindering a lawful arrest;
  - D. Inciting bystanders to hinder or obstruct an officer in the performance of their duties.
  - E. An individual's recording of police activity from a safe distance without any attendant action intended to obstruct the activity or threaten the safety of others does not amount to interference.
  
6. A person's expression of criticism of the police (or the police activity being observed) does not amount to interference.
  - A. The First Amendment protects a significant amount of verbal criticism and challenge directed at police officers.
  - B. Even foul expressions of disapproval towards police officers are protected under the First Amendment.
    - ***The U.S. Supreme Court has held that 'a properly trained officer may reasonably be expected to exercise a higher degree of restraint' than the average citizen when it comes to reacting to insults or 'fighting words.'***
    - ***Courts have given First Amendment protection to persons who made obscene gestures and yelled profanities at police officers, and they have prohibited the police from interfering with such speech.***
  
7. The warrantless seizure of material protected by the First Amendment (photos, videos, etc.) will be strictly scrutinized by a court. In ordinary circumstances, the seizure of cameras or recording devices without a warrant will not be reasonable. Cameras or recording devices will not be seized without a warrant unless:
  - A. Officers have probable cause to believe that critical evidence of a crime is contained on/in the camera or recording device; and
  - B. Officers first have explained the circumstances and have unsuccessfully attempted to get the consent of the person in possession of the recording device; and

- C. The seizure of the camera/recording device is for no longer than reasonably necessary for the officer, acting with diligence, to obtain a warrant to seize the evidence; and
- D. Supervisory approval has been granted for the seizure.
- E. If a camera/recording device is seized without a warrant officers are prohibited from seizing or viewing the evidence contained in the device until a warrant is obtained for that seizure.
- F. if the device is seized pursuant to a lawful arrest, it is lawful to search the device incident to arrest provided there is Probable Cause to believe the device contains items of evidentiary value that could be lost or remotely deleted.