

OWATONNA POLICE DEPARTMENT MANUAL

GENERAL ORDER: 247

EFFECTIVE DATE: January 16, 2024

SUBJECT: PUBLIC ASSEMBLY AND FIRST AMENDMENT ACTIVITY

PURPOSE

The First Amendment to the Constitution of the United States of America 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 peaceably to assemble and to petition the Government for a redress of grievances."

The Bill of Rights in Article 1 of the Minnesota Constitution addresses the rights of free speech and the liberty of the press. However, neither the state nor federal constitutions protect criminal activity or threats against citizens, businesses, or critical infrastructure.

The Owatonna Police Department supports all people's fundamental right to peaceably assemble and their right to freedom of speech and expression.

The purpose of this policy is to provide guidelines to the Owatonna Police Department personnel regarding the application and operation of acceptable law enforcement actions addressing public assemblies and First Amendment Activity.

POLICY

The Owatonna Police Department will uphold the constitutional rights of free speech and assembly while using the minimum use of physical force and authority required to address a crowd management or crowd control issue.

The policy of the Owatonna Police Department regarding crowd management and crowd control is to apply the appropriate level of direction and control to protect life, property, and vital facilities while maintaining public peace and order during a public assembly or First Amendment activity. Department personnel must not harass, intimidate, or discriminate against or unreasonably interfere with persons engaged in the lawful exercise of their rights.

This policy concerning crowd management, crowd control, crowd dispersal, and police responses to violence and disorder applies to spontaneous demonstrations, crowd event situations, and planned demonstration or crowd events regardless of the permit status of the event.

This policy is to be reviewed annually.

DEFINITIONS

- A. **Chemical Agent Munitions:** Munitions designed to deliver chemical agents from a launcher or hand thrown.
- B. **Control Holds:** Control holds are soft empty hand control techniques as they do not involve striking.
- C. **Crowd Management:** Techniques used to manage lawful public assemblies before, during, and after an event. Crowd management can be accomplished in part through coordination with event planners and group leaders, permit monitoring, and past event critiques.
- D. **Crowd Control:** Techniques used to address unlawful public assemblies.
- E. **Deadly Force:** Force used by an officer that the officer knows, or reasonably should know, creates a substantial risk of causing death or great bodily harm. (Reference: Owatonna Police Department's Use of Force Policy, MN Statutes 609.06 and 609. 066)
- F. **Direct Fired Munitions:** Less-lethal impact munitions that are designed to be direct fired at a specific target.
- G. **First Amendment Activities:** First Amendment activities include all forms of speech and expressive conduct used to convey ideas and/or information, express grievances, or otherwise communicate with others and include both verbal and non-verbal expression. Common First Amendment activities include, but are not limited to, speeches, demonstrations, vigils, picketing, distribution of literature, displaying banners or signs, street theater, and other artistic forms of expression. All these activities involve the freedom of speech, association, and assembly and the right to petition the government, as guaranteed by the United States Constitution and the Minnesota State Constitution.

The government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.
- H. **Great Bodily Harm:** Bodily injury which creates a high probability of death, or which causes serious, permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm. (Reference: Owatonna Police Department's Use of Force Policy, MN Statutes 609.06 and 609. 066)
- I. **Legal Observers:** Individuals, usually representatives of civilian human rights agencies, who attend public demonstrations, protests and other activities. The following may be indicia of a legal observer: Wearing a green National Lawyers' Guild issued or authorized Legal Observer hat and/or vest (a green NLG hat and/or black vest with green labels) or wearing a blue ACLU issued or authorized legal observer vest.
- J. **Less-lethal Impact Munitions:** Impact munitions which can be fired, launched, or otherwise propelled for the purpose of encouraging compliance, overcoming resistance or preventing serious injury without posing significant potential of causing death.
- K. **Media:** Media means any person who is an employee, agent, or independent contractor of any newspaper, magazine or other periodical, book publisher, news agency, wire service, radio or television station or network, cable or satellite station or network, or audio or audiovisual production company, or any entity that is in the regular business of news gathering and disseminating news or information to the public by any means, including, but not limited to, print, broadcast, photographic, mechanical, internet, or electronic distribution. For purposes of this policy, the following are indicia of being a member of the

media: visual identification as a member of the press, such as by displaying a professional or authorized press pass or wearing a professional or authorized press badge or some distinctive clothing that identifies the wearer as a member of the press.

LAW ENFORCEMENT PROCEDURES

- A. **Uniform:** All officers responding to public assemblies must at all times, including when wearing protective gear, display their agency name and a unique personal identifier in compliance with this department's uniform policy. The chief law enforcement officer must maintain a record of any officer(s) at the scene who is not in compliance with this requirement due to exigent circumstances.
- B. **Officer conduct:**
1. Officers shall avoid negative verbal engagement with members of the crowd. Verbal abuse against officers does not constitute a reason for an arrest or for any use of force against such individuals.
 2. Officers must maintain professional demeanor and remain neutral in word and deed despite unlawful or anti-social behavior on the part of crowd members.
 3. Officers must not take action or fail to take action based on the opinions being expressed.
 4. Officers must not interfere with the rights of members of the public to observe and document police conduct via video, photographs, or other methods unless doing so interferes with on-going police activity.
 5. Officers must not use a weapon or munition unless the officer has been trained in the use and qualified in deployment of the weapon/munition.
 6. This policy does not preclude officers from taking appropriate action to direct crowd and vehicular movement; enforce ordinances and statutes; and to maintain the safety of the crowd, the general public, law enforcement personnel, and emergency personnel.

RESPONSE TO CROWD SITUATIONS

- A. **Lawful assembly:** Individuals or groups present on the public way, such as public facilities, streets or walkways, generally have the right to assemble, rally, demonstrate, protest, or otherwise express their views and opinions through varying forms of communication including the distribution of printed matter. These rights may be limited by laws or ordinances regulating such matters as the obstruction of individual or vehicle access or egress, trespass, noise, picketing, distribution of handbills, leafletting and loitering.
- B. **Unlawful assembly:**
1. The definition of an unlawful assembly has been set forth in Minnesota Statute §609.705.
 2. 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
 3. The fact that some of the demonstrators or organizing groups have engaged in violent or unlawful acts on prior occasions or demonstrations is not grounds for declaring an assembly unlawful.
 4. Whenever possible, the unlawful behavior of a few participants must not result in the majority of peaceful protestors being deprived of their First Amendment rights, unless other participants or officers are threatened with dangerous circumstances.

5. Unless emergency or dangerous circumstances prevent negotiation, crowd dispersal techniques must not be initiated until after attempts have been made through contacts with the police liaisons and demonstration or crowd event leaders to negotiate a resolution of the situation so that the unlawful activity will cease, and the First Amendment activity can continue.

C. **Declaration of Unlawful Assembly:**

1. If the on-scene supervisor/incident commander has declared an unlawful assembly, the reasons for the declaration and the names of the decision maker(s) must be recorded. The declaration and dispersal order must be announced to the assembly. The name(s) of the officers announcing the declaration should be recorded, with the time(s) and date(s) documented.
2. The dispersal order must include:
 - a) Name, rank of person, and agency giving the order
 - b) Declaration of Unlawful Assembly and reason(s) for declaration
 - c) Egress or escape routes that may be used
 - d) Specific consequences of failure to comply with dispersal order
 - e) How long the group has to comply
3. Whenever possible, dispersal orders should also be given in other languages that are appropriate for the audience. Officers must recognize that not all crowd members may be fluent in the language(s) used in the dispersal order.
4. Dispersal announcements must be made in a manner that will ensure that they are audible over a sufficient area. Dispersal announcements must be made from different locations when the demonstration is large and noisy. The dispersal announcements should be repeated after commencement of the dispersal operation so that persons not present at the original broadcast will understand that they must leave the area. The announcements must also specify adequate egress or escape routes. Whenever possible, a minimum of two escape/egress routes shall be identified and announced.

D. **Crowd Dispersal:**

1. Crowd dispersal techniques should not be initiated until officers have made repeated announcements to the crowd, or are aware that repeated announcements have been made, asking members of the crowd to voluntarily disperse, and informing them that, if they do not disperse, they will be subject to arrest.
2. Unless an immediate risk to public safety exists or significant property damage is occurring, sufficient time will be allowed for a crowd to comply with officer commands before action is taken.
3. If negotiations and verbal announcements to disperse do not result in voluntary movement of the crowd, officers may employ additional crowd dispersal tactics, but only after orders from the on-scene supervisor/incident commander. The use of these crowd dispersal tactics shall be consistent with the department policy of using the minimal officer intervention needed to address a crowd management or control issue.
4. If, after a crowd disperses pursuant to a declaration of unlawful assembly and subsequently participants assemble at a different geographic location where the participants are engaged in non-violent and lawful First Amendment activity, such an assembly cannot be dispersed unless it has been determined that it is an unlawful assembly, and a new declaration of unlawful assembly has been made.

HANDCUFFS

- A. All persons subject to arrest during a demonstration or crowd event shall be handcuffed in accordance with department policy, orders, and training bulletins.
- B. Officers should be cognizant that flex-cuffs may tighten when arrestees hands swell or move, sometimes simply in response to pain from the cuffs themselves. When arrestees complain of pain from overly tight flex cuffs, officers must examine the cuffs and ensure proper fit.
- C. Arrestees in flex-cuffs must be monitored to prevent injury.
- D. Each unit involved in detention and/or transportation of arrestees with flex-cuffs should have a flex-cuff cutter and adequate supplies of extra flex-cuffs readily available

MEDIA

- A. The media have a First Amendment right to cover public activity, including the right to record video or film, livestream, photograph, or use other mediums.
- B. The media must not be restricted to an identified area, and must be permitted to observe and must be permitted close enough access to view the crowd event and any arrests. An onsite supervisor/incident commander may identify an area where media may choose to assemble.
- C. Officers will not arrest members of the media unless they are physically obstructing lawful efforts to disperse the crowd, or efforts to arrest participants, or engaged in criminal activity.
- D. The media must not be targeted for dispersal or enforcement action because of their media status.
- E. Even after a dispersal order has been given, clearly identified media must be permitted to carry out their professional duties unless their presence would unduly interfere with the enforcement action.

LEGAL OBSERVERS

- A. Legal observers, including unaffiliated self-identified legal observers and crowd monitors, do not have the same legal status as the media, and are subject to laws and orders similar to any other person or citizen.
- B. Legal observers and monitors must comply with all dispersal orders unless the on-site supervisor/incident commander chooses to allow such an individual legal observers and monitors to remain in an area after a dispersal order.
- C. Legal observers and crowd monitors must not be targeted for dispersal or enforcement action because of their status.

DOCUMENTATION OF PUBLIC ASSEMBLY AND FIRST AMENDMENT ACTIVITY

- A. The purpose of any visual documentation by Owatonna Police Department of a public assembly or first amendment activity must be related only to:
 - 1. Documentation of the event for the purposes of debriefing,
 - 2. Documentation to establish a visual record for the purposes of responding to citizen complaints or legal challenges, or
 - 3. Creating visual records for training purposes.
- B. If it is the policy of Owatonna Police Department to videotape and photograph, it must be done in a manner that minimizes interference with people lawfully participating in First Amendment activities.

Videotaping and photographing of First Amendment activities must take place only when authorized by the on-site supervisor/incident commander.

- C. Individuals should not be singled out for photographing or recording simply because they appear to be leaders, organizers, or speakers.
- D. Unless evidence of criminal activity is provided, videos or photographs of demonstrations shall not be disseminated to other government agencies, including federal, state, and local law enforcement agencies. If videos or photographs are disseminated or shared with another law enforcement agency, a record should be created and maintained noting the date and recipient of the information.
- E. If there are no pending criminal prosecutions arising from the demonstration or if the video recording or photographing is not relevant to an Internal Affairs or citizen complaint investigation or proceedings or to civil litigation arising from police conduct at the demonstration, the video recording and/or photographs shall be destroyed in accordance with policy 336, portable recording systems.
- F. This directive shall not prohibit department members from using these videos or footage from such videos as part of training materials for officers in crowd control and crowd dispersal techniques and procedures.

General Order 247

General Order 247 was reviewed by the following committee members:

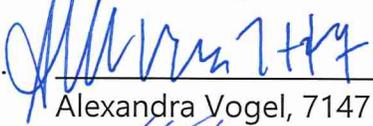
POLICY REVIEW COMMITTEE

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| 1. | 

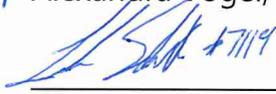
Josh Sorensen, 7118 | <u>1-19-24</u>

Date |
| 2. | 

Christian Berg, 7131 | <u>01/19/2024</u>

Date |
| 3. | 

Alexandra Vogel, 7147 | <u>1-18-24</u>

Date |
| 4. | 

Luke Selvik, 7119 | <u>1/19/24</u>

Date |
| 5. | 

Melissa Michael, 7138 | <u>1/18/2024</u>

Date |
| 6. | 

Andrew van Osdale, 7133 | <u>1-18-24</u>

Date |
| 7. | 

Wendy Gasner, 7161 | <u>1-19-24</u>

Date |