



# DETROIT POLICE DEPARTMENT

MANUAL

<b>Series</b> XXXXXXX	<b>Effective Date</b> TBD	<b>Review Date</b> Annually	<b>Directive Number</b>  302.6
<b>Chapter</b> XXXXXXXXXXXX			
<b>Reviewing Office</b>			<input checked="" type="checkbox"/> <b>New</b> <input type="checkbox"/> <b>Directive</b> <b>Revised</b> <i>Revisions are in italics</i>
<b>References</b>			

## FIRST AMENDMENT ACTIVITIES

### 302.6 – 1 PURPOSE

The purpose of this policy is to establish rules and procedures for members responding to, interacting with, or otherwise managing crowds or individuals engaged in lawful First Amendment activities.

### 302.6 – 2 POLICY

The Detroit Police Department (DPD) is legally and ethically required to protect the rights and liberties of citizens, including those engaged in protected First Amendment activities. The First Amendment guarantees to all individuals the freedom of speech and expression, the freedom of assembly, and the freedom to observe and record the actions of law enforcement officers in the course of their duties. The DPD views rights under the First Amendment as fundamental to democratic governance and acknowledges that observance of these rights fosters transparency and accountability in government activities, including law enforcement functions. Under no circumstances may members infringe upon the First Amendment rights of individuals.

### 302.6 – 3 Definitions

#### 302.6 – 3.1 Civil Disturbance (also Civil Unrest)

A breach of the peace caused by a gathering of persons where there is a threat of collective violence, destruction of property, or other unlawful acts. Such a gathering may also be referred to as a “riot” or “unlawful assembly.” MCL 752.543 makes it unlawful “for a person to assemble or act in concert with 4 or more persons for the purpose of engaging in conduct constituting the crime of riot, or to be present at an assembly that either has or develops such a purpose and to remain there at with intent to advance

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such purpose.” The term “riot” is defined under MCL 752.541 and refers to “5 or more persons, acting in concert, to wrongfully engage in violent conduct and thereby intentionally or recklessly cause or create a serious risk of causing public terror or alarm.”

**302.6 – 3.2 Crowd Dispersal Order**

A lawful command given by a member of the Department 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.

**302.6 – 3.3 Counter-Protester**

A participant in a protest in a protest that opposes an existing protest.

**302.6 – 3.4 First Amendment Assembly (or Demonstration)**

An assembly of persons engaging in First Amendment protected activity. These may be scheduled events that allow for law enforcement planning but also may include spontaneous gatherings. This term includes, but may not be limited to, marches, protests, and other assemblies for the purpose of expressing opinions, ideas, or beliefs.

**302.6 – 3.5 Incident Commander**

The member designated by the Department to be responsible for the Department’s overall response to an incident. This member is typically the commander or captain of the Metro Division.

**302.6 – 3.6 Inciting Imminent Unlawful Action**

Urging other persons to engage in criminal activity that is about to occur or will immediately occur. Inciting imminent unlawful action does not include urging others to engage in criminal activity that might occur at some point in the future. It only includes urging criminal activity that is about to occur.

**302.6 – 3.7 Legal Observers**

Individuals attending protests to monitor, observe, and document government interaction with individuals engaged in First Amendment activities; provide arrest support for protesters on the ground; help support teams to track and assist individuals that have been taken into custody; and empower activists; and serve as a deterrent to unconstitutional behavior by law enforcement. This term includes the group Legal Observers®, identifiable by wearing specially marked green hats, who are volunteers trained by the National Lawyers Guild to show up at protests, marches, or other actions.

**302.6 – 3.8 Public Way**

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Any street, alley, or other parcel of land open to the outside air that leads to a public street that has been deeded, dedicated, or otherwise permanently appropriated to the public for public use.

**302.6 – 3.9 Speech Peddling**

When a licensed peddler sells or exchanges for value anything containing words, printing, or pictures that predominantly communicates a non-commercial message.

**302.6 – 4 Procedures****302.6 – 4.1 The First Amendment and Protected Activities**

The First Amendment to the United States Constitution provides that—

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Rights guaranteed under the First Amendment includes, but are not limited to, the following:

- The right to free speech and expression, including the right to criticize law enforcement.
- The right to engage in protected expression in the presence of law enforcement officers without being subject to retaliation.
- The right to advocate for an alternative system of government and to advocate for “the use of force” or “law violation,” except where such advocacy (in conjunction with other unlawful acts) is directed toward and is likely to cause imminent lawless conduct.
- The right to freely organize and participate in lawful assemblies and protests in parks, on sidewalks, in streets, and other public spaces.
- The right to assemble in public forums reasonably close to the subject of the protest so that those assembled may be seen and heard.
- The right to observe and record the actions of law enforcement officers in the public discharge of their duties in all public spaces. As used here, the term “public spaces” includes sidewalks, parks, and other locations where lawful protests may take place. The term also includes all other areas in which individuals have a legal right to be present, including (possibly) a person’s home or business, and common areas of public and private facilities and buildings.
- Members shall respect and never infringe upon the rights of individuals guaranteed under the First Amendment. Under no circumstances may a member

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engage in acts of retaliation against an individual who has lawfully engaged in First Amendment activities.

**302.6 – 4.2 First Amendment Rights — The Public Way**

The “public way” generally includes public property held open to the public (e.g., sidewalks, parks, and public plazas). As long as marchers do not obstruct car or pedestrian traffic, a permit is not required to march in the streets or on the sidewalk. Individuals on the public way have a right to express their views through any form of communication, including distribution or sale of newspapers, magazines, handbills, or other printed matter. They also have a right to solicit financial contributions. Protected First Amendment activities may include labor unrest, strikes and demonstrations, and other forms of speech and expression.

**302.6 – 4.3 Strikes and Labor Unrest**

Sworn members supporting a scene of labor unrest or a strike shall make an initial assessment of the situation and notify the zone dispatcher of the size and scope of the strike. Sworn members need to assess the potentiality for violence and notify a supervisor to respond. If necessary, the responding supervisor shall notify the officer in charge of the precinct desk and depending on the severity of the situation, executive notifications will be made through Communications Operations. A patrol supervisor shall be dispatched to the location of the incident to determine the legality of the strike. Picketing strikers shall not be engaged unless absolutely necessary or ordered to do so by a supervisor.

**302.6 – 4.3 Demonstrations**

The DPD has the statutory responsibility to preserve the public peace and to safeguard lives and property while protecting the constitutional rights of free speech and assembly. However, if the assembly is unlawful, or the demonstrators resort to unlawful activity, the department will endeavor to utilize verbal commands as the primary means to maintain control of the demonstration.

**302.6 – 4.3 Protected First Amendment Activities**

Members shall respect and never infringe upon the right of individuals—

- To speak and express themselves freely, including but not limited to the use of criticism, insults, profanity, name calling, or obscene gestures directed at law enforcement.
- To express disagreement.
- To gather at or near the object of the assembly or protest.
- To assemble on sidewalks and streets and in parks and other public spaces so that they may be seen and heard.

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- To observe and record the actions of law enforcement officers in the public discharge of their duties in all public spaces (including sidewalks and parks), as well as in all other areas in which persons have a legal right to be present (including a person's home or business and common areas of public and private facilities and buildings, so long as the observation and recording does not threaten the safety of any member of any other person and does not physically interfere with the performance of any member's duties. This includes, but is not limited to, legal observers.

Time, place, and manner restrictions shall be enforced only for the purpose of maintaining public safety and shall restrict no more speech than is necessary to further this purpose.

Members shall make reasonable efforts to protect protesters and preserve their right to protest. To the extent feasible, members shall separate protesters from counter-protesters for the purpose of maintaining order and to avoid any potential confrontation. In order to de-escalate the potential for disorder and avoid mass arrests, members are strongly encouraged to endeavor to accommodate assemblies and use discretion when encountering protests that temporarily block traffic or otherwise obstruct public streets by regulating or rerouting traffic as much as practical.

**302.6 – 4.3 Prohibited Actions Regarding Speech and Assembly**

Members shall act in accordance with the Department's Code of Conduct (Directive 102.3) at all times. In addition, members shall adhere to the following:

- a. Members shall not infringe on the rights of any person to criticize law enforcement through speech, unless the person is endangering another member or person, or is physically interfering with law enforcement action.
- b. Members shall not retaliate against any person who exercises their First Amendment rights to comment on or protest any police activity. This includes retaliation by ordering persons or groups to disperse, or by stopping, detaining, searching, arresting, issuing a citation to, using force, or threatening to stop, detain, search, arrest, or issue a citation to any person or group.
- c. Members shall not hinder or prevent members of the public who are lawfully present from observing and / or recording DPD 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. This includes but is not limited to legal observers and media.
- d. Members shall not take action against legal observers as part of an attempt to enforce established guidelines for legal observers (e.g., the National Lawyers Guild's Guidelines for Legal Observers). Training and enforcement of Legal Observer guidelines is the responsibility of the National Lawyers Guild.

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**EXAMPLE:** A person clearly identified as a Legal Observer by wearing a specially marked green hat is observing protesters and law enforcement from a short distance. At some point, the Legal Observer feels strongly about the demonstration and begins to chant in unison with the protesters. The Legal Observer fails to remove their green hat prior to doing so, as is required per the National Lawyers Guild guidelines. Members shall not attempt to enforce this guideline or otherwise single such persons out for harsher treatment.

- e. Members shall not use force in response to a person engaging only in legally protected speech or a lawful assembly.
- f. Members shall not engage in intimidation or harassment toward persons participating in lawful assemblies or protests. Such prohibited intimidation or harassment includes, but is not limited to, verbal threats, profanity, and displaying a weapon for the purpose of intimidation.
- g. Members shall not interrogate or otherwise question participants concerning their views unless essential to an investigation of an apparent violation of law.
- h. Members shall not arrest any persons engaged in First Amendment conduct without individualized probable cause or detain without individualized reasonable suspicion to believe a crime has occurred, is occurring, or is about to occur.

**NOTE:** The mere fact that an individual is picking up, about to throw, or throwing a chemical agent canister previously deployed by law enforcement, or other object, unless doing so constitutes a crime, does not automatically constitute an immediate threat of loss of life or serious bodily injury. Members must consider the size and composition of the object, the distance from which it is being thrown, and the potential effects of the object being thrown.

- i. Members shall not arrest a person engaged in First Amendment activity unless there is individualized probable cause to believe that the person has committed a crime. This means that a member may not arrest any person unless the member has sufficient objective facts based on the member's own knowledge, or reliable and trustworthy information provided by other members or third parties, to establish probable cause that the person committed a crime. Members may not arrest any person engaged in First Amendment activity based on the fact that other persons engaged in the same First Amendment activity also engaged in violence or otherwise unlawful conduct.

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**EXAMPLE:** A group of 300 persons march together in the streets and on the sidewalks engaged in political protest. Five persons break from the group, smash several storefront windows, and then rejoin the group. DPD members may identify and arrest the five persons who smashed the windows based on their personal conduct. DPD members may not arrest others in the group based on their association with the five persons who broke the window because there is no individualized probable cause that the other members of the group committed a crime or did anything other than engage in First Amendment protected activity.

- j. Members may not interrupt a speaker, except where speech incites imminent unlawful action. This means that members may only take action when—
1. A statement threatens or encourages imminent unlawful violence action or destruction of property, has a substantial likelihood of producing imminent unlawful violence action or destruction of property, and is intentionally stated by the speaker to clearly and objectively direct at least one other person to engage in imminent unlawful violence action.

**NOTE:** The mere advocacy of the use of force or violence sometime in the future is still constitutionally protected under the First Amendment, and the person speaking cannot be arrested simply because they advocate for violence sometime in the future.

**EXAMPLE:** During a demonstration, the crowd moves into the street, disrupting traffic. The police successfully direct protesters out of the street and back onto the curb. A person yells, “We’ll take the street later!” or “We’ll take the street again!” The person may not be detained or arrested for his statements.

2. There is a risk that the speech will provoke an audience into using illegal force against the speaker. This means that members may interrupt speech when it provokes violence or threats of imminent violence against the speaker after DPD has attempted to control the crowd and has made reasonable efforts to protect the speaker.

**NOTE:** Members shall use all lawful efforts to control the crowd before interrupting the speaker.

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**EXAMPLE:** Demonstrators march through the city until they are met by a growing number of onlookers with an opposing viewpoint. The onlookers become increasingly unruly and tension rises between the two groups. The law requires that DPD members must first attempt to manage the unruly onlookers before ordering any demonstrators to disperse. Even if DPD members have difficulty controlling the unruly onlookers, they may not arrest anyone who is lawfully exercising their First Amendment rights. They may only arrest those who are violating the law.

3. Members may interrupt a speaker who makes actual threats of imminent violence that would result in harm to a person or substantial harm to the property of another person.

**NOTE:** Only the highest-ranking member on the scene may authorize the interruption or restriction of speech for the above-mentioned reasons. If the highest-ranking member does not authorize the interruption or restriction of speech, the member(s) shall do so using the least restrictive means possible and only after all other alternatives to interruption or restriction are exhausted.

- k. Members shall not terminate or disperse any protest or assembly unless the protest or assembly has turned into a civil disturbance or threatens to turn imminently into a civil disturbance, and a dispersal order has been given in accordance with law and DPD policy.
  1. As a general matter, only a command officer ranked commander or above may declare an assembly unlawful. If no member ranked commander or above is available, the declaration may be made by a ranking member who is serving as the incident commander. Any declaration that an assembly is unlawful must be subsequently documented in writing.

**NOTE:** The highest-ranking member at the scene will generally assume the role of incident commander until relieved by a superior commander or other person designated as incident commander based on the nature of the incident.

2. An assembly shall not be deemed unlawful unless the command officer deeming it unlawful determines that there is a threat to public safety (e.g., collective violence, destruction of property, or other injury). The failure to

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obtain a permit is not a sufficient basis to declare an assembly unlawful. The fact that some of the persons involved in an assembly or protest have engaged in unlawful acts on prior occasions is not a valid basis for declaring an assembly unlawful.

**NOTE:** The decision to declare an assembly unlawful requires clear justification and extensive documentation detailing the facts that lead to that decision. The report documenting the reasons for declaring an assembly unlawful will include reference to BWC footage from members at the scene.

3. Orders to disperse may not be issued except following a declaration that an assembly is unlawful. Orders to disperse may only be made by a lieutenant or above or incident commander, following receipt of a declaration that an assembly is unlawful. Any order to disperse must be subsequently documented in writing.

**NOTE:** Orders to disperse may be issued by the Air Support Unit by way of the helicopter's public address system provided a lieutenant or above directs the crew to issue the order consistent with the above policy. By directing the Air Support Unit to relay the order, the member ranked lieutenant or above shall verify their rank and authority via radio (e.g., "[unit number] to Air Support 1. I am [ranked lieutenant or above] and hereby under my authority authorize you to start issuing a dispersal order."). Any additional dispersal orders to be made via the public address system shall be relayed via radio or in a similar manner.

4. Absent exigent circumstances, orders to disperse shall not be issued until after DPD has attempted to communicate with the leaders, organizers, or other participants in the protest or demonstration and resolve the situation so that the unlawful activity decreases and the First Amendment assembly or demonstration can continue.
5. If a crowd disperses following a declaration of unlawful assembly and reconvenes at a different location where the participants engage in a lawful First Amendment assembly or demonstration, no order to disperse shall be issued unless it is established that the assembly is unlawful and adequate warnings are rendered in accordance with DPD policy.

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6. Members must obtain supervisory approval, to be documented as soon as practicable, before issuing any citations or making arrests related to a refusal to obey a dispersal order or related to any other public protest activities, unless those activities pose a threat of imminent harm to persons or property and violate a state or local law.
7. In dispersing a public assembly, members shall adhere to all applicable DPD policies.
- l. Members shall not substantially surround or enclose persons participating in or observing an assembly or protest and prevent them from leaving the area unless warnings to disperse have been given and the persons have been provided an opportunity to disperse in accordance with DPD policy.

**EXAMPLE:** A group of persons gathered in a public park is ordered to disperse and exit the park. The persons promptly attempt to comply with the order by walking down an alley that intersects the park. Members may not form lines at the beginning and end of the alley and close off all exit routes. Members may not arrest everyone thus gathered within the alley that intersects the park.
- m. Members shall not treat protesters differently based on the content or viewpoint of their legally protected speech, nor based on the race, national origin, gender identity, gender expression, disability or illness (physical or mental), sexual orientation, religion, political ideology or affiliation, social status, veteran status, economic status, familial status, HIV status, immigration status, homelessness, language ability, age, or any other protected class under state, federal, and local laws.
- n. Members shall not target the leaders or organizers of an assembly or protest by singling out such persons for harsher treatment. Members shall not single out persons for video recording solely because the persons appear to be the leaders or organizers of an assembly or protest. This does not prevent a member from taking enforcement actions in the event that the member has probable cause to believe that a person, whether a leader / organizer or not, is inciting violence or has committed a crime.
- o. Members shall not allow personal beliefs and opinions to interfere with their duties as a law enforcement officer.
- p. Members shall not express personal, political, or religious views during a public assembly while on duty.

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- q. Members shall not make comments about the views expressed by persons exercising their First Amendment rights.

**302.6 – 4.3 Preparation for Protests and Assemblies**

Incident Action Plans (IAPs) may be used to direct and coordinate response operations. If mandated, an IAP shall be developed by the incident commander or designee prior to all known significant pre-planned or anticipated public protests or assemblies (more than 50 anticipated participants). This allows for a clear mode of communicating the overall incident objectives in the context of operational and support activities. IAPs must include answers to the following four questions:

1. What do we want to do?
2. Who is responsible for doing it?
3. How do we communicate with each other?
4. What is the procedure if someone is injured?

If mandated, the IAP may include an effective traffic control plan for streets and sidewalks and a protocol for health and safety guidance during pre-deployment briefings, ensuring the availability of mental health and medical professionals to provide health care to members, ensuring close monitoring and periodic affirmative checks of members' wellbeing by supervisors, close monitoring of member fatigue and indication of stressors, and the deployment of police counselors or psychologists to provide individual counseling to members and their families during prolonged periods of demonstrations or unrest. To the extent feasible, the IAP should include a plan for public information sharing before, during, and after a significant public assembly.

**302.6 – 4.3 Cooperation with Persons Seeking to Exercise their First Amendment Rights**

DPD recognizes that the involvement of all stakeholders is critical to upholding First Amendment rights while promoting public safety. To foster cooperation with persons seeking to exercise their First Amendment Rights—

- a. Members will strive to establish communication with organizers and leaders of the assembly or protest.
- b. If DPD becomes aware that a First Amendment assembly or demonstration is or will be occurring, members shall make reasonable attempts to establish communication and cooperate with the organizers of the assembly or protest, regardless of whether a permit has been applied for or issued.
- c. The commanding officer responsible for monitoring a First Amendment assembly will consult stakeholders when planning for and responding to First Amendment assemblies and demonstrations. Upon establishing contact, the commanding officer responsible for monitoring a First Amendment assembly (or their

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- designee) will consult stakeholders when planning for and responding to First Amendment assemblies and demonstrations. Upon establishing contact, the commanding officer or their designee shall request that the organizers or leaders of the assembly or demonstration designate a primary police liaison and that the primary police liaison maintain continuous contact with the commanding officer (or their designee).
- d. Regardless of whether a group responds to DPD's attempts to establish communication before an assembly or protest, DPD shall attempt to identify a primary police liaison for the assembly or demonstration and foster a primary police liaison for the assembly or demonstration and foster cooperation with the group as early as possible during the assembly or protest. Further no retaliatory action will be taken against a group for failure to designate a primary police liaison or communicate with DPD.
  - e. The assigned member should continue to communicate with the primary police liaison throughout the duration of an assembly or demonstration, even if DPD ultimately begins to effect arrests or take other enforcement measures.

**302.6 – 4.3 Mobile Field Force**

The Mobile Field Force (MFF) are specially trained and equipped for large events. The MFF's duties include, but are not limited to, ensuring the safety of event participants, observers, and bystanders; ensuring respect and protection of First Amendment rights; Assisting in managing civil disturbances / unrest in the event that a breach of the peace occurs. The Chief of Police or designee has the authority to deploy the MFF for pre-planned events.

Upon deployment of the MFF, the incident commander has control and command of the MFF's activities. MFF personnel shall follow the guidelines outlined in the MFF's Standard Operating Procedures as well as the directives contained in any applicable DPD policies. This includes, but is not limited to, utilizing de-escalation techniques if specific persons or groups become hostile or threatens imminent, violent action or destruction of property, unless such tactics would place the officers or others in danger. This also includes utilizing crowd management tactics to facilitate safe environments for public speech, if feasible.

**302.6 – 4 Training and Education****302.6 – 4.1 Requirements**

Each member shall receive training consistent with this policy. Such training shall include periodic instruction regarding the key requirements of the policy. Evidence of each member's training – including the member's attendance, dates of training, and test scores or other proof that the member successfully completed the training shall be documented and maintained by the DPD.