



Policy 804

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FIRST AMENDMENT PROTECTED ACTIVITY	
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By Order of the Police Commissioner

POLICY

The purpose of this policy is to describe First Amendment rights, which shall be guaranteed and protected by the members of the Baltimore Police Department (BPD).

- First Amendment Right to Assemble.** Each individual in the United States has important First Amendment rights that must be vigorously respected and protected by law enforcement. Under the Constitution of the United States, persons and groups have a right to organize and participate in First Amendment assemblies on the streets, sidewalks, other public ways, and in the parks of the City of Baltimore. They also have a First Amendment right to assemble near the object of their protest so they may be seen and heard.
- Reasonable Restrictions.** These rights are subject to reasonable restrictions. By law, the State of Maryland, and the Mayor and City Council of Baltimore may adopt reasonable restrictions on the time, place, and manner in which persons engage in First Amendment activity. The BPD enforces those restrictions, in accordance with the law.
- Rioting and Looting.** First Amendment rights do not protect rioting, looting or other illegal behavior. Nothing in this policy prevents BPD members from arresting any individual, including the speaker, who is engaging in violent or unlawful activity.
- Public Safety.** BPD officers, and the BPD itself, may place additional reasonable restrictions on First Amendment speech and assembly (beyond those imposed by federal, state and local laws) only as necessary to maintain public safety and order and to facilitate uninhibited commerce and freedom of movement.
- Crowd Management.** The BPD will strive to effectively manage crowds during demonstrations to protect the protesters' First Amendment rights, but may act as necessary to prevent loss of life, injury, or property damage and to minimize unreasonable disruption to persons who are uninvolved. All BPD officers encountering an individual who is engaged in protected First Amendment speech or assembly shall refrain from interfering with that speech, including using force, unless necessary to prevent the loss of life, injury, property damage and unreasonable disruptions.

DEFINITIONS

First Amendment Assembly/Demonstration – A lawful assembly of persons organized primarily to engage in First Amendment activity. These may be scheduled events that allow for law enforcement planning but also may include spontaneous assemblies. They include, but are not limited to, marches, protests, and other assemblies.

True Threats – Statements that intend to threaten or intimidate, when the speaker means to communicate a serious intent to commit an act of unlawful violence or harm to a particular individual or group of individuals and those individuals are aware and/or present to observe the communication.

Civil Disturbance/Unrest – A gathering or group act that constitutes a breach of the peace or any assembly 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.

RESPONSE TO CITIZEN SPEECH

Permissible Restrictions

1. Sworn members may interrupt demonstrations and assemblies only after BPD has attempted to control the crowd that is threatening violence, to protect those engaged in lawful constitutional assembly, and the member holding the rank of lieutenant or above has concluded that crowd control is impossible and a threat to breach of the peace is present or imminent. BPD members have an obligation to make all reasonable efforts to protect the lawful demonstrators.
 - 1.1. The decision to interrupt speech may only be made by a sworn member holding the rank of lieutenant or above.
2. The BPD may interrupt speech in the following limited circumstances:
 - 2.1. Speech incites unlawful activity: BPD members may interrupt citizen speech when the speech incites unlawful activity. However, mere *advocacy* for unlawful activity may not be regulated. In order for speech to be subject to regulation, the speech must:
 - 2.1.1. Be an incitement to unlawful action;
 - 2.1.2. A threat of imminent/immediate violent harm or disorder; and
 - 2.1.3. Have a substantial likelihood of producing illegal violent action; and
 - 2.1.4. The speaker must clearly and objectively intend to direct immediate unlawful violent action.

NOTE: The mere advocacy of the use of force or violence sometime in the future does not remove it from the umbrella of First Amendment protection. This type of speech is still constitutionally protected and the person speaking cannot be arrested simply because of his or her speech.

EXAMPLE: During a demonstration, the crowd moved into the street, disrupting traffic. The police successfully directed the protesters out of the street and back onto the curb (to clear the demonstration from the street), when an individual yelled “We’ll take the street later,” or “We’ll take the street again.” The individual may *not* be detained or arrested for his statements.

- 2.2. Risk that Speech Will Provoke an Audience into Using Illegal Force Against the Speaker: BPD members may interrupt speech when it provokes violence or immediate threats of violence, or there is a clear and immediate/present danger of a hostile crowd reaction to the speaker (i.e., civil unrest and/or riot), only after BPD has attempted to control/discipline the crowd and made a clear effort to protect the speaker.

NOTE: A member may interrupt a speaker only if it is otherwise impossible for the member(s) to control a crowd.

EXAMPLE: A group of individuals marched throughout the city until they were met by a growing opposition crowd of onlookers and unruly bystanders. The case law holds that police must first attempt to discipline the unruly bystanders before ordering the lawful demonstrators to disperse. However, even if police cannot control the bystanders, the lawful demonstrators may not be arrested for refusing to disperse. In other words, the illegal behavior and intimidation of the counter-protesters is not a reason to arrest the lawful protesters, even if the lawful protesters refuse to disperse.

- 2.3. Demonstrations or Assemblies that Provoke Hostile Crowd Reactions: BPD members may interrupt a demonstration or an assembly of persons engaged in First Amendment speech when it provokes *true* threats of *immediate* violence from the crowd that would result in harm *to an individual or in substantial harm to the property of another individual*. In other words, in order to arrest a person for the content of his or her speech, the threats of violence must appear to be genuine threats of immediate violence, not generalized threats of vague future harm.

REQUIRED ACTION FOR MEMBERS

The interruption and regulation of speech, expression, and assembly by the BPD must be done in a way that is the least restrictive means possible, and after all other alternatives to interruption are exhausted. Only a sworn officer holding the rank of lieutenant or above, may decide whether other alternatives are impossible.

1. Members shall:
 - 1.1. Protect life and property.
 - 1.2. Ensure that all privacy, civil rights, and civil liberties protections are upheld.
 - 1.3. Practice fair and impartial enforcement of laws, statutes, and ordinances. Adhere to the event Operations Plan, unless otherwise directed by supervisors. Expanded activity should not be conducted without supervisory approval unless criminal activity is identified by the officer.
 - 1.4. Enforce reasonable time, place, and manner restrictions as discussed in the Operations Plan.
2. Members shall not:
 - 2.1. Engage in unauthorized enforcement activities, including unauthorized information collection.
 - 2.2. Document information on persons solely on the basis of:
 - 2.2.1. Ethnicity, national origin, or race.
 - 2.2.2. Religious, political, or social beliefs or associations.
 - 2.2.3. Sexual orientation.

- 2.2.4. Support for unpopular causes.
- 2.3. Conduct investigative activity without direct supervisory authorization or unless criminal activity is identified by the officer.
- 2.4. Allow personal beliefs and opinions to interfere with their duties as a law enforcement officer.
- 2.5. Express personal, political, or religious views during the assembly while on duty.
- 2.6. Infringe on any person's right to peaceably assemble and associate with others.¹

RESCISSION

Remove and destroy/recycle Policy 804, *First Amendment Protected Activity*, dated 25 November 2015.

COMMUNICATION OF POLICY

This policy is effective on the date listed herein. Each employee is responsible for complying with the contents of this policy.

¹ "Recommendations for First Amendment-Protected Events For State and Local Law Enforcement Agencies." December 2011, p20. By "Global." (The Global Justice Information Sharing Initiative (Global) serves as a Federal Advisory Committee to the U.S. Attorney General on critical justice information sharing initiatives.)