



Colorado Springs Police Department General Order

101 First Amendment Rights

Section 100 – Organizational Values & Structure

Effective Date: 4/1/2021

Supersedes Date: 8/23/2016

.01 Purpose

The purpose of this directive is to outline the Colorado Springs Police Department's (CSPD) position on activities involving free speech rights, protections, and limitations afforded by the United States and Colorado Constitutions.

.02 Cross-Reference

[GO 104 Determining Probable Cause](#)

[GO 120 Treatment of the Public](#)

[GO 121 Fair and Impartial Policing](#)

[GO 401 Police Officer Conduct](#)

[GO 1210 Assemblies and Mass Events](#)

[DL-1020-23 Responses to Civil Matters](#)

.03 Discussion

The First Amendment of the United States Constitution reads:

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.

Article II, Section 10 of the Colorado Constitution reads:

No law shall be passed impairing the freedom of speech; every person shall be free to speak, write or publish whatever he will on any subject, being responsible for all abuse of that liberty; and in all suits and prosecutions for libel the truth thereof may be given in evidence, and the jury, under the direction of the court, shall determine the law and the fact.

As listed above, the First Amendment to the United States Constitution and Article II, Section 10 of the Colorado Constitution, grants individuals the right to free speech to voice their opinions and beliefs, make proclamations, distribute literature, and peacefully assemble to exercise such rights.

The right to assemble is applicable to only that of peaceful assembly. Once the applicable laws and ordinances are determined to have been violated, law enforcement is subsequently obligated to restore and maintain peaceful order afforded to the community.

While governments must have legitimate reasons for regulating public events, interpretations of the First Amendment allow law enforcement agencies broad discretion regarding when and how to regulate public assemblies and what tactics to employ.

A best practice approach to managing assemblies is through the development of thoughtful policies and practices, which are both fair and effective. These elements, when appropriately applied, encourage people to comply with the law while simultaneously ensuring accountability of those who enforce the law.

Incorporation of these practices by CSPD emphasizes:

- The facilitation of peaceful expression by the city of Colorado Springs and CSPD
- Effective communication between CSPD and assembly participants
- Developing an understanding of motivations, expectations, and knowledge sharing (e.g., social identities, purpose, lawfulness)
- An adaptable approach to policing protests which allows for continued facilitation of peaceful behavior while taking enforcement action against those who commit unlawful acts

Implementation of these strategies allows law enforcement the ability to focus on upholding citizen's constitutional rights of peaceful expression in a public forum while apprehending violators. Every public event or assembly that occurs is unique, which provides opportunities for learning and growth on both sides. This is why regular conversation, community involvement, and interaction remains an integral and imperative part of the CSPD operational structure surrounding public events.

.04 Policy

The city of Colorado Springs and CSPD are sworn supporters of the First Amendment and committed to creating a safe environment for community members to exercise the protections the Constitution, statutes, and ordinances afford.

The primary goal for CSPD is to create, maintain, and continuously evaluate policies and practices that balance the rights of free speech and the safety and rights of both participants and non-participants.

CSPD will not suppress or restrain the implicit rights of free speech, assembly, religion, or any other lawful and peaceful activity held within the city limits of Colorado Springs nor when personnel may be acting as mutual aid and providing assistance to other agencies.

CSPD will treat people asserting rights under the First Amendment of the U.S. Constitution and Article II, Section 10 of the Colorado Constitution, in a manner that is consistently neutral and professional, with respect to the content of their expression and in accordance with [GO 121 Fair and Impartial Policing](#).

CSPD will ensure destructive, violent, and unlawful behaviors towards others and property are mitigated with the implementation of appropriate agency responses, while simultaneously remaining mindful of preserving its citizen's First Amendment rights.

CSPD personnel must consider the time, place, and manner (TPM) restrictions of public property use prior to intervening with any free speech activity or gathering.

Property and forum designations, if in question, will be determined by the Public Safety Attorney, or designee, in conjunction with CSPD command personnel when developing the appropriate agency response.

Arrests must be based on probable cause that a crime has been committed. First Amendment activities that do not involve illegal conduct cannot be the basis for an arrest.

Arrests of individuals engaging in First Amendment activities, on public property/forum, that is based solely upon the complaint of other citizens, when no other criminal activity is evident, is prohibited.

As the primary law enforcement authority within the city of Colorado Springs, CSPD will notify mutual aid agencies, when feasible, of departmental policy and operational plans when responding to First Amendment demonstrations. However, each mutual aid agency remains responsible for the conduct of its personnel during the course of the response operation.

The city may choose to establish curfews to ensure peace is maintained in response to unlawful activity. Failure to comply with any issued curfews will be considered unlawful behavior by CSPD, which can and may result in detainment and/or arrest.

.05 Definitions

Adverse Action: An action that is likely to deter an ordinary person from engaging in protected conduct.

Sexually Exploitative Material: Any photograph, motion picture, video, recording or broadcast of moving visual images, print, negative, slide, or other mechanically, electronically, chemically, or digitally reproduced visual material that depicts a child engaged in, participating in, observing, or being used for explicit sexual conduct.

Fighting Words and True Threats: Words in which their very utterance inflicts injury or tends to incite an immediate breach of the peace. This category of prohibited speech requires the threat of an immediate breach of peace in order to be punishable.

Forum: In First Amendment law, refers to the place in which a speaker speaks. Protections vary regarding the right to speak and assemble based upon the speaker's chosen forum, as outlined in section .10 Event Locations & Property Types.

Handbill (City Ordinance 9.6.207): Any material in print which, in whole or in part, invites interest in or advertises a particular product, business, event, or attraction; or encourages concurrence in or support of a point of view; or encourages support of or opposition to a candidate for election; or encourages support of or opposition to a ballot issue or question, or offers information of any kind.

Lawful: Individual or collective behaviors and actions that are conducted within compliance with established laws and/or government ordinances.

Obscene: Material or performance that:

- The average person, applying contemporary community standards, would find that taken as whole appeals to the prurient interest in sex;
- Depicts or describes:
 - Patently offensive representations or descriptions of ultimate sex acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality; or
 - Patently offensive representations or descriptions of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, or covered male genitals in a discernibly turgid state; and
- Taken as a whole, lacks serious literary, artistic, political, or scientific value.

Picketing/Protesting: To make a public display or demonstration of sentiment for, or against a person, or cause, including protesting which may include any oral communication or speech, the

display of signs, and the distribution of leaflets or handbills, which may involve an effort to persuade or influence, including all expressive and symbolic conduct, whether active or passive.

Private Property: Property owned by private parties, who are not a government entity.

Protected Speech: The lawful exercise of rights under either the First Amendment of the U.S. Constitution or Article II, Section 10 of the Colorado Constitution.

Public Property: Property that is dedicated to public use and/or owned collectively by a population and maintained by the government.

Time, Place, and Manner (TPM): The standard for reasonable restrictions permitted to governments on the exercise of the freedom of speech on public property and in traditional public forums.

Unlawful: That which is contrary to, prohibited, or unauthorized by law.

Unprotected Speech: Speech that is prohibited and subject to governmental regulations; to include obscenity, threats/intimidation, fighting words, fraudulent misrepresentations, advocacy of lawless behavior, and defamation.

.10 Event Location & Property Types

The type of property where an event is occurring is a principal factor influencing the privileges, rights, and liberties afforded to citizens. Additionally, those who enforce established laws and ordinances will utilize the property type to determine appropriate department responses.

Public Property/Traditional Forums

Public property/forums are areas where persons enjoy First Amendment protections and discrimination protection against a speaker's views. Public forums typically include property accessible to the public and open to public expression and assembly, (e.g., public streets, sidewalks, parks, and other common areas, as designated).

However, "the First Amendment does not guarantee access to the property because it is owned or controlled by the government," (*USPS v. Council of Greenburgh Civic Assn's, 1981*). The government may place restrictions on speech being conducted on public property under specific conditions.

Time, Place, and Manner (TPM) Restrictions

Based upon the United States Supreme Court's rulings, the government may place reasonable TPM restrictions on citizens when exercising their First Amendment rights, which may also include applicable state statutes or city ordinances.

When evaluating whether to implement TPM, "The crucial question is whether the manner of expression is basically compatible with the normal activity of a particular place at a particular time," (*Grayned v. City of Rockford, 1972*).

Implementation of any/all TPM restrictions by CSPD will include the following standards:

- *Content-neutrality* – any restriction by CSPD will not be related to the content of the message or gathering (*Snyder v. Phelps, 2011*), unless evidence is present of unprotected speech.
- *Narrowly tailored restrictions* – no restriction will be overly broad or vague thus burdening speech any more than necessary to achieve the groups asserted interest (*McCullen v. Coakley, 2014*).
- *A specific & significant government interest* – police have significant interest in restricting forms of express that endanger public safety (e.g., blocking highways, streets, or designated egress routes).
- *Alternative means to convey message* – courts have ruled the right to place restrictions on locations where protests may take place as long as the assembly may effectively communicate their message to their audience via alternative means (*Amnesty International, USA v. Battle, 2009*).

Additionally, TPM restrictions are inclusive of considerations such as public safety, traffic control, preventing blockages of building entrances, minimizing confliction of meetings at the same time and place, etc.

Non-Traditional Public Forum

Occasionally, the city, at its discretion, may open public property for public expression even though the property is not traditionally a public forum. The key factor in the creation or opening of a non-traditional public forum is the intent of the city. CSPD will typically not initiate the opening of a non-traditional forum unless prior notification and requests for assistance is received through the special events coordinator and/or the city entity with the authority to make such decisions.

Non-traditional public forums may include locations such as municipal auditoriums, community centers, or meeting rooms at educational establishments or other government buildings.

While open, non-traditional forum event must be operated in accordance with the following:

- The speech conducted within receives the same First Amendment protections as a traditional public forum.
- The government is not obligated to have the location remain open and may close the non-traditional forum at their discretion.
- The non-traditional forum will conform to all requirements of this directive, as well as [GO 1210 Assemblies & Mass Events](#).

Non-Forum Public Property

Non-forum public properties are those areas that may be utilized by the public or owned by the government but are deemed not suitable for public assemblies or forums, therefore it will not be categorized under the public/open forum designation.

Non-forum public property can include cemeteries, wastewater treatment facilities, a public broadcasting building, and municipal airport property.

Private Property

Property owners may generally exclude individuals from private property, as well as restrict activity on such property. Additionally, they may also advise persons, engaged in any First Amendment activity, to vacate the property or be subject to a complaint for trespassing per Ordinance 9.6.102.

CSPD will respond to First Amendment trespassing complaints on private property in accordance with [DL-1020-23 Responses to Civil Matters](#) and [DL-1210-01 Assembly & Mass Event Operations](#).

Conversely, certain private property exists in which the public has a right to engage in free speech activities. This is due to the property while being privately owned, functioning as a public forum or, due to a significant degree of governmental involvement, that particular private property is deemed as a public forum by the city.

Public Forum/Private Property

Public forum private properties are typically a functional equivalent of a traditional downtown business district or areas of a large regional shopping mall. Whether the private property is open for speech activity is dependent on several factors including government involvement with the property, whether a portion of the property is dedicated to governmental purposes, or whether the government has significant financial or tax involvement with the property.

Private properties deemed to be “open public forums” by the city, include the following public areas (e.g., food court, atriums, etc.) of:

- The Citadel Mall
- Chapel Hills Mall
- First and Main Shopping Center
- World Arena (outside the arena including the parking lots)
- University Village Shopping Center
- The Shops at Briargate

While this list represents the most current private properties that the city has determined to be public forum private property, additional large retail properties may be added.

Like open/public forums, private property owners may establish reasonable TPM restrictions for the exercise of First Amendment rights. For example, both the Citadel and Chapel Hills malls have guidelines with TPM restrictions regarding First Amendment activities on their property.

Failure to comply with established restrictions may result in the filing of a trespassing complaint by the owner or manager and elicit a CSPD response.

.15 Forum Determinations

CSPD Supervisors questioning forum/property type may utilize Attachment – Assembly Officer’s Guide.

If questions regarding the property type remain, supervisory personnel must contact the PSCA, or designee, for further guidance and/or official determination of the property type.

.20 Protected Speech

The Supreme Court has recognized that First Amendment protections extend to individual and collective speech “in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.” (*Roberts v. U.S. Jaycees, 1984*).

While speech is generally considered protected, this is inclusive of acts of rudeness (e.g., displaying a middle finger at an officer) and derogatory comments directed towards an officer.

When applied to law enforcement, examples of prohibited actions against protected speech can include:

- Using an obscene gesture or derogatory comment as reasonable suspicion or probable cause for law enforcement purposes, such as conducting a non-consensual contact, as well as searching, interviewing, or detaining the person.
- An officer retaliating against a person for exercising their First Amendment rights by notifying an individual's employer/educational facility of that person's disparaging behavior/comments they directed towards law enforcement.

In most situations, the courts have ruled such expressions are protected speech under the First Amendment; therefore, police taking action in these situations would discourage the persons from expressing themselves when legally allowed to do so, thus constituting a violation of a person's First Amendment rights. Such action by law enforcement, absent articulation of other unlawfulness, is prohibited by CSPD.

Additionally, the act of the officer contacting the person, based solely upon their rude/derogatory behavior, could potentially constitute additional violations of the person's Fourth and Fourteenth Amendment rights.

.25 Unprotected Speech

First Amendment protections do not extend to all types of speech. The Supreme Court has identified limited areas of speech that may be considered unlawful due to their content. Speech that includes obscenity, sexually exploitative material, and speech that constitutes so-called "fighting words" or threats/intimidation is not protected speech. Such allegations or complaints will result in a law enforcement response by CSPD.

Individuals may not act in an unlawful manner while asserting what they believe to be protected free speech rights.

.30 Permissible Activities

Individuals may participate in public parades and public celebrations if such participation does not interfere with the rights of other persons, as approved by the event organizer, nor constitutes a violation of city or state criminal codes.

Persons exercising their First Amendment rights may speak to people passing by or those assembled to hear demonstrators in a public location, so long as the individuals engaging in the activity remain lawful.

In residential neighborhoods, the public streets and sidewalks remain part of the public forum for any/all canvassing or solicitation of homeowners and First Amendment activities, unless targeting of specific locations is detected, in accordance with Section .40 Unlawful Activities.

Individuals may burn a flag so long as the fire does not endanger the safety, health or welfare of others, or violate city or state criminal codes or burn bans in effect.

Petition Gathering

The First Amendment covers not only petition gathering but implies that signatures must be collected in order to comply with some government functions.

Petition gatherers are welcome to collect signatures at state, city, or county-owned properties such as but not limited to:

- Outside the 4th Judicial District Courthouse
- Municipal courthouse
- State DMV locations
- The Pioneer Museum gazebo,
- Public forum areas
- Public libraries
- City Hall

Failure for a petition gatherer to follow TPM restrictions on private property can/may result in trespass charges from CSPD.

.40 Unlawful Activities

Persons engaged in assemblies, free speech activities, or petition gathering on public property may not actively interfere with the business of another by creating excessive noise, impeding others right to access the same location, blocking entrances to buildings or dwellings, or by obstructing motor vehicles or pedestrian traffic utilizing public thoroughfares.

If the elements of unlawfulness or unprotected speech are present by someone engaged in such activity, appropriate law enforcement action can/may be taken by responding officers.

This includes:

- Any acts of violence
- Damage to property, whether public or private
- And/or other unlawful behavior

A demonstration may be declared unlawful when the assembly or a significant portion thereof, participates in any unlawful activities. Subsequently, any members of the assembly engaged in

violence to persons or damage to property will be deemed as engaging in unlawful acts, which can result in dispersal orders, citations, and/or arrest.

Individuals engaged in a protected First Amendment activity will not target or focus picketing or other activity toward a particular household or dwelling in a residential area, pursuant to CRS §18-9-108.5, Residential Picketing.

Handbill Distribution

It is unlawful for any person to throw, deposit, place, or distribute any handbills, leaflets, etc. on any kind of public property or without the consent of the owner on private property, (*Colorado Springs City Ordinances 9.6.207 Bills; Attachment Prohibited and 9.6.208 Bills: Requirements for Distribution*). Violations of this ordinance may result in a CSPD response.

.50 Event Planning & Permitting

Organizations and/or groups who plan First Amendment assemblies or large-scale events are encouraged to apply for a special events permit through the city of [Colorado Springs webpage](#). This allows the city and CSPD the opportunity to assist and collaborate in developing a plan to ensure the efficiency and safety of the event. Planning assistance can include arrangements for legal road closures, traffic control, and security during the assembly.

Upon city approval, the CSPD Patrol Support Section will actively work with event organizers to develop a plan focused on the protection of the participant's First Amendment rights, maintain event safety, and allocate needed resources in accordance with [GO 240 Special Events](#) and [GO 1210 Assemblies and Mass Events](#).

Attachment

[Property Types & PSCA Notifications](#)