



**CHEVY CHASE
VILLAGE
POLICE
DEPARTMENT**

John Fitzgerald

Police Chief: John Fitzgerald

GENERAL ORDER: 5-61; FIRST AMENDMENT RIGHTS

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DISTRIBUTION: **Sworn Personnel**

I. PURPOSE

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

II. POLICY

The Chevy Chase Village Police Department will protect, and will in no way restrain, the right of the people to engage in the free exercise of lawful speech, assembly, religion or any other lawful activity. However, officers are authorized to take appropriate enforcement action when the actions of individuals or groups of persons violate the law or otherwise exhibit a clear and present danger to the health, safety, or welfare of the general public.

III. DISCUSSION

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 peaceably to assemble, and to petition the government for a redress of grievances."

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. Thus, individuals have 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 as described, below.

IV. PERMISSIBLE ACTIONS

- A. 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 law, persons may assemble, preach, distribute literature, picket and protest on public property, burn a flag, etc.
- B. 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

some members of society.

- C. 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.
- D. State law (Criminal Law §10-201, Disturbing the Peace and Disorderly Conduct) 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 this law, which is a misdemeanor.

V. NON-PERMISSIBLE ACTIONS

- A. Individuals engaged in First Amendment activity may NOT:
 - 1. obstruct the path of persons utilizing a public sidewalk;
 - 2. 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;
 - 3. assemble in a manner that disrupts a person's right to tranquility in the person's home;
 - 4. demonstrate, assemble, distribute literature, or preach on private property against the will of the owner or lawful tenant of that property; or,
 - 5. commit any crime while asserting First Amendment Rights.
- B. If a criminal offense is committed by a person engaged in First Amendment activity, enforcement action may be taken.

VI. RESPONSE TO VIOLATIONS INVOLVING PERSONS EXERCISING OR ASSERTING FIRST AMENDMENT RIGHTS

- A. 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.
- B. 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.

VII. PICKET LINES & 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:

- A. 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.
- B. There is no maximum number of participants established for pickets, providing their conduct conforms to these guidelines.
- C. 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.
- D. Picketers are permitted to distribute informational leaflets and/or pamphlets.
- E. Employees, suppliers, or customers of the target of the picket have the right to freely pass.
- F. 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.

VIII. VIDEO RECORDING & PHOTOGRAPHING POLICE OFFICERS; *FIRST AMENDMENT 'AUDITORS'*

Police officers and police departments continue to face embarrassment and lawsuits when officers illegally interfere with persons who photograph or video record police officers in the performance of their duties or when they record government facilities, vehicles or anything else from a public area. Officers shall adhere to the following policies:

- A. Generally, individuals have a First Amendment right to record from a place where the public is permitted to be. This applies to both interior and exterior places so long as the place from where they are recording is open to the public.
- B. Individuals have a 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 public or private property where the person has a right to be present.
- C. Members of the press and members of the general public enjoy the same rights in any area accessible to the general public. 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.
- D. Officers are prohibited from demanding identification from the individual recording, from ordering the person to leave the premises, or from interfering in any way with the individual merely because the person is recording.
- E. Officers must not search or seize a camera or recording device without a warrant except under very limited circumstances as described herein.
- F. Officers are prohibited from threatening, intimidating or otherwise discouraging any individual from recording police activities.
- G. Officers must not intentionally block or obstruct cameras or recording devices in any manner.
- H. Officers are prohibited from deleting recordings or photographs, and from damaging or destroying recording devices/cameras under any circumstances.
- I. 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, obstruct the official duties of the officer, or incite others to violate the law. **NOTE:** 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.

- J. Examples of actions that would be unlawful include:
1. Repeatedly instructing a witness being questioned by a police officer not to respond to the officer's questions;
 2. Hindering a lawful arrest *or physically interfering with any lawful police action (searches, detentions, evidence collection, etc.)*;
 3. Inciting bystanders to hinder or obstruct an officer in the performance of their duties.
- K. A person's expression of criticism of the police (or the police activity being observed) does not amount to interference.
1. The First Amendment protects a significant amount of verbal criticism and challenge directed at police officers.
 2. 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.
- L. 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:
1. Officers have probable cause to believe that critical evidence of a felony crime is contained on/in the camera or recording device; and
 2. Officers first have explained the circumstances and have unsuccessfully attempted to get the consent of the person in possession of the recording device; and
 3. 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

4. Supervisory approval has been granted for the seizure.
- M. If a camera/recording device is seized without a warrant pursuant to item 10, above, officers are prohibited from seizing or viewing the evidence contained in the device until a warrant is obtained for that seizure.

This directive voids the previous version dated 5/23/2019.