

**FERGUSON POLICE DEPARTMENT
GENERAL ORDER**

TITLE: Response to First Amendment Protected Activity: Public Protests/Demonstrations		GENERAL ORDERS:
TOPIC: Policies and Procedures Concerning proper protocol/response as it relates to Public Protests and Demonstrations		
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The First Amendment of the United States Constitution
First Amendment
Protected Activity

I. Purpose

The purpose of this General Order is to allow for the ~~peaceful~~ lawful expression of all First Amendment rights, including the rights to freedom of speech, and expression, and freedom of assembly in the City of Ferguson.

II. Policy Statement

It is the policy of the Ferguson Police Department ("FPD" or the "Department") to ensure that the First Amendment Rights guaranteed by the United States Constitution are protected for all individuals in a manner that reflects the Department's commitment to fair and lawful policing, procedural fairness and justice, and community-oriented policing. FPD acknowledges that First Amendment protected activities serve important societal functions, including promoting transparency in government affairs, ensuring accountability of public officials, and encouraging community feedback—whether critical or laudatory—that ultimately reduce tension and foster a sense of openness and trust between law enforcement and the public.

III. Definitions

Civil Disorder: any public disturbance involving acts of violence by assemblages of three or more persons, which causes an immediate danger of or results in damage or injury to the property or person of any other individual;

Civil Disturbance: a breach of the peace 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 an "unlawful assembly."

Counter-Protestor: a protestor who participates in a protest, staged to counter or oppose another protest, a participant in a protest that opposes an existing protest.

Exigent Circumstances: emergencies in which a reasonable person would believe that imminent bodily harm to a person or persons or the destruction of evidence is likely.

First Amendment: an amendment to the U.S. Constitution that forbids the government and its agents from interfering with a citizen's freedom of religion, speech, assembly, or petition.

Inciting imminent unlawful violent action: encouraging other persons to engage in violent criminal activity that will occur immediately. Inciting imminent unlawful violent action does not include encouraging others to engage in violent criminal activity that might occur at some point in the future; it only includes encouraging violent criminal activity that is ~~about to happen~~ (imminent).

Incident Action Plan (IAP): an oral or written plan containing general objectives reflecting the overall strategy for managing a public protest, demonstration, or ~~civil disturbance~~ unlawful assembly.

Kettling: a police tactic where officers attempt to control a crowd by forming lines around the crowd, and preventing individuals from leaving a particular area, and/or threaten those in the crowd with arrest.

Commented [KT1]: Note to Drafter (NTD): See MO ST 574.070 and comments below discussing the removal of "Civil Disturbance."

Commented [KT2]: NTD: This definition is not in accord with Ferguson ordinances or Missouri law. The more appropriate definition here would be "Unlawful Assembly" which is present in both Ferguson ordinance and Missouri statutes—we have included the definition of "Unlawful Assembly" below.

For additional reference we have also included the Missouri statutory definition of "Civil Disorder."

As FPD struggled with what constituted "Unlawful Assembly" or "Civil Disorder" during the protests after Mike Brown's death and Jason Stockley's acquittal, it is imperative that these definitions are clear, and reflect current law.

Commented [KT3]: NTD: See Merriam-Webster definition.

On-Scene Commander: shift supervisor, unless the Chief of Police has appointed an Incident Commander. The on-scene commander will take appropriate action until relieved by a higher authority.

Probable Cause: the facts and circumstances known to the officer at the time would justify a prudent person in believing an individual committed or was committing an offense. Probable cause is based upon an objective assessment of facts and circumstances presented to the officer and requires a higher level of evidence than reasonable suspicion.

Procedural Fairness and Justice: The process of building trust with members of the community by adopting and carrying out the following principles: 1) treating community members with dignity and respect, 2) giving individuals a chance to be heard individuals voice during encounters, even if police do not support the individuals' message, 3) making decisions based on facts and the concerns of community members, and being unbiased and transparent when making those decisions, and 4) communicating trustworthy motives and goodwill. This includes the idea of fairness in the processes that resolve disputes and allocate resources, including the administration of justice and legal proceedings.

Commented [KT4]: NTD: See para. 62 of the consent decree.

Protected Characteristics: include race, ethnicity, national origin, gender, gender identity, sexual orientation, age, immigrant status, disability, and limited English proficiency.

Public Protest/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. They include, but are not limited to, marches, protests, and other assemblies.

Safety Officer: a/an FPD officer or member of the Ferguson Fire Department designated by the City who is responsible for monitoring incident operations and advising the Chief of Police and other command staff on all matters relating to operating safety, including the health and safety of emergency responding personnel and protesters.

Safe Space: a safe space, designated by protestors and/or demonstrators, as a place to take refuge, during a protest or demonstration. Such spaces provide an area for protestors and/or demonstrators to rest, recover, and recharge without fear of law enforcement interaction.

Search Warrants: legally obtained documents that give police specific rights or powers authority to conduct a particular search, such as the right to search something or somebody.

Seizure: Seizure of a person occurs when an officer's words or actions convey to a reasonable person that he or she is not free to leave. Seizure of one's property occurs when there is some meaningful interference with an individual's possessory interests in that property, including but not limited to, an officer physically taking and removing an individual's tangible personal property.

True Threats: statements that threaten or intimidate, when the speaker communicates a serious intent to commit an act of unlawful violence or harm to a particular person or group of persons, and those the subjects of those statements' persons are aware of or are present to observe the communication.

Unlawful Assembly: knowingly assembling with six or more other persons and agreeing with such persons to violate any state or federal criminal laws with force or violence.

Commented [KT5]: NTD: It is important that these policies address both a seizure of a person as well as a seizure of property as numerous residents, and the DOJ report, have detailed accounts of FPD unlawfully seizing individuals and their property in response to First Amendment activity.

For definition reference, see *United States v. Jacobsen*, 466 U.S. 109 (1984).

Commented [KT6]: NTD: See MO ST 574.040.

IV. Principles

- A. All FPD personnel shall respect the First Amendment rights of all persons, including but not limited to:
1. **The right to free speech and expression**, which includes the right to criticize law enforcement or otherwise engage in protected expression in the presence of law enforcement officers without being subject to retaliation. This may include statements which insult law enforcement and/or use profanity.
 2. **The right to freely organize and participate in lawful assemblies and protests** in parks, on sidewalks, in streets, and in other public forums, including public forums near the object of the demonstration or protest so that those assembled may be seen and heard.
 3. **The right to observe and record the actions of law enforcement officers** in the public discharge or their duties in all public spaces (including sidewalks, parks, and other locations for lawful public protest), as well as 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), without being subject to retaliation.

B. Officers will act with professionalism, and courtesy, and respect when interacting with individuals and groups who are engaging and who have engaged in activity protected by the First Amendment.

V. Requirements and Procedures

A. General First Amendment Requirements and Procedures for Officers

1. Officers shall allow persons to speak and express themselves freely, including by using criticism, insults, profanity, name calling, or obscene gestures directed at law enforcement or by expressing disagreement.
2. Officers shall **not**:
 - a. restrict the rights of any person to who criticizes, opposes, insults, or disrespects law enforcement through speech or gestures, unless the person is endangering an FPD officer or another person, or is physically interfering with lawful law enforcement action;
 - b. take any ~~police~~ action in retaliation for individuals lawfully exercising their right to witness, observe, record, comment on, or protest police activity. Such retaliatory actions may. This includes detaining, searching, arresting, issuing a citation, or using force in response to non-criminal statements or other expressive conduct, when the officer would not have taken such action in the absence of the statements or expressive conduct;
 - c. use force in response to a person engaging in legally protected speech or a lawful assembly unless the person poses an imminent threat to the safety of an FPD officer or others;
 - d. engage in any form of intimidation or harassment toward persons participating in assemblies or protests. Such prohibited intimidation and harassment include, but are not limited to, verbal threats, both verbal and through gestures or actions, including threats of arrest; use of and profanity, and obscene language; use of video recorders to harass, and displaying, pointing to, or touching a weapon for the purpose of intimidation, and wielding a baton;
 - e. arrest a person engaged in First Amendment activity unless there is individualized probable cause to believe that the particular person has committed a crime;
 - i. This means that a FPD officer may not arrest any person unless the officer has sufficient objective facts based on the officer's own knowledge, or reliable and trustworthy information provided by other officers or third parties, to establish probable cause that the person committed a crime. FPD officers 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 engage in violent or otherwise unlawful conduct. For more guidance on the requirements for making a warrantless arrest, consult *General Order X.X.X: Citations and Warrantless Arrests*.

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B. Requirements and Procedures for Officers During Public Protests and Demonstrations

1. The shift supervisor will assume the role of on-scene commander, unless the Chief of Police has appointed Incident Commander. The on-scene commander will take appropriate action until relieved by a higher authority.
2. Patrol units will stop all traffic into the affected area, with the exception of emergency personnel.
3. ~~The field command post (a staging area to which officers report for briefing and dispatch) should not be within view of the group or individuals engaging in public protest or demonstration.~~
4. Officers shall allow all persons to gather at or near the object of the demonstration or public protest and shall allow persons to assemble on sidewalks and streets and in parks and other public spaces, so that they may be seen and heard.
5. ~~In order to~~ Officers shall de-escalate the potential for disorder and avoid mass arrests. This may include, but is not limited to, ~~officers shall endeavor to accommodate~~ accommodating assemblies and protests that may temporarily block traffic or otherwise obstruct public streets by regulating or rerouting traffic as much as practical.

Commented [KT7]: NTD: This should not be something that we put in this policy and it definitely should not be out of view of the public protest

6. Officers shall enforce restrictions on the time, place, and manner of a demonstration or public protest only for the purpose of maintaining public safety and shall restrict no more speech than is necessary to further maintain public safety.
7. For any event for which there is an Incident Action Plan ("IAP"), officers shall follow the IAP, including by enforcing reasonable time, place, and manner restrictions in the IAP, unless otherwise directed by supervisors.
8. Officers shall take all reasonable efforts to protect protestors and preserve their right to protest.
9. Officers shall ~~make every effort to~~ separate protestors and counter-protestors, if needed to maintain order and avoid any potential confrontation. This separation must be done respectfully and without injury or unlawful detention or arrest to the protestors or counter protestors.
10. Officers on duty at public protests, demonstrations, Civil Disorder, and Unlawful Assemblies and ~~civil disturbances~~ will operate their body-worn video recorders ("BWVR") in accordance with *General Order X.X.X: Body Worn Video Recorders*. Officers' BWVR must not include facial recognition technology or any other technology that records, measures, or identifies physical features or biometric information. Officers may not use facial recognition technology, biometric reading, or location tracking on any footage, media, image, or recording from a protest, march, demonstration, or other protected activity, to identify, surveil, or track anyone.

10-11. Officers shall **not**:

- a. unlawfully interfere with individuals gathering in groups for public protests and demonstrations in a lawful manner and location;
- b. treat protestors differently based on the content of their speech or expression, or their race, color, ethnicity, national origin, religion, gender, sexual orientation, disability, or any other protected characteristic, or immigrant status, housing status, occupation, or limited English proficiency. See *General Order X.X.X: Fair and Impartial Policing*.
- c. use canines for crowd control. For guidance on the proper use of canines, consult *General Order 4.7.0: Canine Unit*.
- d. use rifle sights, mine-resistant ambush protected vehicles, long-range acoustics devices connected to armored vehicles, or other military-type weaponry, equipment or vehicles to monitor or control crowds during protests;
- e. cover their badges or otherwise hide or allow to be hidden, their identification information;
- f. target the leaders or organizers of a protest or demonstration by singling out such persons for harsher treatment. Officers shall not single out persons for video recording solely because the persons appear to be the leaders or organizers of a demonstration or protest. This does not prevent an officer from taking enforcement actions in the event that the officer has probable cause to believe that a person, whether a leader/organizer or not, is inciting violence or has committed a crime;
- f.g. single out anyone attending a protest, for harsher treatment, harassment, intimidation, or video recording;
- h. conduct any activity beyond the IAP without supervisor approval unless criminal activity is identified; or
- f. engage in any police activity during a public protest or demonstration, including officers assigned to observe protestors, unless he/she has received appropriate training, including de-escalation techniques, key concepts of the National Incident Management System command and management, including Incident Command Systems, multiagency coordination systems, and policing consistent with the First Amendment. FPD shall request all other law enforcement agencies responding within Ferguson to ensure the same standard applies for their respective officers.

Commented [KT8]: NTD: This needs to be spelled out because this wordage leaves room for individual perception of what an officer may consider an issue of "public safety." Law enforcement in Ferguson have routinely (and wrongly) viewed the mere fact that protestors or demonstrators are gathered outside, or being disruptive, a matter of public safety sufficient to spur law enforcement action. This is not true.

If this is in the policy, then we need to specify what public safety or endangering it means specifically.

Commented [KT9]: NTD: See pages 53-60 of *After-Action Assessment of the Police Response to the August 2014 Demonstrations in Ferguson, Missouri*, available at <https://www.policefoundation.org/wp-content/uploads/2018/08/After-Action-Assessment-of-the-Police-Response-to-the-August-2014-Demonstrations-in-Ferguson-Missouri.pdf>.

Commented [KT10]: NTD: See para. 122 of the consent decree.

44-12. Interruption of speakers

- a. FPD officers shall not interrupt a speaker exercising First Amendment rights, except in the very limited circumstance where:
 - i. The statement:
 1. threatens imminent unlawful violent action or the destruction of property; **and**
 2. has a substantial likelihood of producing imminent unlawful violent action or destruction of property; **and**
 3. is intentionally stated by the speaker to clearly and objectively direct at least one other person to engage in imminent unlawful violent action.
 - ii. ~~There is a risk that the statement will provoke listeners into using illegal force against the speaker, meaning when a~~ The statement provokes violence or threats of immediate violence against a speaker after FPD has used all lawful efforts to control the crowd and made a reasonable effort to protect the speaker.
 - iii. A speaker makes true threats of imminent violence that would result in harm to a person or substantial harm to the property of another person.
- b. Only the highest-ranking FPD officer on the scene may interrupt or restrict speech for any of the reasons listed above. If the highest-ranking FPD officer interrupts or restricts speech, they shall do so using the least restrictive means possible and only after all available alternatives to interruption or restriction have been exhausted.

Commented [KT11]: NTD: This statement is too vague and therefore may be wrongly used to justify FPD's interruption of First Amendment activities.

42-13. Dispersal

- a. Only the Chief or the Assistant Chief or their designee (rank of lieutenant) may declare a public protest or demonstration to be unlawful. The Chief, Assistant Chief, or their designee shall only declare a public protest or demonstration unlawful when there is an imminent threat to public safety (e.g., collective violence, destruction of property, or other injury).
 - i. The failure to obtain a permit is a not a sufficient basis to declare a public protest or demonstration unlawful.
 - ii. The fact that some of the persons involved in the public protest or demonstration have engaged in unlawful activity, either at the current protest or on prior occasions, is not a valid basis for declaring the entire public protest or assembly unlawful.
 - iii. Observing or recording officers' activities is not considered unlawful. If a protestor, demonstrator, or bystander's presence in a location causes an obstruction or interference to FPD activity, officers must recommend a less-intrusive location from which the individuals may continue to observe, record, and/or protest and give the individual a reasonable opportunity to comply prior to taking further enforcement action.
- b. **The decision to declare a public protest or demonstration unlawful will be rare.** The Chief, Assistant Chief, or their designee must document the reasons for making such a declaration in a detailed incident report and include all BWVR footage from officers at the scene.
- c. FPD command staff and officers will not terminate or disperse any public protest or demonstration unless the protest or demonstration has become a Civil Disorder, by causing an immediate danger of or resulting in damage or injury to the property or person of any other individual, a civil disturbance or threatens to turn imminently into Civil Disorder disturbance, or is a Unlawful Assembly and a dispersal order has been given in accordance with Section V.B.13(f) of this General Order.
- d. Officers shall not substantially surround or enclose, or engage in kettling of persons participating in or observing a public protest or demonstration, or prevent them individuals from leaving the an

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area. If protestors' activity becomes unlawful or violent, officers must give multiple clear and loud unless warnings that the protestors should to disperse. These warnings must be given in or translated to a language the protestors understand. All individuals must be have been given and the persons have been provided a reasonable opportunity and access to disperse in accordance with Section V.B.13(e) of this General Order, before any officer commences enforcement activity.

e. Dispersal Warnings

- i. The on-scene supervisor shall give a Dispersal Warning (See Appendix A) when warning individuals or crowds who ~~are in violation of the law~~ have created Civil Disorder or Unlawful Assembly that they are subject to arrest if they do not disperse.
- ii. The on-scene supervisor shall communicate all standardized warnings via "bull horn," loudspeaker or other similar communication device to ensure that individual protesting or demonstrating can clearly hear the warnings being issued based on the size of the crowd and environmental conditions.
- iii. All FPD officers present will record all dispersal warnings on their BWVR equipment.
- ~~iv.~~ The on-scene supervisor shall record the exact date, times and locations of the warnings given on the Dispersal Warning Form (See Appendix A).

~~iv.v.~~ All dispersal warnings must be followed by a period of time sufficient to allow individuals to disperse, information on how to exit the area, and an unrestricted exit path.

f. Dispersal Orders

- i. 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 FPD Lieutenant or above, following receipt of a declaration that an assembly is unlawful. Any order to disperse must be subsequently documented in writing.
- ii. Absent exigent circumstances, orders to disperse shall not be issued until after FPD 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 public protest of demonstration can continue.
- iii. If a crowd disperses following a declaration of unlawful assembly and reconvenes at a different location where the participants engage in a lawful public protest or demonstration, no order to disperse shall be issued unless it is established that the assembly is unlawful and adequate warnings are rendered per [+Section X+] of this General Order.
- iv. FPD officers shall obtain supervisory approval, to be documented as soon as possible, before issuing any citation or making an arrest related to a refusal to obey an order to disperse, unless that refusal poses an objective imminent threat of harm to persons or property **and** violates state or local law.
- v. Officers may only use force to carry out an order to disperse if it is necessary, objectively reasonable, and proportional to a person's level of resistance or threat posed and all efforts to de-escalate have been made whenever possible. Using force to disperse individuals is rare and should only use the least amount of force necessary. See, e.g., [General Order 4.1.0: Use of Lethal and Less-Lethal Force].

43-14. Citations and Arrests During Public Protests and Demonstrations

- a. Officers will only issue citations to or arrest people when they have *individualized* probable cause to believe that the person has committed or is committing an offense. This means that a FPD officer shall not arrest any person unless the officer has sufficient objective facts based on the officer's own knowledge, or reliable and trustworthy information provided by other officers or third parties, to establish probable cause that the person committed or is committing an offense. See *General Order X.X.X: Citations and Arrests*.

b. Officers shall have probable cause before arresting an individual, especially for arrests that lead to discretionary charges such as a Failure to Comply, Disorderly Conduct, Interference with Officer, or Resisting Arrest.

c. When an officer has probable cause to believe that an individual has committed or is committing a low-level and/or minor offenses that does not immediately threaten the officer's or other's safety—such as jaywalking, standing in a roadway, loitering, littering, simple trespass, etc.—officers should first inform the individual of the offense, give a verbal warning, use other de-escalation tactics, or issue a citation before resorting to arrest.

i. Officers must obtain verbal supervisory approval, which must be documented as soon as practicable, before issuing a citation for the following offenses: failure to comply/obey; disorderly conduct; peace disturbance; manner of walking in roadway; resisting arrest; and obstruction of government operations/interfering with an officer. This supervisory approval must be documented in detail by the end of the officer's shift that day.

d. For arrests that reflect discretionary charges against an individual, such as Failure to Comply, Disorderly Conduct, Manner of Walking in the Street, Interfering in Police Business, Misusing 911, or Resisting Arrest, officers must seek permission from a permanent rank supervisor prior to effectuating such Arrest, unless not practicable under the circumstances, in which case officers must notify a permanent rank supervisor as soon as practicable after effectuating an Arrest.

e. All arresting officers must document, in a detailed written report, as required by [x policy] the specific and probable cause for the arrest. FPD shall track the number and use of discretionary arrests, aggregated by demographics.

a.f. FPD shall retain all records, including officer reports, civilian complaints, disciplinary records, etc that concern law enforcement action during a protest, march, or demonstration.

b.g. FPD officers shall not arrest any person engaged in First Amendment activity based on the fact that other persons engaged in the same First Amendment activity have engaged in or are engaging in otherwise unlawful conduct.

h. Officers shall obtain supervisory approval, to be documented as soon as practicable, before issuing any citations or making arrests related to public protest activity, including violation of any state or local law, such as Mo. Rev. Stat. § 574.060 (refusal to disperse); § 574.040 (unlawful assembly); or *ad hoc* police rule limiting the time, place, and manner of lawful public protest, (such as a "keep-moving" policy).

i. Officers shall not arrest individuals solely because they disrespected, yelled at, insulted, or criticized FPD or used profanities. Officers must have lawful justification for every arrest. Officers must inform individuals of the lawful reason for their arrest.

e.j. Mass Arrests

i. FPD officers will make every effort to isolate and remove specific individuals or groups only when they have probable cause to believe those individuals have committed or are committing a crime of agitators whose purpose is to incite the crowd to imminent unlawful violent action before orders for mass arrest are issued in response to illegal behavior. Often times, removing agitators will cause others in the crowd to de-escalate activity.

i.ii. In an effort to avoid mass arrests and ensure protestors can exercise their First Amendment rights freely, officers should use verbal warnings, tools and de-escalation tactics to avoid issuing citations or arresting, especially for minor offenses and/or discretionary charges, including but not limited to, loitering, simple trespass, and disorderly conduct.

ii.iii. In rare circumstances where officers are not able to isolate and remove specific individuals or groups for committing an offense, they may arrest large numbers of individuals where these is probable cause to believe those individuals have committed or are committing offenses. This shall be a last resort. When considering whether to arrest a large number of people, the on-site supervisor shall consider:

1. Number of officers;

Commented [KT12]: NTD Take this out. This policy already states the appropriate grounds for an arrest. No need for an officer to use his or her own perception of what an "agitator" is.

Additionally officers should not be subjectively allowed to speculate on what a protestor or demonstrator's "purpose" is.

2. Number of protestors;

3. The safety of protestors;

3.4. Seriousness of offenses;

4.5. Demeanor of protestors; and

5.6. Availability of arrest teams/transportation for arrested individuals.

iii.iv. Upon issuing an order to execute a mass arrest, the on-site supervisor shall:

1. Ensure sufficient arrest teams are assembled, equipped and staged. Equipment shall include: Pre-packaged arrest packets including: arrest reports, Flex Cuffs, etc.
2. Stage a sufficient number of transportation vehicles for arrested individuals;
3. Notify the receiving jail, St. Ann Jail to prepare to receive arrested individuals;
4. Identify an alternate facility prepared to accept additional arrested individuals beyond the capacity of the initial receiving jail, St. Ann Jail; and
5. Assign personnel to process and charge arrested individuals.

d.k. FPD will not condition the release of arrested and detained individuals on an end to the public protest or demonstration.

44-15. Use of Force During Public Protests and Demonstrations

a. Officers must use every effort to avoid using force on protestors and demonstrators exercising their First Amendment right. Uses of force should be a last resort after attempting deescalation tactics.

a.b. If a protest or demonstration becomes unlawful, officers should attempt to disperse the crowd before using force. The on-scene commander will use every effort to induce the crowd to disperse before using any level of force.

c. During protests and demonstrations, authorization for any crowd control weapons shall only come from the Chief of Police, or if the Chief is unavailable, the Chief's designee at the rank of Deputy Chief or above.

d. Rubber bullets, bean bags, teargas, batons, and other items should be used as non-lethal force, consistent with FPD policies. Officers must use these weapons with caution to ensure such force does not extend to lawful protestors, demonstrators, or bystanders.

e. Under no circumstances should any officer spray tear gas, pepper spray, or any other chemical substance towards or on a protestor, demonstrator, or crowd of individuals lawfully exercising their First Amendment right.

f. Officers should not fire weapons, including those dispensing rubber bullets or paint canisters, into a crowd.

g. FPD's use of force general orders do not change during periods of Civil Disorder or Unlawful Assembly disturbance and apply in their entirety during those times, times of civil disturbance.

h. Officers must immediately call for and provide medical support to injured individuals, including protestors and demonstrators.

i. FPD officers will provide a loud and clear verbal warnings prior to any use of force whenever feasible. See General Order 4.1.0: Use of Lethal and Less-Lethal Force.

b.j. All officers shall immediately report any every reportable use of force to a supervisor and as soon as it is safe and feasible to do so, document in detail every reportable use of force used,

Commented [KT13]: NTD: to ensure transparency the contents of this packet should be spelled out.

Commented [KT14]: NTD: St. Ann's police department and jail have repeatedly engaged in problematic behavior and racially discriminatory practices. Accordingly, we have removed references to St. Ann specifically to allow FPD to coordinate with other departments, rather than being bound by policy to consult a particular agency.

See for example:

•Cops Ousted for Bad Behavior Often Land in One Place: St. Ann (July 5, 2020), available at https://www.sltoday.com/news/local/crime-and-courts/cops-ousted-for-bad-behavior-often-land-in-one-place-st-ann/article_cd3fa355-644c-5b16-8f41-2685c1b71c6d.html#tracking-source=home-top-story.

•Officer seen on video bashing a car window to drag a man through it. Police say it was respectful, available at <https://www.washingtonpost.com/nation/2019/05/08/officer-seen-video-bashing-car-window-drag-man-through-it-police-say-it-was-respectful/> and

•Until the wheels fall off: St. Ann is proud of its rep for police chases, but there are costs, available at https://www.sltoday.com/news/local/crime-and-courts/until-the-wheels-fall-off-st-ann-is-proud-of-its-rep-for-police-chases/article_73638ba9-3bee-50bc-93c6-230fd574e309.html.

Commented [KT15]: NTD: Though we acknowledge that FPD has a separate use of force policy, we have included additions to this section that highlight crucial use of force guidelines that directly impact First Amendment activity.

Accordingly, we believe it is imperative that the following edits be placed directly into the First Amendment policy, in a manner that clearly lists the limits on officer use of force.

See pages 43-52 of After-Action Assessment of the Police Response to the August 2014 Demonstrations in Ferguson, Missouri, available at <https://www.policefoundation.org/wp-content/uploads/2018/08/After-Action-Assessment-of-the-Police-Response-to-the-August-2014-Demonstrations-in-Ferguson-Missouri.pdf>.

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observed, or suspected during First Amendment activity, including deployment of tear gas and other less-lethal force instruments, like rubber bullets, Pepperballs, and Stingerballs as well as the date, time and circumstance for each deployment, when it is safe and feasible to do so.

e.k. Supervisors will investigate all force used during periods of Civil Disorder and Unlawful Assembly civil disturbances in accordance with *General Order 4.1.2: Use of Force: Review.*

15.16. Preparation for Public Protests and Demonstrations

- a. The Chief of Police shall develop an IAP prior to all known significant pre-planned or anticipated public protests or demonstrations (more than 50 anticipated participants). The requirements for an IAP are included in *Appendix B* to this General Order.
 - i. The Chief of Police will share the IAP with any outside agencies expected to assist FPD in responding to a public protest, demonstration, or Civil Disorder or Unlawful Assembly civil disturbance as far in advance of the public protest, demonstration, Civil Disorder or Unlawful Assembly or civil disturbance as possible.
 - ii. [The Chief of Police must ensure that any law enforcement agency that provides police support adheres to FPD's policies around fairness and lawful policing including, refraining from use of canines for crowd control and/or rifle sights to monitor crowds during protest.]
 - iii. The on-scene commander or their designee will brief the personnel of any outside agencies expected to assist FPD in responding to a public protest, demonstration, Civil Disorder or Unlawful Assembly civil disturbance upon their arrival to the staging area and in advance of deployment.
- b. Communication with Persons Seeking ~~To~~ Exercise their First Amendment Rights
 - i. In anticipation of a public protest or demonstration, FPD will strive to establish contact and communication with any organizers or leaders of the protest or demonstration because the involvement of all stakeholders is critical to upholding First Amendment rights while promoting public safety.
 - ii. If FPD becomes aware that a public protest or demonstration is or will be occurring, FPD officers shall make reasonable attempts to establish communication and cooperate with any organizers of the public protest or demonstration, regardless of whether a permit has been applied for or issued.
 - iii. The Chief of Police will consult stakeholders when planning for and responding to public protests or demonstrations. Upon establishing contact, the Chief shall request that any organizers or leaders of the public protest or demonstration designate a primary police liaison and that the primary police liaison maintain continuous contact with the Chief. The Chief will either identify himself or a designee as the primary FPD contact for organizers or leaders of the public protest or demonstration.
 1. Whether or not a group responds to FPD's attempts to establish communication before a public protest or demonstration, FPD shall attempt to identify a primary police liaison for the public protest or demonstration and foster cooperation with the group as early as possible during the public protest or demonstration.
 2. ~~Further,~~ FPD will not take any retaliatory action against a group for failure to designate a primary police liaison or communicate with FPD prior to, during, or after a protest or demonstration.
 3. The Chief should continue to communicate with the primary police liaison throughout the duration of a public protest or demonstration, even if ~~B~~ FPD ultimately begins to effect arrests or take other enforcement measures.
 - iv. If, in communication with organizers or leaders, FPD learns of a community "Safe Space," officers will respect the boundaries of the Safe Space and refrain from entering the premises. Officers must not block entrance or exit to the Safe Space.

Commented [KT16]: NTD: See paras. 121 and 167 of the consent decree.

16-17. Complaints

- a. Officers will maintain a supply of complaint forms in their official vehicles and will advise members of the public about the complaint process when required or requested, including informing the community that a complaint form is not required. complaints may be submitted anonymously, and may be submitted online. See *General Order X.X.X: Internal Investigations*.
- b. All complaints against FPD officers in connection with any public protest, demonstration, Civil Disorder or Unlawful Assembly ~~civil disturbance~~ will be accepted, tracked, classified, investigated, and resolved consistent with *General Order X.X.X: Internal Investigations*.
- c. FPD will accept any complaints made against any officer(s) of any agency during a multijurisdictional response in the same manner as it would accept complaints made against FPD officers (verbally or in writing, including by mail, email, online, phone, or in person, and from any source, including anonymous sources, the Civilian Review Board, bystander witnesses, or third parties). See *General Order X.X.X: Internal Investigations*.
- d. All complaints FPD receives regarding any officer of any agency during a multijurisdictional response will be accepted, tracked, and classified consistent with *General Order X.X.X: Internal Investigations*. The Chief of Police will then email the complaint to the appropriate agency for investigation and resolution. The Chief will request that the agency notify FPD of the resolution.

VI. Supervision of First Amendment Protected Activity

- A. When an officer requests supervisory approval before issuing a citation or making an arrest in accordance with [+Section X+] of this General Order, if reasonably practical, a supervisor shall respond to the scene and assess the situation in person. At a minimum, supervisors must be present to approve arrests and other enforcement or investigative actions prior to arrested individuals being transported to a holding facility, unless their delay in reaching the scene would escalate the situation, in which case the reason for their absence will be documented in detail in all required reports, as soon as practicable. If a supervisor cannot reach the scene in such a timely manner to approve an arrest or other action prior to an arrested individual being transported, officers shall obtain verbal supervisory approval prior to transporting any arrested individual to a holding facility.
- B. Supervisors must be present to approve before officer(s):
 - a. Issuing any citation or making any arrest related to the use of a recording device;
 - b. Issuing any citation or making any arrest of any member of the media, whether formally credentialed or not, including citizen-journalists and live-streamers;
 - c. Performing any warrantless seizure of a recording device or recording; and
 - d. Taking any other significant action involving recording devices or recordings.

Commented [KT17]: NTD: See paras. 125 and 125 of the consent decree.

We also want to underscore the importance of listing clear restrictions and/or requirements for supervisory approval in an easy-to-read numbered or bulleted format.

Commented [KT18]: NTD: We strongly encourage, in keeping with the spirit of the consent decree, that this section include provisions that require FPD to not only request that an outside law enforcement agency adhere to lawful and unbiased policing practices, but it actively refrain from engaging those departments that fail to do so—like the St. Ann police department.

VII. Participation of Outside Agencies

- A. The Chief of Police has the authority to request an outside law enforcement agency to assist FPD in responding to a public protest, demonstration, Civil Disorder, or Unlawful Assembly or ~~civil disturbance~~.
- B. The Chief of Police will retain control and command of any outside law enforcement agencies participating in any response to a public protest, demonstration Civil Disorder, or Unlawful Assembly or ~~civil disturbance~~ in Ferguson.
- C. The Chief of Police will communicate to all outside law enforcement agencies participating in any response to a public protest, demonstration Civil Disorder, or Unlawful Assembly or ~~civil disturbance~~ in Ferguson the limitations and requirements for such participation, including limitations and requirements related to officer use of force, bias-free policing, the application of federal monitoring and/or the federal consent decree, the use of canines, the prohibition against using rifle sights to monitor crowds and other military-type weaponry, vehicles and equipment, arrests, and officer uniforms, including officer identification. The Chief of Police will include these limitations and requirements in the IAP and any pre-event briefings with outside law enforcement agencies. The on-scene commander will include these limitations and requirements in any onsite briefings.
- D. The Chief of Police shall request outside law enforcement agencies responding within Ferguson to ensure that any officers they deploy to the City of Ferguson during public demonstrations receive appropriate training, including de-escalation techniques, key concepts of the National Incident Management System command and

This is a department riddled with civil rights violations and other unlawful conduct. See *Cops Ousted for Bad Behavior Often Land in One Place: St. Ann* (July 5, 2020), available at https://www.sttoday.com/news/local/crime-and-courts/cops-ousted-for-bad-behavior-often-land-in-one-place-st-ann/article_cd3fa355-644c-5b16-8f41-2685c1b71c6d.html#tracking-source=home-top-story.

Accordingly, in any engagement with other equally-situated law enforcement agencies, FPD should remain in command, and should therefore lead and instruct the supporting law enforcement agencies on how to use lawful and fair policing practices, that adhere to this policy.

This is especially relevant given the City of Ferguson's attorney, Apollo Carey's statement at the June 4, 2020 status hearing that neighboring police departments, like the St. Ann department, are hesitant to respond to FPD's call for emergency help in response to protestors because they do not want to adhere to the lawful policing requirements of the consent decree. See June 4, 2020 transcript at pgs 33-37.

management, including Incident Command Systems, multiagency coordination systems, and policing consistent with the First Amendment and any other applicable laws.

VIII. Training

- A. All FPD officers will receive initial and ongoing annual in-service training regarding First Amendment protected activity, appropriate police responses to the exercise of such activity, and common pitfalls and oversteps in responding to such activity. This training will also address policing public demonstrations and crowd control. This training may overlap with training on Stop, Search, and Arrest, and on Use of Force. Officers will also be trained on protocols for obtaining supervisory approval for seizures, searches, citations, and arrests and other significant police actions that result from First Amendment related activity.
- B. The Chief of Police will ensure that all law enforcement officers employed by the City of Ferguson during public demonstrations shall receive appropriate training, including de-escalation techniques, key concepts of the National Incident Management System command and management, including Incident Command Systems, multiagency coordination systems, and policing consistent with the First Amendment.

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(Currently not in existence with the FPD GO's)

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**FERGUSON POLICE DEPARTMENT
GENERAL ORDER**

TITLE: Response to First Amendment Protected Activity—Right to Observe, Photograph and Audio or Video Record Police Activity		GENERAL ORDERS:
TOPIC: Policies and Procedures Concerning the Right to Observe, Photograph and Audio or Video Record Police Activity		
ISSUE DATE:	EFFECTIVE DATE:	DISTRIBUTION: ALL PERSONNEL
CANCELLED PUBLICATIONS:		NUMBER OF PAGES: 9

INDEX:
The First Amendment of the United States Constitution
First Amendment
Protected Activity

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I. Purpose

The purpose of this General Order is to allow for the peaceful expression of First Amendment rights, including the rights to freedom of speech and expression and freedom to observe, photograph or audio or video record police activity in the City of Ferguson.

II. Policy Statement

It is the policy of the Ferguson Police Department ("FPD" or the "Department") to ensure that the First Amendment Rights guaranteed by the United States Constitution are protected for all individuals in a manner that reflects the Department's commitment to procedural fairness and justice and community-oriented policing. FPD acknowledges that First Amendment protected activities serve important societal functions, including promoting transparency in government affairs, ensuring accountability of public officials, and encouraging community feedback—whether critical or laudatory—that ultimately reduce tension and foster a sense of openness and trust between law enforcement and the public.

All FPD officers shall respect the right of all individuals to observe, photograph or audio or video record the actions of police officers in the public discharge of their duties in all public spaces (including sidewalks, parks, and other locations for lawful public protest), as well as all other areas in which individuals have a legal right to be present (including an individual's home or business and common areas of public and private facilities and buildings), without being subject to retaliation provided that such observation, photography and audio or video recording does not pose an objective imminent threat to the safety of any officer or any other person and does not physically interfere with the ability of officers to perform their official duties.

III. Definitions

Consent Search: a search conducted based on the consent or permission of the individual whose person or property is searched.

Exigent Circumstances: emergencies in which a reasonable person would believe that imminent bodily harm to a person or persons or the destruction of evidence is likely.

First Amendment: an amendment to the U.S. Constitution that forbids the government and its agents from interfering with a citizen's freedom of religion, speech, assembly, or petition.

Limited English Proficiency: a person who does not speak English as his/her primary language and has a limited ability to read, write, speak, or understand English is considered as having Limited English Proficiency ("LEP"). LEP individuals may be competent in certain types of communication (e.g., speaking or understanding), but still be LEP for other purposes (e.g., reading or writing). Similarly, LEP designations are context-specific: an individual may possess sufficient English language skills to function in one setting, but these skills may be insufficient in other situations.

Non-custodial Interview: an encounter during which an officer asks questions to investigate for a possible offense, and during which the person is free to leave and/or decline any of the officer's requests at any point and would reasonably understand that they are free to leave and/or decline the officer's requests.

Probable Cause: the facts and circumstances known to the officer at the time would justify a prudent person in believing the person committed or was committing an offense. Probable cause is based upon an objective assessment of the facts and circumstances presented to the officer and requires a higher level of evidence than reasonable suspicion.

Procedural Fairness and Justice: The process of building trust with members of the community by adopting and carrying out the following principles: 1) treating community members with dignity and respect, 2) giving individuals a chance to be heard, individuals' voice during encounters, even if police do not support the individuals' message, 3) making decisions based on facts, and being unbiased and transparent when making those decisions, and 4) communicating trustworthy motives and goodwill. This includes the idea of fairness in the processes that resolve disputes and allocate resources, including the administration of justice and legal proceedings.

Commented [KT1]: Note to Drafter (NTD): See para. 465 definition 62 of the consent decree.

Reasonable Suspicion: articulable facts that, within the totality of the circumstances, lead an officer to reasonably believe that the suspect has committed, is committing, or is about to commit a crime.

Search Warrants: legally obtained documents that give police specific authority to conduct a particular search. documents that give police specific rights or powers such as the right to search something or somebody.

Seizure: occurs when an officer's words or actions convey to a reasonable person that he or she is not free to leave.

Social Contact: A social contact is a consensual encounter between a police officer and a civilian community member with the intent of engaging in casual, non-investigative conversation. The community member is free to leave and/or decline any of the officer's requests at any point. Through social contacts and other community engagement activities, officers develop a deeper understanding of community perspectives and priorities. Social contacts are opportunities for officers to build trust, familiarity, and meaningful relationships with the communities they serve.

Commented [MD2]: NTD: See para. 465 definition 71 of the consent decree.

IV. Principles

- A. All FPD personnel shall respect the First Amendment rights of all persons, including but not limited to:
 - 1. **The right to free speech and expression**, which includes the right to criticize, including insults, and/or use profanities at law enforcement or otherwise engage in protected expression in the presence of law enforcement officers without being subject to retaliation.
 - 2. **The right to freely organize and participate in lawful assemblies and protests** in parks, on sidewalks, in streets, and in other public forums, including public forums near the object of the demonstration or protest so that those assembled may be seen and heard.
 - 3. **The right to observe and record the actions of law enforcement officers** in the public discharge of their duties in all public spaces (including sidewalks, parks, and other locations for lawful public protest), as well as 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), without being subject to retaliation.
- B. Officers will act with professionalism and courtesy when interacting with individuals and groups who are engaging and who have engaged in activity protected by the First Amendment.

V. Requirements and Procedures

- A. **General**
 - 1. Officers will act with professionalism and courtesy when interacting with individuals and groups who are observing, photographing or audio or video recording police activity.
 - 2. Officers shall not interfere with will allow individuals to record ing officer activity by camera, video recorder, cell phone recorder, or any other means.
 - 3. Officers shall not interfere with will allow individuals to observe ing, photograph ing, or audio or video record ing police activity in:
 - a. all public places, including parks, sidewalks, streets, and locations where public protest/demonstration is occurring;

- b. their homes or businesses;
 - c. common areas of public and private facilities and buildings; and
 - d. any other public or private place at which the individual has a legal right to be present.
4. In areas open to the public, officers shall allow any individual the same access for observation, photography and audio or video recording as is given to the news media, as long as the individual has a legal right to be present where they are located.
5. Officers may restrict individuals, regardless of their intent to observe, photograph, audio and/or video from recording any police activity, from entering any marked and protected crime scene or a restricted area that would normally be unavailable to the general public.
6. Officers may limit an individual's observation, photographing, or audio or video recording of tactical operations such as serving arrest or search warrants by establishing a marked perimeter, only if such perimeter is necessary to protect officer and public safety. This perimeter must not unreasonably restrict an individual's observation, photographing, or audio or video recording.

Tactical operation should not be used to limit peaceful demonstrations or assemblies

- 6.7. The use of a camera or recording device during a police encounter shall not in itself be considered a threat to officer safety and thus shall not be a basis to require an individual to refrain from photographing or recording or to put away their recording device, as long as the individual who is photographing or recording is in a lawful location, is not posing an objective imminent threat to the safety of others or officers, is not obstructing or interfering with an officer's official duties, and is not otherwise violating the law.

"Obstruction" consists of use of or threat ~~end to use of~~ violence, force, or other physical interference or obstacle that prevents or hinders officers from performing their official duties or "Interference" consists of conduct, threats, actions, or activities that prevent or hinder officers from performing their official duties. Examples of interference may include, but are not limited to:

- i. Using or threatening the use of violence, physical force, or physical intervention in a lawful arrest, stop or detention;
 - ii. Obstructing the movement of emergency equipment and personnel or the flow of non-emergency vehicular or pedestrian traffic;
 - iii. Entering a marked crime scene or area not accessible to the general public;
 - iv. Tampering with a witness; or
 - v. Inciting bystanders to obstruct or interfere with an officer performing their official duties.
- b. An individual's criticism of police activity, even while observing, photographing or audio or video recording that activity, does not by itself constitute interference unless it poses an objective imminent threat to the safety of an officer or other person, and as long as the act of criticism does not violate the law or incite others to engage in imminent illegal activity that is likely to occur. See *General Order X.X.X: First Amendment Protected Activity: Public Protests and Demonstrations*.
 - c. Verbal disagreements, criticism, insults, name calling, or obscene gestures directed at FPD officers or others do not in and of themselves constitute interference or justify a law enforcement action.
 - d. During hostile situations, officers will consider, before making contact with an individual who is observing, photographing or audio or video recording police activity, whether initiating contact with that individual will escalate the situation.
 - e. Officers will, when possible, utilize de-escalation techniques at the earliest possible moment and as often as possible throughout their entire encounter with an individual who is observing, photographing or audio or video recording police activity. In addition to de-escalating as soon as and whenever possible, officers shall also avoid escalating situations by using unnecessarily

Commented [KT3]: NTD: The concern here is that a "tactical operation" is broad; FPD's tactical operations unit is also used to address "civil disobedience" so the concern is that this unit may use this section as justification to block individuals during a protest or demonstration.

We prefer this not state "such as ..." but instead list the FPD actions that are allowed under this provision. See revised language.

aggressive language and/or an aggressive or confrontational tone of voice. Officers will not verbally abuse individuals who are observing, photographing or audio or video recording police activity. See *General Order 4.1.0: Use of Force, Section V.A: De-escalation*.

7.8. If an individual is observing, photographing or audio or video recording police activity from a position that poses an objective imminent threat to the safety of an officer or other person, or physically interferes with an officer's ability to perform their official duties, the officer must:

- a. first inform the individual that they are engaging in prohibited activity by clearly explaining to the individual exactly what the prohibited activity is;
- b. recommend a less-intrusive location from which the individual may continue to observe, photograph, or audio or video record; and
- c. give the individual a reasonable opportunity to comply prior to taking further enforcement action.

9. To protect the privacy of another individual, such as an injured person or a crime victim, an officer may respectfully request that the individual who is observing, photographing, or audio or video recording the other individual voluntarily stop observing, photographing or recording. If the individual who is observing, photographing, or audio or video recording insists on continuing to do so, to protect the individual's privacy, the officer may ask the ~~other individual, such as an injured person or a crime victim,~~ whether they would like to go to a more private location, except in circumstances when the injured person or victim was previously injured by an officer or due to officer conduct. Officers must then explicitly inform the individual that this is not required, and they are free to remain in public view with the officer.

8.10. When considering whether to stop, detain, cite, arrest or take other enforcement action against an individual who is observing, photographing, or audio or video recording the police, an officer must be able to clearly and objectively articulate a reason for the action that is separate from the act of observing, photographing, or audio or video recording. The act of observing, photographing, or audio or video recording alone does not constitute obstruction or interference or provide grounds for taking enforcement actions, even if the officer considers the act to be a distraction or annoyance.

9.11. **Officers will allow an individual to photograph or audio or video record their own interaction with police.**

- a. Officers may instruct an individual to cease photographing or audio or video recording and put away the camera or recording device when that individual is being placed under lawful arrest for an offense unrelated to the audio/video recording.

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B. Prohibited Actions Against Individuals Observing, Photographing, or Audio or Video Recording Police Activity

1. Officers shall not treat individuals observing, photographing, or audio or video recording police activity differently based on their race, color, ethnicity, national origin, religion, gender, gender identity, sexual orientation, age, immigrant status, disability, housing status, occupation, or limited English proficiency.
2. Officers shall not order an individual to stop observing, photographing, or audio or video recording police activity unless that person is observing, photographing, or audio or video recording police activity in a prohibited place location. (see Section V.A.5-8 above).
3. Officers shall not tell an individual observing, photographing, or audio or video recording police activity that the individual's actions are not allowed, require a permit, or require an officer's consent unless that person is observing, photographing, or audio or video recording police activity in a ~~prohibits place~~ prohibited location. (see Section V.A.5-8 above).
4. Officers shall not in any way threaten, intimidate or otherwise discourage an individual, who is not violating any other law, from observing, photographing or audio or video recording an officer's enforcement activities.
5. Officers shall not demand an individual's identification because the individual is observing, photographing or audio or video recording police activity.
6. Officers shall not demand that the individual state a reason why they are observing, photographing or audio or video recording police activity.

7. Officers shall not stop, detain, search, arrest, issue a citation to, or use force or threaten to do so ~~to use force, or any other investigative or enforcement action~~ against an individual solely because the individual is observing, photographing or audio or video recording police activity, unless the officer has a separate and lawful justification for such action.
8. ~~Officers shall not consider~~ Observing, photographing, or audio or video recording police activity in and of itself is not suspicious conduct. Officers may initiate social contacts or non-custodial interviews with any individual, but the individual's refusal to answer questions or speak to the officer during a social contact or non-custodial interview does not provide a basis for ordering an individual to stop observing, photographing or audio or video recording police activity, nor is it a basis for an investigative stop or search. *See General Order X.X.X. Investigative Stops and Detentions.*
9. Officers shall not intentionally block or obstruct cameras or recording devices. If an officer becomes aware that he/she in any way obstructs an individual's audio or visual recording, he/she should take immediate reasonable steps to correct the action, if it does not interfere with lawful enforcement actions.
- 9-10. Officers shall not demand to review or erase, tamper with, edit, or delete any image, sound or video recording, or request any person to erase or delete any files, media or recorded images or sounds from any camera or other recording device that is in possession of any person, or that has been seized or voluntarily turned over.
- 10-11. Officers shall not ~~intentionally~~ destroy cameras, other recording devices, sounds, images, or videos, or any other form of video or audio footage depicting officer behavior. Officers and they may not order an individual to ~~intentionally~~ destroy the same or otherwise cause such destruction, provided, however, that the City may dispose of material in accord with the record retention and destruction requirements established by state law.

C. Seizure and Searches of Cameras, Recording Devices and Recording Media

1. Officers shall not search, seize, or otherwise coerce production of cameras, recording devices, recording media, or recorded sounds, images, or videos without obtaining a warrant unless one of the narrow and temporary exceptions to the warrant requirement listed below in this General Order apply.
2. Officers shall not request or seize an individual's camera, recording device or recording medium (e.g., the memory card) ~~for the purpose of~~ and cause, in any way, the deletion, destruction, malfunction, or otherwise concealment any recorded material, including sounds, images, or videos, ~~which they believe may portray individual officers or FPD in a negative light.~~ Concerns of this nature do not provide a valid basis to request or seize cameras or recording devices.
- 2-3. If an officer has probable cause to believe that a camera, recording device or recording medium contains images or recordings that are evidence of a crime, the officer shall immediately obtain approval from a Shift Supervisor to request that the recording individual, where possible and practical, and in the presence of the officer, voluntarily consent to transmitting the images or recordings via electronic mail to the officer's official city electronic mail account. If the individual cannot or will not transmit the recording via electronic mail, the officer should request that the individual voluntarily consent to providing the camera, recording device or recording medium to the officer. The officer shall not, implicitly, or explicitly, coerce consent to take possession of any recording device or information it may contain.
- 3-4. Consent to take possession of a camera, recording device or recording medium must be given explicitly, affirmatively, and voluntarily. Officers shall not coerce individuals to consent to FPD taking possession of cameras, recording devices or recording media.
- 4-5. If the individual voluntarily consents to providing the camera, recording device or recording medium to the officer, the officer shall:
 - a. contact FPD's On-Call Detective and the Shift Supervisor and notify them of the evidence;
 - b. video record the officer's request to take possession of the camera, recording device or recording medium and the individual's affirmative statement of consent or denial of consent on their Body-Worn Video Recording ("BWVR") equipment;

- c. exercise care and caution with the camera devices, recording device or recording medium;
- d. complete an incident report documenting the collection of the camera, recording device or recording medium. *General Order X.X.X. Search Warrants and Warrantless Searches*;
- e. list the item(s) surrendered by the person and taken into evidence on the incident report by proper serial number or other identifier the camera, recording device or recording medium;
- f. document within the incident report the basis for their probable cause to believe that a camera, recording device or recording medium contains images or recordings that are evidence of a crime
- g. provide the individual with the business card and identifying information of the officer who took custody of the camera, recording device or recording medium;
- h. provide the individual with information, including a complaint number (from the incident report), on where, when, and how to recover the camera, recording device or recording medium;
- i. submit the camera, recording device or recording medium into evidence, consistent with *General Order 428.00: Evidence and Property*;
- j. obtain a search warrant before viewing photographs or listening to or watching recordings on a camera or memory chip that has been seized as evidence. Images and recordings obtained by consent shall be viewed by the Detective responsible for investigating the crime believed to be captured on the camera, recording device or recording medium.

6. If the recording individual refuses to voluntarily provide the camera, recording device or recording medium and if the officer has an objectively reasonable belief that the individual has captured a recording of critical evidence related to a serious crime; and such evidence is in imminent danger of being tampered with, altered, deleted, or destroyed absent seizure, the officer ~~may~~ shall immediately request a supervisor respond to the scene.

With the approval of a supervisor, after obtaining approval from the highest-ranking supervisor on scene, the officer may seize the camera, recording device or recording medium for no more than 12 hours while a legal subpoena, search warrant, or other valid order is obtained. Upon seizing such property, officers may not search or review its contents without first obtaining a search warrant.

k-a. Officers shall:

- i. video record the officer's request to take possession of the camera, recording device or recording medium and the individual's affirmative statement of consent or denial of consent on their BWVR equipment;
- ii. exercise care and caution with the camera, recording device or recording medium;
- iii. complete an incident report documenting any seizure of a camera, recording device or recording medium. *General Order X.X.X. Search Warrants and Warrantless Searches*
- iv. list the item(s) seized by the person and taken into evidence on the incident report by proper serial number or other identifier the camera, recording device or recording medium;
- v. document within the incident report the basis for their objectively reasonable belief that the individual has captured a recording of critical evidence related to a serious crime; and such evidence is in imminent danger of being tampered with, altered, deleted, or destroyed absent seizure.
- vi. provide the individual with the business card and identifying information of the officer who seized the camera, recording device or recording medium;
- vii. provide the individual with information, including a complaint number (from the incident report), on where, when, and how to recover the camera, recording device or recording medium;

viii. submit the camera, recording device or recording medium into evidence, consistent with *General Order 428.00: Evidence and Property*.

~~h.b.~~ Officers shall not attempt to download, or otherwise access any material contained within the camera, recording device or recording medium without a warrant unless they have an objectively reasonable belief that the camera, recording device, or recording medium contains information that could prevent imminent death or serious physical harm.

i. An officer shall contact the highest-ranking supervisor available for authorization to immediately review recordings that have been seized without a warrant under this provision. If the supervisor grants authorization, the officer may immediately search the camera, recording device or medium for images and recordings that are related to the exigent purpose.

~~m.c.~~ Officers shall apply for, execute, and return any search and seizure warrant(s) in accordance with *General Order X.X.X. Search Warrants and Warrantless Searches* as soon as reasonably possible with diligent effort.

i. If the legal subpoena, search warrant, or other valid order is denied for lack of probable cause, officers shall not continue to hold the camera, recording device or recording medium while seeking additional evidence to support the warrant application. Instead, officers shall immediately return the camera, recording device or recording medium to the individual from whom it was seized immediately.

7. An officer may seize an individual's camera, recording device or recording medium incident to the lawful arrest of the individual. However, the seizure of a camera, recording device or recording medium incident to a lawful arrest does not allow an officer to search or view the contents of the camera, recording device or recording medium without a warrant.

The use of a recording device during a police encounter is not in itself a basis to require a person to refrain from recording or to put away his or her recording device, as long as the person recording is in a lawful location, is not threatening the safety of others or the police officers, and is not obstructing or interfering with the officer's lawful duties, and is not otherwise violating the law.

Commented [KT4]: NTD: See para. 114 of consent decree.

5.8. FPD officers shall maintain all cameras, recording devices and recording media that are in FPD custody so that they can be returned to the owner intact with all images or recordings undisturbed.

D. Supervisory Requirements: Officers

1. Officers shall obtain supervisory approval, to be documented in detail, as soon as practicable, before taking any action set forth below:
 - a. Issuing any citation or making any arrest related to the use of a camera, recording device or recording medium;
 - b. Issuing any citation or making any arrest of any member of the media, whether formally credentialed or not, including citizen-journalists and live-streamers;
 - c. Performing any warrantless seizure of a camera, recording device or recording medium; and
 - d. Taking any other ~~significant~~ action involving camera, recording device or recording media, including the destruction or erasure of any photo or, audio or visual recording.

E. Supervisory Requirements: Supervisors

1. When an officer contacts a supervisor after unsuccessful attempts at directing an individual who is observing, photographing or audio or video recording police activity to move to a position that does not threaten the safety of an officer or others or physically interfere with the officer's ability to perform their official duties, the supervisor shall determine the best course of action to protect the rights of the individual who is observing, photographing or audio or video recording while ensuring the officer is able to perform their official duties fully.
2. When an officer requests supervisory approval before issuing a citation or making an arrest of an individual who is observing, photographing or audio or video recording police activity, if reasonably practical, a

supervisor shall respond to the scene and assess the situation in person. At a minimum, supervisors must be present to approve arrests and other actions prior to arrestees being transported to a holding facility, unless their delay in reaching the scene would escalate the situation, in which case the reason for their absence will be documented as soon as practicable. If a supervisor cannot reach the scene in such a timely manner to approve an arrest prior to an arrested individual being transported to a holding facility, officers shall obtain verbal supervisory approval prior to transporting any arrested individual to a holding facility.

3. Supervisors shall ensure that any camera, recording device, recording medium, images, videos, or audio files that comes into FPD custody have only come into custody in one of the following circumstances:
 - a. Through the explicit, affirmative, and voluntary consent of the person in possession of the camera, recording device or recording medium or image;
 - b. Through execution of a valid search and seizure warrant or the narrow and temporary exceptions to the warrant requirement set forth in this General Order; or
 - c. Through some valid exception to the warrant requirement. See *General Order X.X.X Search Warrants and Warrantless Searches*.
4. Supervisors shall review and approve/disapprove all applications for search and seizure warrants, as required by *General Order X.X.X Search Warrants and Warrantless Searches*.

VI. Training

- A. All FPD officers will receive initial and ongoing annual in-service training regarding First Amendment protected activity, appropriate police responses to the exercise of such activity, and common pitfalls and oversteps in responding to such activity. This training may overlap with training on Stop, Search, and Arrest, and on Use of Force. Officers will also be trained on protocols for obtaining supervisory approval for seizures, searches, citations, and arrests and other significant police actions that result from First Amendment related activity.

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APPROVED BY:	DATE:

(Currently not in existence with the FPD GO's)

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**General Order X.X.X: Response to First Amendment Protected Activity:
Public Protests/Demonstrations**

**Appendix A
Dispersal Warning Form**

This warning is shall to be used when preparing to make before making arrests during civil disturbances. Any warnings that are given during civil disturbances must be documented in detail, recorded on body-worn video recording (BWVR) equipment, and retained for reporting purposes.

WARNING

I am _____ of the Ferguson Police Department.
(Command staff's name & rank)

You are in violation of: _____
(Criminal offense)

If you do not stop your unlawful behavior at _____ and
(Exact location)

disperse peacefully, you will be arrested. The following routes of dispersal are available:

(Provide exact routes for dispersal)

You have five (5) minutes to disperse.

Date: _____ Time: _____

Record the **time** that all warnings have been given to the group of individuals involved in the civil disturbance:

1st Warning: _____ (Wait five (5) minutes before reading the 2nd warning)

2nd Warning: _____ (Wait five (5) minutes before reading the 3rd warning)

3rd Warning: _____ (commence making individual arrests)

Warnings shall be given with a bull horn or public address systems, and must be given in a loud and clear manner so that anyone in close enough proximity to be subject to arrest can easily hear and understand that message. All warnings must be documented by all FPD officers on scene on their BWVR equipment.

Commented [KT1]: Note to Drafter: When you keep giving the same warning several times, people don't know when to take it seriously. The third warning should say something different, like "Arrests will begin in one minute."