Appleton Police Department

Policy & Procedures Manual

TITLE: Public Assembly & First Amendment Activity **NUMBER: 31.6**

Minn. Stat. 6700.1615
First Amendment US Constitution
Minnesota Constitution
609.705 Unlawful Assembly
609.71 Riot
609.066 Autherized Use of Force by Peace Officers
609.06 Authorized Use of Force

(MANDATED POLICY)

EFFECTIVE DATE: January 8th, 2024

DISTRIBUTION: All Personnel
All Police Vehicles

I. POLICY

The Appleton Police Department will uphold the constitutional rights of free speech and assembly while using the minimum use of physical force and authority required to address a crowd management or crowd control issue.

The policy of the Appleton Police Department ("department") regarding crowd management and crowd control is to apply the appropriate level of direction and control to protect life, property, and vital facilities while maintaining public peace and order during a public assembly or First Amendment activity. Department personnel must not harass, intimidate, or discriminate against or unreasonably interfere with persons engaged in the lawful exercise of their rights.

This policy concerning crowd management, crowd control, crowd dispersal, and police responses to violence and disorder applies to spontaneous demonstrations, crowd event situations, and planned demonstration or crowd events regardless of the permit status of the event.

This policy is to be reviewed annually.

II. PURPOSE:

The First Amendment to the Constitution of the United States of America 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 Bill of Rights in Article 1 of the Minnesota Constitution addresses the rights of free speech and the liberty of the press. However, neither the state nor federal constitutions protect criminal activity or threats against citizens, businesses, or critical infrastructure.

The Appleton Police Department supports all people's fundamental right to peaceably assemble and their right to freedom of speech and expression.

The purpose of this policy is to provide guidelines to the Appleton Police Department personnel regarding the application and operation of acceptable law enforcement actions addressing public assemblies and First Amendment Activity

III. DEFINITIONS:

A. Chemical Agent Munitions: Munitions designed to deliver chemical agents from a launcher or hand thrown.

B. Control Holds: Control holds are soft empty hand control techniques as they do not involve striking.

C. Crowd Management: Techniques used to manage lawful public assemblies before, during, and after an event. Crowd management can be accomplished in part through coordination with event planners and group leaders, permit monitoring, and past event critiques.

D. Crowd Control: Techniques used to address unlawful public assemblies.

E. Deadly Force: Force used by an officer that the officer knows, or reasonably should know, creates a substantial risk of causing death or great bodily harm.

(Reference: (law enforcement agency's) Use of Force Policy, MN Statutes **609.06 and 609. 066)**

F. Direct Fired Munitions: Less-lethal impact munitions that are designed to be direct fired at a specific target.

G. First Amendment Activities**:** First Amendment activities include all forms of speech and expressive conduct used to convey ideas and/or information, express grievances, or otherwise communicate with others and include both verbal and non-verbal expression. Common First Amendment activities include, but are not limited to, speeches, demonstrations, vigils, picketing, distribution of literature, displaying banners or signs, street theater, and other artistic forms of expression. All these activities involve the freedom of speech, association, and assembly and the right to petition the government, as guaranteed by the United States Constitution and the Minnesota State Constitution.

The government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.

H. Great Bodily Harm*:* Bodily injury which creates a high probability of death, or which causes serious, permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm. (Reference: (law enforcement agency's) Use of Force Policy, MN Statutes **609.06 and 609. 066)**

I. Legal Observers – Individuals, usually representatives of civilian human rights agencies, who attend public demonstrations, protests and other activities. The following may be indicia of a legal observer: Wearing a green National Lawyers' Guild issued or authorized Legal Observer hat and/or vest (a green NLG hat and/or black vest with green labels) or wearing a blue ACLU issued or authorized legal observer vest.

J. Less-lethal Impact Munitions. Impact munitions which can be fired, launched, or otherwise propelled for the purpose of encouraging compliance, overcoming resistance or preventing serious injury without posing significant potential of causing death.

K. Media: Media means any person who is an employee, agent, or independent contractor of any newspaper, magazine or other periodical, book publisher, news agency, wire service, radio or

television station or network, cable or satellite station or network, or audio or audiovisual production company, or any entity that is in the regular business of news gathering and disseminating news or information to the public by any means, including, but not limited to, print, broadcast, photographic, mechanical, internet, or electronic distribution. For purposes of this policy, the following are indicia of being a member of the media: visual identification as a member of the press, such as by displaying a professional or authorized press pass or wearing a professional or authorized press badge or some distinctive clothing that identifies the wearer as a member of the press.

IV.Procedure:

A. Uniform: All officers responding to public assemblies must at all times, including when wearing protective gear, display their agency name and a unique personal identifier in compliance with this department's uniform policy. The chief law enforcement officer must maintain a record of any officer(s) at the scene who is not in compliance with this requirement due to exigent circumstances.

B. Officer conduct:

1. Officers shall avoid negative verbal engagement with members of the crowd. Verbal abuse against officers does not constitute a reason for an arrest or for any use of force against such individuals.
2. Officers must maintain professional demeanor and remain neutral in word and deed despite unlawful or anti-social behavior on the part of crowd members.
3. Officers must not take action or fail to take action based on the opinions being expressed.
4. Officers must not interfere with the rights of members of the public to observe and document police conduct via video, photographs, or other methods unless doing so interferes with on-going police activity.
5. Officers must not use a weapon or munition unless the officer has been trained in the use and qualified in deployment of the weapon/munition.
6. This policy does not preclude officers from taking appropriate action to direct crowd and vehicular movement; enforce ordinances and statutes; and to maintain the safety of the crowd, the general public, law enforcement personnel, and emergency personnel.

V. Responses to Crowd Situations:

A. Lawful assembly. Individuals or groups present on the public way, such as public facilities, streets or walkways, generally have the right to assemble, rally, demonstrate, protest, or otherwise express their views and opinions through varying forms of communication including the distribution of printed matter. These rights may be limited by laws or ordinances regulating such matters as the obstruction of individual or vehicle access or egress, trespass, noise, picketing, distribution of handbills, leafleting and loitering.

B. Unlawful assembly

1. The definition of an unlawful assembly has been set forth in Minnesota Statute §609.705.
2. The mere failure to obtain a permit, such as a parade permit or sound permit, is not a sufficient basis to declare an unlawful assembly
3. The fact that some of the demonstrators or organizing groups have engaged in violent or unlawful acts on prior occasions or demonstrations is not grounds for declaring an assembly unlawful.
4. Whenever possible, the unlawful behavior of a few participants must not result in the majority of peaceful protestors being deprived of their First Amendment rights, unless other participants or officers are threatened with dangerous circumstances.
5. Unless emergency or dangerous circumstances prevent negotiation, crowd dispersal techniques must not be initiated until after attempts have been made through contacts with the police liaisons and demonstration or crowd event leaders to negotiate a resolution of the situation so that the unlawful activity will cease, and the First Amendment activity can continue.

C. Declaration of Unlawful Assembly

1. If the on-scene supervisor/incident commander has declared an unlawful assembly, the reasons for the declaration and the names of the decision maker(s) must be recorded. The declaration and dispersal order must be announced to the assembly. The name(s) of the officers announcing the declaration should be recorded, with the time(s) and date(s) documented.
2. The dispersal order must include:
   a) Name, rank of person, and agency giving the order
   b) Declaration of Unlawful Assembly and reason(s) for declaration
   c) Egress or escape routes that may be used
   d) Specific consequences of failure to comply with dispersal order
   e) How long the group has to comply
3. Whenever possible, dispersal orders should also be given in other languages that are appropriate for the audience. Officers must recognize that not all crowd members may be fluent in the language(s) used in the dispersal order.
4. Dispersal announcements must be made in a manner that will ensure that they are audible over a sufficient area. Dispersal announcements must be made from different locations when the demonstration is large and noisy. The dispersal announcements should be repeated after commencement of the dispersal operation so that persons not present at the original broadcast will understand that they must leave the area. The announcements must also specify adequate egress or escape routes. Whenever possible, a minimum of two escape/egress routes shall be identified and announced.

D. Crowd Dispersal

1. Crowd dispersal techniques should not be initiated until officers have made repeated announcements to the crowd, or are aware that repeated announcements have been made, asking members of the crowd to voluntarily disperse, and informing them that, if they do not disperse, they will be subject to arrest.
2. Unless an immediate risk to public safety exists or significant property damage is occurring, sufficient time will be allowed for a crowd to comply with officer commands before action is taken.
3. If negotiations and verbal announcements to disperse do not result in voluntary movement of the crowd, officers may employ additional crowd dispersal tactics, but only after orders from the on-scene supervisor/incident commander. The use of these crowd dispersal tactics shall be consistent with the department policy of using the minimal officer intervention needed to address a crowd management or control issue.
4. If, after a crowd disperses pursuant to a declaration of unlawful assembly and subsequently participants assemble at a different geographic location where the participants are engaged in non-violent and lawful First Amendment activity, such an assembly cannot be dispersed unless it has been determined that it is an unlawful assembly,and a new declaration of unlawful assembly has been made.

VI. Tactics and Weapons to Disperse or Control a Non-Compliant Crowd

Nothing in this policy prohibits officers' abilities to use appropriate force options to defend themselves or others as defined in the (law enforcement agency's) Use of Force policy.

A. Use of Batons

1. Batons must not be used for crowd control, crowd containment, or crowd dispersal except as specified below.
2. Batons may be visibly displayed and held in a ready position during squad or platoon formations.
3. When reasonably necessary for protection of the officers or to disperse individuals in the crowd pursuant to the procedures of this policy, batons may be used in a pushing, pulling, or jabbing motion. Baton jabs must not be used indiscriminately against a crowd or group of persons but only against individuals who are physically aggressive or actively resisting arrest. Baton jabs should not be used in a crowd control situation against an individual who is attempting to comply but is physically unable to disperse or move because of the press of the crowd or some other fixed obstacle.
4. Officers must not strike a person with any baton to the head, neck, throat, kidneys, spine, or groin, or jab with force to the armpit unless the person has created an imminent threat of great bodily harm to another.
5. Batons shall not be used against a person who is handcuffed except when permissible under this department's Use of Force policy and state law.

B. Restrictions on Crowd Control and Crowd Dispersal

1. Canines. Canines must not be used for crowd control, crowd containment, or crowd dispersal.
2. Fire Hoses. Fire hoses must not be used for crowd control, crowd containment, or crowd dispersal.
3. Electronic Control Weapons (ECWs) must not be used for crowd control, crowd containment, or crowd dispersal.
4. Motorcycles and police vehicles must not be used for crowd dispersal, but may be used for purposes of observation, visible deterrence, traffic control, transportation, and area control during a crowd event.
5. ~~5.~~ Skip Fired Specialty Impact Less-Lethal Munitions (Wooden Dowels and Stinger Grenades) may be used as a last resort if other crowd dispersal techniques have failed or have been deemed ineffective.
6. Direct Fired munitions may never be used indiscriminately against a crowd or group of persons even if some members of the crowd or group are violent or disruptive.
    a) Except for exigent circumstances, the on-scene supervisor/incident commander must authorize the deployment of Direct Fired munitions. Direct Fired munitions must be used only against a specific individual who is engaging in conduct that poses an immediate threat of loss of life or serious bodily injury to them self, officers, or the general public; or is creating an imminent risk to the lives or safety of other persons through the substantial destruction of property.
    b) Officers shall not discharge a Direct Fired munitions at a person's head, neck, throat, face, left armpit, spine, kidneys, or groin unless deadly force would be justified.
    c) When circumstances permit, the on-scene supervisor/incident commander must make an attempt to accomplish the policing goal without the use of Direct Fired munitions as described above, and, if practical, an audible warning shall be given to the subject before deployment of the weapon.
7. Aerosol Hand-held Chemical Agents must not be used in a demonstration or crowd situation or other civil disorders without the approval of the on-scene supervisor/incident commander.
    a) Aerosol, hand-held, pressurized, containerized chemical agents that emit a stream shall not be used for crowd management, crowd control, or crowd dispersal during demonstrations or crowd events. Aerosol hand-held chemical agents may not be used indiscriminately against a crowd or group of persons, but only against specific individuals who are engaged in specific acts of serious unlawful conduct or who are actively resisting arrest.
    b) Officers shall use the minimum amount of the chemical agent necessary to overcome the subject's resistance.
    c) When possible, persons should be removed quickly from any area where hand held chemical agents have been used. Officers must monitor the subject and pay particular attention to the subject's ability to breathe following the application of a chemical agent.
    d) A subject who has been sprayed with a hand-held chemical agent shall not be left lying on their stomach once handcuffed or restrained with any device.

9. Chemical munitions use in a crowd situation is subject to the following:
   a) Chemical munitions must be used only when:
      1) a threat of imminent harm or serious property damage is present, or

         other crowd dispersal techniques have failed or did not accomplish the policing goal as determined by the incident commander,
      2) sufficient egress to safely allow the crowd to disperse exists, and
      3) The use of chemical munitions is approved by the on-scene supervisor/incident commander, and
   b) When feasible, additional announcements should be made prior to the use of chemical munitions in a crowd situation warning of the imminent use of chemical munitions.
   c) Deployment of chemical munitions into a crowd must be avoided to prevent unnecessary injuries.
   d) CN chemical munitions are prohibited.
   e) The use of each chemical munition must be recorded (time, location), and the following information must be made available by the department on request :
      1) the name of each chemical munition used in an incident,
      2) the location and time of use for each munition deployment,
      3) access to the safety data sheet (SDS) for chemical munition
   f) Where extensive use of chemical munitions would reasonably be anticipated to impact nearby residents or businesses, agencies should consider proactively notifying impacted individuals of safety information related to the munitions use as soon as possible, even if after the event.
   g) When chemical munitions are used, an emergency responder will be on standby at a safe distance near the target area when feasible.
   h) Chemical munitions are subject to the same procedural requirements as outlined in the (law enforcement department)'s UOF policy.

C. Arrests

1. If the crowd has failed to disperse after the required announcements and sufficient time to disperse, officers may encircle the crowd or a portion of the crowd for purposes of making multiple simultaneous arrests.
2. Persons who make it clear (e.g., by non-violent civil disobedience) that they seek to be arrested may be arrested and must not be subjected to other dispersal techniques, such as the use of batons or chemical agents. Persons refusing to comply with arrest procedures may be subject to the reasonable use of force.
3. Arrests of non-violent persons shall be accomplished by verbal commands and persuasion, handcuffing, lifting, carrying, the use of dollies and/or stretchers, and/or the use of soft empty hand control holds.

4. Officers must document any injuries reported by an arrestee, and as soon as practical, officers must obtain professional medical treatment for the arrestee.
5. Juveniles arrested in demonstrations shall be handled consistent with department policy on arrest, transportation, and detention of juveniles.
6. Officers arresting a person with a disability affecting mobility or communication must follow the department policy on arrest, transportation, and detention of persons with disabilities.

VII.Handcuffs

A. All persons subject to arrest during a demonstration or crowd event shall be handcuffed in accordance with department policy, orders, and training bulletins.

B. Officers should be cognizant that flex-cuffs may tighten when arrestees hands swell or move, sometimes simply in response to pain from the cuffs themselves. When arrestees complain of pain from overly tight flex cuffs, officers must examine the cuffs and ensure proper fit.

C. Arrestees in flex-cuffs must be monitored to prevent injury.

D. Each unit involved in detention and/or transportation of arrestees with flex-cuffs should have a flex-cuff cutter and adequate supplies of extra flex-cuffs readily available.

VII.Media.

A. The media have a First Amendment right to cover public activity, including the right to record video or film, livestream, photograph, or use other mediums.

B. The media must not be restricted to an identified area, and must be permitted to observe and must be permitted close enough access to view the crowd event and any arrests. An onsite supervisor/incident commander may identify an area where media may choose to assemble.

C. Officers will not arrest members of the media unless they are physically obstructing lawful efforts to disperse the crowd, or efforts to arrest participants, or engaged in criminal activity.

D. The media must not be targeted for dispersal or enforcement action because of their media status.

E. Even after a dispersal order has been given, clearly identified media must be permitted to carry out their professional duties unless their presence would unduly interfere with the enforcement action.

IX. Legal Observers

E. Legal observers, including unaffiliated self-identified legal observers and crowd monitors, do not have the same legal status as the media, and are subject to laws and orders similar to any other person or citizen.

F. Legal observers and monitors must comply with all dispersal orders unless the on-site supervisor/incident commander chooses to allow such an individual legal observers and monitors to

remain in an area after a dispersal order.

G. Legal observers and crowd monitors must not be targeted for dispersal or enforcement action because of their status.

X.Documentation of Public Assembly and First Amendment Activity

A. The purpose of any visual documentation by (law enforcement agency) of a public assembly or first amendment activity must be related only to:

   1) Documentation of the event for the purposes of debriefing,

   2) Documentation to establish a visual record for the purposes of responding to citizen complaints or legal challenges, or

   3) Creating visual records for training purposes.

B. If it is the policy of (law enforcement agency) to videotape and photograph, it must be done in a manner that minimizes interference with people lawfully participating in First Amendment activities. Videotaping and photographing of First Amendment activities must take place only when authorized by the on-site supervisor/incident commander.

C. Individuals should not be singled out for photographing or recording simply because they appear to be leaders, organizers,or speakers.

D. Unless evidence of criminal activity is provided, videos or photographs of demonstrations shall not be disseminated to other government agencies, including federal, state, and local law enforcement agencies. If videos or photographs are disseminated or shared with another law enforcement agency, a record should be created and maintained noting the date and recipient of the information.

E. If there are no pending criminal prosecutions arising from the demonstration or if the video recording or photographing is not relevant to an Internal Affairs or citizen complaint investigation or proceedings or to civil litigation arising from police conduct at the demonstration, the video recording and/or photographs shall be destroyed in accordance with department policies.

F. This directive shall not prohibit department members from using these videos or footage from such videos as part of training materials for officers in crowd control and crowd dispersal techniques and procedures.